

# **COPYRIGHT: A STUDY ON LEGISLATIVE MEASURES RELATING TO IT IN INDIA**

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## **ABSTRACT**

Enrichment of culture is of vital interest to each and every society. The copyright law helps in fulfilling this social interest. Copyright helps the composers, authors, designers, artists to protect their works. Copyright Law always tries to prevent plagiarism. Copyright is a type of intellectual property that protects the **original works of the authors**. The authors get the exclusive right for a limited period to use their works. The Copyright Act has been enacted to check the piracy. Works of the authors are original when they are independently created by a human author without copying from others. A study on legislative measures relating to Copyright in India will help us to get a proper knowledge regarding the different provisions of copyright law in India. In copyright law it includes books, poems, paintings, photographs, illustrations, musical compositions, sound recordings, computer programmes, architectural works, cinematograph films etc. We can say that the copyright is the right which a person acquires in his original work and which is the result of his intellectual labour. The primary function of a copyright law is to protect the fruits of a man's work from the infringers. By observing and understanding the international character of copyright the various countries have joined to form conventions for the protection of copyrights owned by its nationals. Infringement of copyright is a great problem in the present days so the copyright Law always tries to prevent it. Copyright Law in India has tried to make a great development in the arena of literature, arts and sculpture by protecting the copyrights of the original authors.

**Keywords:** Copyright, Intellectual property, study, Legislative measures, Infringement.

## **INTRODUCTION**

The importance of copyright has increased enormously and rapidly in recent times. Copyright is a kind of intellectual property. In India the earliest statute law relating to copyright is the Indian Copyright Act of 1847. This act was enacted during the period of British East India Company. This Act was passed by Governor General of India in council. It was passed to affirm the applicability of the law that obtained in England to India. Very little information is available on how this legislation operated and functioned during the period from 1847 to 1911.

After that the law of copyright was codified in England by the Copyright Act, 1911. This Act was made applicable in India and to all the countries under the British Dominion. After that the Governor-General of India enacted the Indian Copyright Act, 1914.

### ***1. The 1914 Act:-***

The Indian copyright Act of 1914, we can say that it was a modified version of the British Copyright Act of 1911. Some of its important provisions were<sup>i</sup>-

- i. under this Act registration of the author's work was not necessary;
- ii. the author got his right as soon as the work was created;
- iii. protection was given not to ideas but to the material form in which the work of the author was expressed;
- iv. Only original works attracted the protection of copyright law although the general principle applied was that "all laws which put a restraint upon human activity and enterprise construed in a reasonable and generous spirit. Under the guise of copyright, plaintiff should not ask the court to close all the avenues of research and scholarship and all frontiers of human knowledge";
- v. According to the Act term of copyright protection was fixed as the lifetime of the author and 25 years after his death. For certain types of work such as joint works, posthumous works, government publications, engravings etc., special periods were prescribed under this Act.

This Act of 1914 was a brief enactment of 15 Sections including the text of the British Copyright Act of 1911 (of England) as its first schedule and it was included

with a few omissions which were not applicable to India. The two Acts were taken together to constitute the copyright law in India.

The Act of 1914 described penalties for infringement of copyright. In the then time it was not considered as a criminal offence. It described the provisions of the destruction of infringing copies or their delivery to the copyright owner. According to the Act the non-registration of a book for copyright protection was not a bar to filing a suit or starting a civil proceeding against the infringer who had infringed copyright<sup>ii</sup>.

## **2. *The Copyright Act, 1957:-***

In 1947, India got its independence. After independence we observed a great change in the constitutional status with which we observed the new developments and technological advances which made it necessary to make a comprehensive review of the subject. The copyright Act of 1957 is the result of it. The Act was consolidating and amending the law as suited to India. The Act introduced a number of changes and new provisions for the better protection of Copyright.<sup>iii</sup> After that this Act was also amended for several times. This Act was amended in 1983, 1984, 1994, 1999 and in 2012.

## **MEANING OF COPYRIGHT**

Section 14 of the Act gives a comprehensive meaning of the term “copyright”<sup>iv</sup>.

<sup>v</sup>For the purpose of this Act, “Copyright” means the exclusive right subject to the provisions of this Act, to do or authorise the doing of any of the following acts in respect of a work or any substantial part thereof, namely:-

- (a) In the case of a literary, dramatic or musical work, not being a computer programme,-
  - i. to reproduce the work in any material form including the storing of it in any medium by electronic means;
  - ii. to issue copies of the work to the public not being copies already in circulation;
  - iii. to perform the work in public, or communicate it to the public;

- iv. to make any cinematograph film or sound recording in respect of the work;
- v. to make any translation of the work;
- vi. to make any adaptation of the work;
- vii. to do, in relation to a translation or an adaptation of the work, any of the acts specified in relation to the work in sub-clauses (i) to (vi);

(b) In the case of a computer programme,-

- i. to do any of the acts specified in clause (a);
- <sup>vi</sup>[ii. to sell or give on commercial rental or offer for sale or for commercial rental any copy of the computer programme:

Provided that such commercial rental does not apply in respect of computer programmes where the programme itself is not the essential object of the rental];

(c) In the case of an artistic work,-

- i. to reproduce the work in any material form including depiction in three dimensions of a two dimensional work or in two dimensions of a three dimensional work;
- “ii. to sell or give on hire, or offer for sale or hire, any copy of the computer programme, regardless of whether such copy has been sold or given on hire on earlier occasions;”

- ii. to communicate the work to the public;
- iii. to issue copies of the work to the public not being copies already in circulation;
- iv. to include the work in any cinematograph film;
- v. to make any adaptation of the work;
- vi. to do in relation to an adaptation of the work any of the acts specified in relation to the work in sub-clauses (i) to (iv);

(d) In the case of a cinematograph film,-

- i. To make a copy of the film, including a photograph of any image forming part thereof;
- ii. to sell or give on hire, or offer for sale or hire, any copy of the film, regardless of whether such copy has been sold or given on hire on earlier occasions;
- iii. to communicate the film to the public;

(e) in the case of a sound recording,-

- i. To make any other sound recording embodying it;
- ii. to sell or give on hire, or offer for sale or hire, any copy of the sound recording regardless of whether such copy has been sold or given on hire on earlier occasions;
- iii. to communicate the sound recording to the public.

Explanation: - For the purpose of this section, a copy which has been sold once shall be deemed to be a copy already in circulation.

The provisions regarding the duration of copyright protection is discussed below<sup>vii</sup>:-

<ul style="list-style-type: none"> <li>➤ Literary</li> <li>➤ dramatic,</li> <li>➤ musical and</li> <li>➤ artistic works</li> </ul>	<ul style="list-style-type: none"> <li>➤ Lifetime of the author + sixty years from the beginning of the calendar year next following the year in which the author dies.</li> </ul>
<ul style="list-style-type: none"> <li>➤ Anonymous and pseudonymous works</li> <li>➤ Posthumous work</li> <li>➤ Cinematograph films</li> <li>➤ Sound records</li> <li>➤ Government work</li> <li>➤ Public undertakings</li> <li>➤ International Agencies</li> <li>➤ photographs</li> </ul>	<ul style="list-style-type: none"> <li>➤ Until sixty years from the beginning of the calendar years next following the year in which the work is first published.</li> </ul>

Copyright is a bunch of rights given by the Copyright laws of our country to the creators of literary, dramatic, musical and artistic works and the producers of cinematograph films and sound recordings. The rights which are provided under Copyright law include the rights of reproduction of the work of the author, communication of the work to the public, adaptation of the work and translation of the work. With the nature of the protected work of the author the scope and duration of protection provided under copyright law varies.

The Indian copyright law protects literary works, dramatic works, musical works, artistic works, cinematograph films and sound recordings.

## **PROBLEMS RELATING TO COPYRIGHT IN THE PRESENT ERA OF GLOBALIZATION**

In the present scenario infringement of copyright is a great problem. In respect of the copyrighted work the owner of a copyright has the exclusive right to do certain acts for monetary gain or for getting his own benefit. If any of these acts are done by any other person without proper authority that person would be guilty of infringement of the copyright in the work.

**Regarding copyright the following points which must be taken into consideration by us**

- I. Whether the present law is adequate or not for the protection of Copyright?
- II. Applying the Copyright law properly for the development of arts, culture, sculpture and literature.

### **Exceptions to copyright infringement in India:-**

Under the Copyright Act 1957 we find that certain acts are exempted from the ambit of copyright infringement. We can see it that while many people in our country tend to use the term fair use to explain copyright exceptions in India, it is a factually wrong usage. The broad fair use exception is followed by US and certain other countries. In India, our country follows a different approach towards copyright exceptions. India follows a hybrid approach that allows-

- fair dealing with any copyrighted work of an author for certain specifically mentioned purposes and
- Certain specific activities which are enumerated in the statute. The fair use approach followed in the US can be applied for any kind of uses. the fair dealing approach followed in India is clearly limited towards the purposes of
  1. private or personal use, including research,
  2. criticism or review,



3. reporting of current events and current affairs, including the reporting of a lecture delivered in public.

The concept of '[fair dealing](#)' has been discussed in different judgments of our country, including the decision of the Supreme Court of India in [ACADEMY OF GENERAL EDUCATION VS. B. MALINI MALLYA](#) (2009) and the decision of the [High Court of Kerala](#) in [CIVIC CHANDRAN VS. AMMINI AMMA](#) (1996)<sup>viii</sup>.

## REMEDIES FOR THE INFRINGEMENT OF COPYRIGHT

The Copyright Act, 1957 provides for three types of remedies for violation of copyright, namely<sup>ix</sup>-

- (1) Civil Remedies;
- (2) Criminal; and
- (3) Administrative Remedies.

### 1. *Civil Remedies:-*

Chapter XII, Sections 54 to 62 deals with the civil remedies which are available for violation of copyright. Injunction, damages, accounts and costs etc. are coming under these remedies. The injunction can be permanent or it can be interlocutory.

***Anton Piller Order :-*** For better protection of copyright and other forms of intellectual property, the courts in England, have invented a new order. The court may, in appropriate cases, acting on an application by the plaintiff, pass an *ex-parte* order directing the defendant to permit the plaintiff, accompanied by solicitor or attorney to enter his premises and take inspection of relevant documents and articles and take copies thereof or remove them for safe custody. Generally where there is a grave danger of relevant documents and infringing articles being removed or destroyed the necessity for such an order arises so that the ends of justice will not be defeated. In the U.K., such an order is called as an Anton Piller Order, named after a plaintiff in a case where such an order was first passed.

### ***Jurisdiction of court to grant civil remedies:-***

<sup>x</sup>Every suit or other civil proceedings arising under the Act in respect of civil remedies, for infringement of copyright in any work, is to be instituted in the District Court having jurisdiction.<sup>xi</sup> For this purpose, a “district court having jurisdiction” includes a district court within the local limits of whose jurisdiction, the person instituting the suit/other proceedings, voluntarily resides or carries on the business or personally works for gain, at the time of the institution of the suit or other proceedings.

### ***2. Criminal Remedies:-***

<sup>xii</sup>Notwithstanding anything contained in other criminal legislations, the Copyright Act, 1957 also provides for certain criminal remedies. Chapter XIII, in Sections 63 to 70 deals with the offences in relation to violation of copyright.

### ***3. Administrative Remedies:-***

<sup>xiii</sup>The copyright Act provides for the establishment of offices and institutions like the Registrar of copyrights, copyright Board and copyright societies etc. They also have certain powers to give certain remedies for violation of copyright

## **JUDICIAL RESPONSES**

**ANAND VS. DELUXE FILMS, AIR 1978 SC 1613 (1627)**, In this case the Supreme Court has laid down the principles which clearly explain the circumstances and instances pertaining to copyright infringement.<sup>xiv</sup>

**GRAMOPHONE CO. OF INDIA LTD., VS. SUPER CASSETTE INDUSTRIES LTD., 1996 PTC (16) 252,**<sup>xv</sup>

In this case the Delhi High Court was called upon to decide whether a combination of melody and / or harmony unless reduced to writing or graphically produced or reproduced would be a “musical work” under the Act.



The High Court speaking through Justice Jaspal Singh held that the defendants were making a only a version recording, which is sound recording made of an already published song by using another voice or voices and with different musicians and arrangers. Thus version recording is neither copying nor reproduction of the original recording. However the court directed the defendants not to use in the carton or inlay card or any other packaging material a design colour scheme and lay out etc. similar to that of the plaintiffs and not to use the same title. The defendants were directed to use an unoffending alternative title.

In the well known case of **NAJMA HEPTULLA VS. ORIENT LONGMAN LTD., AIR 1989 DELHI 63 AT P. 70**, the Court observed that, where there was active and close intellectual collaboration and co-operation between the narrator and the writer which resulted in the book, both the narrator and the writer would be joint owners of the work, entitled to first ownership. Thus if there is intellectual contribution by two or more persons, pursuant to a pre-concerted design, to the composition of a literary work, then those persons have to be regarded as joint authors.<sup>xvi</sup>

**VIDEO MASTER VS. NISHI PRODUCTIONS, 1998 PTC (18) 117,<sup>xvii</sup>**

In this case the Bombay High Court was called upon to decide whether manufacturing Betachem Cassettes for the purpose or its user for satellite broadcasting for transmission infringes the copyright of the persons having exclusive and sole video copyrights in respect of the cinematograph films.

The court answered the question in negative and held that copyright for the broadcast does not infringe the rights of person enjoying the right to exhibit the film by cable T.V. The court also held that by receiving the satellite signals on dish antenna owned / maintained by cable T.V. operator or private party and by relaying signals through media of cable to the viewers do not infringe the copyrights of the plaintiffs / licences of copyrights in cinematograph films.

## CONCLUSION

Copyright is provided for the protection of the original works of the authors which includes artistic creations, such as poems, novels, music, paintings, cinematographic works etc. When rights are violated punishments must be given to the infringers. Piracy must be prevented by Copyright rules. Though law relating to copyright is enacted by our legislatures to protect the copyright, but it is found that it is not always enough to protect the copyright. So, more rules regarding the protection of copyright are necessary in the present scenario of our country. At last we can say that in our country so many legislative measures are taken for the proper protection of copyright and the Supreme Court of India and the High Courts of India and the other courts always helping us in protecting copyright in our country.

## ENDNOTES

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<sup>i</sup> G. B. REDDY, INTELLECTUAL PROPERTY RIGHTS AND THE LAW 102-103 (GOGIA LAW AGENCY 2017).

<sup>ii</sup> G. B. REDDY, INTELLECTUAL PROPERTY RIGHTS AND THE LAW 102-103 (GOGIA LAW AGENCY 2017).

<sup>iii</sup> G. B. REDDY, INTELLECTUAL PROPERTY RIGHTS AND THE LAW 103 (GOGIA LAW AGENCY 2017).

<sup>iv</sup> G. B. REDDY, INTELLECTUAL PROPERTY RIGHTS AND THE LAW 74-76 (GOGIA LAW AGENCY 2017).

<sup>v</sup> Subs. by Act 38 of 1994, w.e.f. 10-5-1995.

<sup>vi</sup> Subs. By the Copyright (Amendment) Act, 1999.

<sup>vii</sup> [https://en.wikipedia.org/wiki/Copyright\\_of\\_India](https://en.wikipedia.org/wiki/Copyright_of_India)

<sup>viii</sup> N. S. GOPALAKRISHNAN AND T. G. AGITHA, PRINCIPLES OF INTELLECTUAL PROPERTY 369-393 (EASTERN BOOK COMPANY 2014).

<sup>ix</sup> G. B. REDDY, INTELLECTUAL PROPERTY RIGHTS AND THE LAW 158-159 (GOGIA LAW AGENCY 2017).

<sup>x</sup> G. B. REDDY, INTELLECTUAL PROPERTY RIGHTS AND THE LAW 162-163 (GOGIA LAW AGENCY 2017).

<sup>xi</sup> Under Section 62 of the Act.

<sup>xii</sup> G. B. REDDY, INTELLECTUAL PROPERTY RIGHTS AND THE LAW 163 (GOGIA LAW AGENCY 2017).

<sup>xiii</sup> G. B. REDDY, INTELLECTUAL PROPERTY RIGHTS AND THE LAW 167 (GOGIA LAW AGENCY 2017).

<sup>xiv</sup> G. B. REDDY, INTELLECTUAL PROPERTY RIGHTS AND THE LAW 146 (GOGIA LAW AGENCY 2017).

<sup>xv</sup> G. B. REDDY, INTELLECTUAL PROPERTY RIGHTS AND THE LAW 79 (GOGIA LAW AGENCY 2017).

<sup>xvi</sup> G. B. REDDY, INTELLECTUAL PROPERTY RIGHTS AND THE LAW 114 (GOGIA LAW AGENCY 2017).

<sup>xvii</sup> G. B. REDDY, INTELLECTUAL PROPERTY RIGHTS AND THE LAW 99 (GOGIA LAW AGENCY 2017).