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A Glimpse of Indian Copyright Laws with a Delineation of its Infringement

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Abstract:

Indian law provides a kind of intellectual property protection known as copyright. This privilege is bestowed to those who have authored unique literary, dramatic, musical, artistic, cinematic, or sound recording works. All works of original composition are protected by the Copyright Act of 1957. What we mean by "original" here is that there is no evidence of plagiarism. Instead than protecting ideas, copyright rules safeguard how those ideas are expressed.

Through this study, the authors have made an earnest attempt to analyze the copyright laws in India which is an important branch of the Intellectual Property Right (IPR), especially focusing on the Copyright Act, 1957 and its various amendments till date. The necessity and strict application of this branch of law has also been discussed throughout this paper. A few reflections are also there regarding the term of copyright protection in this paper. Besides, a discussion on the infringement of copyright and the reasons for it has also been provided through this write-up. To explain it properly a few important judicial pronouncements have been examined by the authors. Finally, a few workable suggestions are brought out through the concluding remark.

Key Words- Copyright, Intellectual property right, original work, ideas, infringement.

1.1 Introduction

The copyright laws of India are on level with those of other countries as outlined in the TRIPS (Trade Related Aspects of Intellectual Property Rights) agreement, which is overseen by the World Trade Organization (WTO). India is a party to both the Universal Copyright Convention (1952) and the Berne Convention for the Protection of Literary and Artistic Works, 1886. The Indian Copyright Act, 1957, as amended in 1999, 2002, and 2012, fully reflects both conventions. Indian copyright law has been updated by the Copyright Act, 1957 to reflect changes in the IT sector, including innovations in digital technology, computer software, and satellite transmission, in response to the worldwide need for copyright harmonization.¹ An integral part of IP rights, copyright grants the exclusive legal right to an author's work in his creation.² Intellectual property rights has been categorized into many branches like patent, trademark, copyright, plant breeders' right, utility model or design, trade secrets, geographical indication etc. Of these, copyright stands out as a special legal privilege bestowed to creators or collectives of creators to prevent others from making a copy, altering, translating, distributing, or performing their work publicly without their express consent.³

1. Vijay Pal Dalmia, *Copyright Law in India- Everything You must Know*, available at: www.mondaq.com (visited on February 4, 2020).
2. N.M. Anjaneya & Aswath Lalitha, "Understanding Copyright Laws: Infringement, Protection and Exceptions", *International Journal of Research in Library Science* (2455-104X), 2016 3. 3.
3. <https://www.lawstreamed.blogspot.in/2011/10/intellectual-property-rights.html>, (visited on February 5, 2020).

The copyright system is in place to protect and compensate the public for the writers' efforts, which result in a finished product. As a result, writers and artists are motivated to consistently generate new works.

1.2 Copyright and Copyright Law: A Brief Concept

Copyright is a kind of authorial property that applies to certain kinds of creative works. Everything that is novel in terms of writing, art, music, theatre, film, or sound recording is protected by copyright. While registration is not required, copyright protection begins the minute a work is created.

This privilege has also been extended by India. Published works outside of India that are protected by the International Copyright Order, 1999. However, for additional safety, getting a registration is usually a good idea. Even if the work is first published in India,⁴ copyright protection is accessible in other nations throughout the globe, which is one of the greatest benefits. Therefore, works first published in India are eligible for copyright protection in other countries even without a formal application. In addition, the International Copyright Order, 1999 grants this protection to works published outside of India by the Indian government.⁵

Despite the fact that libraries are legally able to utilize copyrighted content for academic and research purposes without the owner's consent, this does not always happen. However, problems may arise if library patrons do not utilize the resources fairly.

Thus, copyright law prevents the unauthorized copying of a work exactly as it is. However, copying the ideas in those works is not prohibited. The holder of copyright may often pursue enforcement in a civil court, however many nations have criminal infringement provisions. In a nutshell, copyright is a legal protection that grants the owner of creative works (such as books, movies, scriptures, pictures, songs, poems, websites, etc.) the authority to dictate the use that such works may have by others.

1.3. Copyright: Why Needed?

Copyright protects the expression of ideas and it encourages people to create through various medium. The expression of ideas belongs to people as much as the other important household properties they bought. Creative works are recognized under copyright as a distinct kind of intellectual property. Any original concept, whether it takes the shape of a book, art, writing, poetry, theatre, etc., may be owned in the same way as physical things like cars and houses.⁶ However, unlike other properties, copyright ownership is for only a limited duration and eventually expires. But this type of protection is very essential, because the sense of satisfaction gained through a creative process is the result of the creator's hardships, time and effort. One's creation is one's asset. No matter what others may say, it is still a potential asset. So such works must be protected.

1.4 An Overall Analysis of Indian Copyright Laws

Aspects of copyright, related rights and neighboring rights are regulated by the Intellectual Copyright Order of 1999 in India, as well as the Copyright Act, 1957 and regulations established there under. There is no common law right to copyright; rather, copyright is given and protected according to the Act.⁷ Concerning copyright, the Indian Constitution places the topic under Entry 49 of List-I, the core list. Parliament alone has the authority to legislate on this matter as it pertains to Central Law. The Indian Parliament codified the Copyright Act of 1957 in response to a global demand for protection of creative works, literary masterpieces, and other forms of intellectual property as a result of public support for such rights around the world.⁸

4. <https://www.legalservicesindia.com/article/1195-Copyright-Law--in-India.html> (visited on February 5, 2020).

5. *Ibid.*

6. David Sarokin, *Why are Copyright Laws Important?*, available at <https://smallbusiness.chrome.com/copyright-laws-important-52601.htm> (visited on February 5, 2020).

7. *Manojah Cine Production v. A. Sudarshan*, AIR1976 Mad 22.

8. *Indian Performing Right Society Limited vs. Eastern Indian Motion Pictures, Assam*, AIR1977 SC 1443 (1453).

The Indian Copyright Act, 1914, which was based on the Copyright Act, 1911 of the UK, contained the copyright laws in place before 1957. However, it was believed that India's newly-formed constitutional standing did not align with the UK Act. In view of the increasing awareness of the importance of copyright, it was deemed essential to establish a separate copyright law. At long last, it seemed that a comprehensive overhaul of the current legislation was unavoidable, and the Copyright Act, 1957 was born. A person's business monopoly and conflicting interests were the driving forces behind the legislature's decision to pass this Act.

The Act of 1957 was, in effect, the first copyright law passed by an independent Indian legislature. In addition to having procedural and substantive provisions, this Act also offers legal recourse for the enforcement of the right. Consequently, it is evident that any nation that wants to encourage its artists, composers, writers, etc., to enrich its cultural legacy, must establish strong copyright protection.⁹ Despite the fact that the Indian Copyright Act of 1847 was the first regulation that applied to India, the Indian Parliament finally passed a complete law on the matter in 1957.

Therefore, a few salient features of this Act must be mentioned here. Such features are as follows¹⁰:

- a) categories of works that are subject to copyright,
- b) extent to which the law grants the author or creator certain rights,
- c) terms of copyright for different categories of work,
- d) rules concerning the transfer of ownership and the granting of licenses for copyrights, including, in some situations, mandatory licenses,
- e) transmission privileges,
- f) description of copyright violation,
- g) exclusive rights of the writer,
- h) remedies for copyright infringement, including civil and criminal,
- i) the establishment of a Copyright Office and a Copyright Board to assist with copyright registration and the resolution of specific types of disputes that may arise from the Act, etc.

The Act of 1957 was further amended for a number of times. An outline of a few such important amendments can be drawn as follows:

1.4.1 Copyright (Amendment) Act, 1983

The Universal Copyright Convention and the Berne Convention served as the foundation for the Copyright Act, 1957. However, all of these international accords experienced revisions in 1971, and in 1983. Hence, Indian copyright law was also significantly changed. Developing nations may now legally force the translation and reproduction of foreign works for academic purposes, classroom use, or systematic instructional activities by granting compulsory licenses under this revised version.

In cases when the author is unknown or deceased, there are provisions for publishing their unpublished works. This is because it might be difficult to determine who owns the copyright in such cases. The introduction of some copyright requirements for publicly given lectures, addresses, etc., and for the publishing of copyright register entries is another significant change brought about by this amendment.

¹¹These are a few major amendments brought out by the Act of 1983.

1.4.2 Copyright (Amendment) Act, 1984

In response to new and more severe technical obstacles that arose after some time had passed, lawmakers amended the copyright law once more. This 1984 addendum version dealt with video film inclusion, duplicate equipment introduction, computer programme protection, police search powers, enhanced penalties, copyright infringement statement, and other relevant rights.¹²

9. S. Alikhan, "The Role of Berne Convention in the promotion of Cultural Creativity and Development: Recent Copyright Legislation in Developing Countries", 28 *Journal of Indian Law Institute* 423(1986).

10. P. Narayanan, *Intellectual Property Law*, 23-24 (Eastern Law House, Kolkata, West Bengal, 3rd edn., 2001).

11. 11. Samuel Israel, "Copyright in India: National and International: The 1983 Amendment of the Indian Copyright Act, 1957", 47 *Economic and Political Weekly*, 18 (Nov. 19, 1983).

12. 12. <https://en.m.wikipedia.org>, (visited on February 5, 2020).

1.4.3 Copyright (Amendment) Act, 1992

In 1992, an adjustment was made that was both minor and significant; it prolonged the duration of copyright for 10 years. The overall duration of copyright protection was thus extended to life plus sixty years as a result of this.¹³

1.4.4 Copyright (Amendment) Act, 1994

The main Act of 1957 was amended, bringing about several significant modifications. This restructures the Copyright Board and its authority, redefines “adaptation” and “author” as they pertain to cinematograph pictures, and more. There have also been changes to the copyright owner’s rights, as well as copyright assignments and licenses. It also established “author's special rights,” redefined what does not constitute infringement, and replaced “performing right societies” with copyright organisations.¹⁴

1.4.5 Copyright (Amendment) Act, 1999

Sections 38, 40-A, 42-A, 52, and others were the primary targets of this addition. By this amendment, the performer’s right was extended to 50 years which was for 25 years in the earlier law. The second major change this Act introduced was the authority of the federal government to enforce the provisions of Chapter VIII of the Act on broadcasting organizations and performers in specific nations.¹⁵ In light of this change, the Central Government may, by order, specify that certain provisions of this Act shall not apply to broadcasting or performers if it determines that a foreign country does not provide sufficient protection to the rights of broadcasting organizations or performers.¹⁶

1.4.6 Copyright (Amendment) Act, 2012

The copyright regulations were announced in March 2013 after the amendment of 2012, which came into force on June 13, 2012. There have been several positive developments brought about by the 2012 modifications, which have garnered tremendous praise. Important things include, but are not limited to, recognition of performers’ moral rights, mandatory licensing for foreign works, fair dealing expanded to all types of works covered by Section 13, border security measures beefed up, special accommodations for people with disabilities, and the introduction of provisions for digital rights management.¹⁷

1.4.7 Draft Copyright (Amendment) Rules, 2019

In these Rules, the government has suggested changes to rules pertaining to accountability and openness, allowing the copyright office to communicate electronically and revising fees.¹⁸ This would be the government’s plan to update the copyright structure to reflect the rapid development of digital technology.

Draft Copyright (Amendment) Rules were announced on May 30, 2019, by the Department for Promotion of Industry and Internal Trade (DPIIT). Current copyright legislation in India is the Copyright Act, 1957 with the Copyright Rules, 2013 as revised in 2016 and 2021.¹⁹

1.5. Copyright Infringement: A Brief Analysis

The monopoly right to profit from one’s work may be exercised in a variety of ways by the owner of copyright.²⁰

13. *Ibid.*

14. *Supra* note 12.

15. <https://www.fakongjian.com>. (Visited on February 7, 2020.).

16. *Ibid.*

17. <https://www.ip-watch.org/2013/01/22/development-in-indian-ip-law-the-copyright-amendment-act-2012>, (visited on February 3, 2020).

18. <https://www.medianama.com/2019/06/223-highlights-copyright-amendment-rules-2019> (visited on February 7, 2022).

19. *Ibid.*

20. *Supra* note 10 at 51.

Infringement occurs, however, when someone uses another person's copyright without their permission to make money off of the original work in any way, including but not limited to making copies, public performances, or communication.²¹ Some remedies for avoiding infringement are also provided for in the Act of 1957.

The unlicensed and illegal duplication of another person's work is called infringement. In violation of the copyright in a work, as stated in Section 51 of the Act 1957, the following may happen: i) someone does anything that the owner of the copyright has the exclusive right to do, or ii) someone allows for profit any place to be used for communication of the work to the public where such communication violates the copyright in that work. This can happen when someone does not have a license from the owner of the copyright or the Registrar of copyright, or when a license's conditions are violated, or where a person –

(i) submits, trades, displays, or offers to sell or hire an infringing copy of the work; (ii) distributes, displays, or sells any infringing copy of the work; (iii) brings any infringing copy of the work to the public eye; or (iv) imports into India, with the exception of one copy for the importer's private and domestic use, any infringing copy of the work.²²

Therefore, it is an infringement of the copyright in the work if anyone conducts any of the aforementioned acts without the proper authorization.

1.5.1 Essential Ingredients of Copyright Infringement

Infringement can entail any combination of the following elements, depending on the type of protected content:

- i) making a physical copy of the piece,
- ii) the work's release,
- iii) dissemination of the works to the general population,
- iv) performance of the work in public,
- v) working on the work's translation and adaptation, or
- vi) subjecting a substantial portion of the protected work to any of the aforementioned actions.²³

1.5.2 Propositions related to Copyright Infringement

The Supreme Court in *Anan v. Deluxe Films*²⁴ has laid down the following propositions:

- Ideas, subjects, concepts, narratives, historical or legendary truths, and so on cannot be protected by copyright.
- Similarities are inevitable when multiple ways of developing the same idea are derived from the same common source. In such a situation, the court needs to decide if the similarities are in the copyright work's form of expression or in some basic or important traits.
- If a spectator or viewer has read or seen both works and has a clear impression that the later work looks like a duplicate of the original work, then there has been a copyright violation. This is the surest and safest way to know for sure.
- There can be no claim of copyright infringement when two works that share a same concept are rendered substantially distinct by presentation and treatment.
- No copyright infringement occurs when, in addition to similarities, there are significant and wide dissimilarities between the original and follow-up work that negate the intention to duplicate the original.
- Since copyright infringement is tantamount to piracy, there needs to be convincing proof of it.
- It gets more challenging for the plaintiff when the issue is whether or not the film director or producer infringed upon the copyright of a theatrical play. The existence of a copyright infringement may be established if, after viewing the film, the spectator perceives it as a faithful adaptation of the original play.

21. The Copyright Act, 1957(Act 14 of 1957), s.52

22. *Supra* note 10 at 52.

23. *Supra* note 10 at 321.

24. AIR 1978 SC 1613.

1.5.3 Statutory Exceptions to Infringement of Copyright

Infringement occurs when someone other than the copyright owner uses a copyrighted work. But the Act does acknowledge some things that would not be considered an infringement. To enable reproduction of the work for specific public reasons, such as the advancement of education and the encouragement of private study and research, those activities are recognized as legislative exceptions to copyright infringement.²⁵

The following exceptions can be pleaded in defence by the defendant in an action for infringement of copyright. Section 52 of the Act lays down those statutory exceptions. They are:

- a. an honest exchange involving a piece of art, whether it be a piece of literature, a play, a song, or a computer programme, for purposes such as study, critique, or evaluation,
- b. generating executable files for specific software applications, covering breaking news through print, broadcast, and photographic media,
- c. duplication of a court case and related documents. The only people who should be able to utilize such a reproduction are legislators.
- d. public performance of readings or recitations from works of literature or theatre,
- e. under specific conditions, publishing in a compilation for usage in educational institutions,
- f. duplication by either the instructor or the student during the delivery of lessons or in the preparation of examinations,
- g. reproducing an article from a current affairs, social, political, or religious publication in specific contexts,
- h. publishing in a journal or periodicals a synopsis of a public talk,
- i. producing no more than three copies of an item for distribution to public libraries, etc.²⁶

These are not the only possible counterarguments to an infringement claim; there are a few additionally:

- a) the claimed infringing work does not have copyright,
- b) the purportedly protected work lacks originality,
- c) the defendant's work is distinct from the plaintiff's and does not infringe against any public policy, the plaintiff's work is not morally or seditious characterized,
- d) the suit is barred by limitation,
- e) the plaintiff is guilty of estoppels, acquiescence or consent,
- f) the infringement is innocent.²⁷

1.5.4 Remedies for Infringement of Copyright

In the event of copyright infringement, the parties may pursue either criminal or civil remedies under the Copyright Act, 1957. Additionally, administrative remedies may be used in some instances.

1.5.4.1 Civil Remedies

In the event of copyright infringement, the owner of the right shall be entitled to all remedies given by law, including but not limited to injunction, damages, and accounts, as stated in Section 55 of the Act. An injunction to prevent the defendant from further infringement-inducing conduct is the primary remedy in the majority of instances.²⁸ If the defendant can show that he had no knowledge or reason to believe that copyright was present in the work on the day of the violation, this is their exclusive recourse. A court may find that the defendant has profited unduly by selling copies that infringe on someone else's work and compel him to pay the plaintiff all or part of that profit.²⁹ In the case of *Gramophone Company of India Ltd. v. Santi*

25. *Supra* note 10 at 328.

26. *Id.* at 328, 329.

27. M.K. Bhandari, *Law Relating to Intellectual Property Rights*, 321 (Central Law Publications, Allahabad, 6th edn., 2021).

28. The Copyright Act, 1957(Act 14 of 1957), s. 55(1).

29. *Supra* note 18 at 208.

Films Corporation Ltd., however, the Supreme Court emphasized the need of including precise charges in the plaint about whether the plaintiff's case would be covered by a specific provision of the Act.³⁰

Damages and Account of Profits is the next significant legal remedy. Damages and account are also available as civil remedies under Section 55 of the Act. You may combine the remedies of injunction with damages or account for profits, but you cannot combine accounts and damages. That much was said in the matter of *Ramkrishna Pictures v. Pillalamari Lakshmikantan and others*.³¹ The plaintiff forfeited all right to seek relief after damages were granted and the decree of damages became permanent.

In the matter of P.N. Krishnan Murthy, the plaintiff sought exemplary damages for copyright infringement on the grounds that the defendant willfully kept the lawsuit from being brought to a close for twenty-five years. The court, however, concluded that it is unfit to issue an exemplary damages award since the books in question were given out to the impoverished youngsters at no cost as part of a charitable public service effort. Thus the decision of the court regarding this civil remedy depends on facts and circumstances which may vary from case to case.

Besides, Section 55 of the Act recognizes some other remedies like Anton Pillar Orders, Mareva Injunctions etc.³² These orders can be made in most extreme cases. These are a kind of preventive measures.

The District Court with jurisdiction must have exclusive authority to hear and decide any civil action or lawsuit alleging copyright infringement.³³

1.5.4.2 Criminal Remedies

The criminal code also provides for punishments for anyone found guilty of infringement. The plaintiff has the option to initiate both civil and criminal proceedings against the infringement. Since copyright infringement is both a civil wrong and a criminal offence, there are limited criminal sanctions for this kind of violation.

The offences of copyright infringement as laid down in the Act can be laid down as under:

- i) Knowingly infringing or abetting the infringement of the copyright in a work, or any work given by the Act. The minimum term for this crime is 6 months and the maximum is 3 years, with a fine of at least Rs. 50,000.³⁴
- ii) For a second and subsequent conviction for the offence stated above, an imprisonment of minimum 1 year or maximum 3 years or a fine of minimum 1 lakh or maximum 2 lakhs may be imposed.³⁵
- iii) Using illegal software with the intent to cause harm is punishable by a fine of at least Rs. 50,000 and up to 2 lakhs or by imprisonment for at least 7 days and up to 3 years.³⁶
- iv) A person may also be fined or jailed for up to a year if they are proven guilty of making false entries in the Register of Copyright etc.³⁷
- v) One year in prison, a fine, or both may be imposed for making a false statement with the intent to deceive or influence any official.³⁸
- vi) Violation of section 52-A, which deals with audio and video piracy, may result in a fine or up to three years in prison.³⁹
- vii) In addition to being a punishable offence by a fine and/or imprisonment for up to two years, possessing plates or other materials used to make unauthorized copies is also prohibited.⁴⁰

30. AIR 1997 Cal 63.

31. AIR 1981AP 224.

32. *Supra* note 18 at 224.

33. The Copyright Act, 1957(Act 14 of 1957), s.62

34. The Copyright Act, 1957(Act 14 of 1957), s.63.

35. *Id.*, s. 63-A.

36. *Id.*, s.63-B.

37. *Id.*, s. 67.

38. *Id.*, s. 68.

39. *Id.*, s. 68-A.

40. *Id.*, s.65

The criminal process outlined in the Criminal Procedure Code 1973 may be used to commence proceedings in the court of Magistrate of the first class for any copyright infringement crime. Additionally, the trial court has the authority to order any police officer not lower than the sub-inspector level to confiscate, without a warrant, any and all copies of the work that infringe upon it, as well as any materials used to create such pieces.⁴¹

1.5.4.3 Administrative Remedies

In addition to the civil and criminal remedies mentioned above, the Registrar and Copyright Board also have some authority to prevent copyright violations.⁴² This is also called administrative or quasi-judicial remedy available under the Indian copyright laws.

The various remedies as analyzed are available for the owner of copyright for protection of this right, if their works are infringed illegally. However, under section 60, the party wronged may seek an injunction to stop the copyright holder from threatening the other party with legal action over any alleged infringement and also recover damages if the copyright holder threatens the other party through a circular, advertisement, or any other method. Unfortunately, this remedy will no longer be available if the individual who threatened has already filed a lawsuit. This was stated in the case of *Super Cassette India v. Bathala Cassettes (P) Ltd.*⁴³

1.6 Concluding Note and Suggestions

In order to address the issue of copyright protection in a way that keeps the interests and rights involved in check, one might take a variety of alternative ways. However, an achievable approach should use identifying techniques that incur a modest level of privacy invasion from the user, without endangering their rights.⁴⁴ Despite its rapid social and economic progress, India has stuck to its long-standing policy of prioritizing the public interest. From this vantage point, the absence of robust protects in India has made the issue of copyright infringement in many forms of creativity a serious challenge. Although a good number of amendments have been made in Indian Copyright laws till date, yet the practical implications of all these is still doubtful as because copyright infringement cases are increasing. We require fast action in all such cases, because delay means denial. Therefore, protection of copyright should not be subject to formalities, i.e., it is not to be acquired through a process of law.

Another serious issue is emergence of challenges to conventional copyright regime in the field of education. This is mainly due to the frequent use of digital technology which has reduced expression of knowledge, literature and arts into bits. This has made copying and dissemination faster which results into protection of copyright a very difficult proposition to enforce. Since this problem is the creation of technology, its solution should also be technology itself. As a result, technological measure of protection like encryption has been evolved. But the use and application of this measure is not found to be proper. Technological progress is always a boon, but on the other hand, it comes with a host of problems. Therefore, policies, programmes and laws have to keep track of technological process and make suitable amendments and modifications to make use of the best effects of such developments. This is absolutely true and must be followed to solve the menace of copyright infringement in India. Any creativity in any field is basically for the purpose of knowledge creation and educating others.

Thus, many organizations must immediately stop being indifferent to the creation of government policies and laws pertaining to copyright issues. It will help in maintaining the balance between the creator's rights and society's larger interest.

41. *Laxminarain Mehta v. Gramophone Co. of India Ltd.*, PTC (Suppl.) 91 Delhi

42. *Supra* note 18 at 87.

43. AIR 1994 Del 237.

44. M. Campidogilo & Franco Frattolillo, "The Copyright Protection Problem: Challenges and Suggestions", Fourth International Conference on Internet and Web Application and Services 525 (2009).

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