AN ANALYTICAL STUDY OF RELEVANCY OF IDEA-EXPRESSION DICHOTOMY UNDER COPYRIGHT LAW

*By **Vaishali Sharma***

5th year BCOM LLB Student, DY Patil Deemed to be University School of Law, Mumbai, India

ABSTRACT

"Copyright only applies to Expressions"

The core principle of copyright law is that it only applies to expressions and in short this itself is the inception of the Idea-Expression Dichotomy.

The idea-expression dichotomy was formulated to ensure that the expression of an idea (i.e., expression), rather than the idea itself, is protected. This doctrine is widespread in the United States and is not entirely alien to Indian jurisprudence. Courts have repeatedly held that ideas themselves are not copyrightable.

Copyright covers only the expression of ideas. An idea is the formulation of an idea on a particular topic, and an expression is the realization of that idea. Many people may come up with the same idea themselves, but they can only claim copyright in the form of the expression of that idea. Such expressions must be specific sequences of words, numbers, or other forms. Therefore, such a principle makes it possible to use multiple expressions for the same idea.

RESEARCH OBJECTIVE

The objective of this study is to analyse, contemplate and summarize the Idea Expression Dichotomy, which forms the basis of the jurisprudence behind the Indian Copyright Law.

RESEARCH QUESTION

The present study is intended to focus upon the issues and problems relating to the Idea-Expression Dichtomoy of the Copyright Law. With the help of Doctrinal method, the proposed exercise is attempted to know the foundation of the doctrine to be understood, its development over time, relevant case laws which have contributed to development of the dichotomy and the present-day stance of the doctrine, along with its applicability to the Indian Copyright Law. Finally, the study summarizes all these observations to completely conclude the entire study.

RESEARCH METHODOLOGY

In accordance with the objective of the present study, doctrinal research designs have been adopted. The doctrinal design has been used to study the jurisprudential development in the areas of copyright law with the perspective of the Idea-Expression Dichotomoy, using various tools like case study, case law analysis, analytical induction, constant comparison, textual analysis, content analysis, etc. The study is majorly based around the secondary data collected from resources like Articles, Research Papers, Legal Journals, Case Laws, Judgements, Literature on the subject.

UNDERSTANDING 'EXPRESSION'

An '*expression*' can be understood as a mutli-faceted terms, meaning:

- In maths, an expression can be understood as a combination of symbols that can be evaluated

- In context of computer, an expression can also refer to some representations of a value of something that can be evaluated to return a value
- In language, an expression is a communication in speech or writing

A common thread between these different definitions, is that they all make references to something concrete, usually a specific sequence of words or symbols. It when different symbols are used that a particular thought or idea is conveyed.

When this definition in broadened, an expression can said to be an artifact used to convey an idea. The artifact can be ink on a paper, code in a file, paint on a canvas, or words on a page. The important aspect is that concrete physical representation communicates an idea from one person to another.

It can also be understood in contrast to a patent, which covers an idea behind an invention also within its purview. The idea may be embodied in many different machines, processes, pr products, each of which is a concrete expression of the patented concept and the protection of the idea itself is what makes the patents so powerful in terms of protection over the subject. It is true to state that many different things can be covered by the description in a single patent.

This can also be understood in terms of an example,

The expressions, 1+3, 2+2, 3+1, 0+4, all provide the same result of 4. So we are to say that 4 is the idea and its expressions are multiple, the patent law shall provide protection to the very idea itself, i.e. '4' whereas the copyright law shall give protection the expressions '1+3', '2+2', '3+1' and '0+4' all shall have separate copyright status.

HISTORICAL BACKGROUND

The very first mention of the dichotomy has been found in the case of *Baker v. Selden*[i], wherein it was founded by the Supreme Court of the United States that a claim to the exclusive property in a peculiar system of book-keeping cannot, under the law of copyright, ne maintained by the author of a treatise in which that system is exhibited and explained. The judgement also contemplates the difference between a copyright and letters patent stated and illustrated.

The Book Keeping Hypothesis

The case of Baker vs Selden, was based around the factual question of whether an exclusivity over a system of bookkeeping can be claimed under copyright law by means of a book in which this system is explained. It was observed by the Court that any book whether is describes the making of a plough, watches or churns, wont contend that the copyright of the book would also give the exclusive right to the art or manufacture described therein. In fact the novelty of the art or thing described therein has nothing to do with the validity of the copyright. To give to the author of the book an exclusive property in the art described therein when no examination of its novelty has ever been officially made would be a surprise and a fraud upon the public. The Court also went on to observe that such an exclusivity is within the province of letter of patent and not copyright. This is where we find the first mention of the basic differentia between the two concepts and also a basic foundation of the concept that the copyright only protects the expression or the articulation of the idea conveyed and not the idea itself, is laid down.

A very relevant observation is, if we take a scenario where a piece of art is both patented and copyrights so over here, the objective of a copyright is explanation and that of the patent is use.

The Hollinrake Case

In the U.K., *Hollinrake v. Truswell*[ii] had introduced the concept of differentiating an expression from its idea thereby providing protection only to the expression under the copyright law. The case was that, Mr Hollinrake claimed copyright in a cardboard sleeve-measuring device. The device enabled a user, by following instructions and using scales printed on the ace of it, to produce with accuracy a pattern for sleeves of any dimension. The Copyright Act of 1842 allowed copyright to subsist in a "book or sheet of letterpress" or in a "map, chart or plan".

Lord Herschell LC considered that "the object of the Copyright Act was to prevent any one publishing a copy of the particular form of expression in which an author conveyed idea or information to the world". He further said the device was "not a literary production but an apparatus for the use of which certain words and figures must necessarily be inscribed upon it". Davey LJ, making observations later approved in another case of *Exxon Corporation v Exxon Insurance Consultants International Limited*[iii], said that "a literary work is intended to

afford either information and instruction, or pleasure, in the form of literary enjoyment", and this device "does not add to the stock of human knowledge or give, and it is not designed to give, any instruction by way of description or otherwise, and it certainly is not calculated to afford literary enjoyment or pleasure". Davey LJ went on to say that its intended purpose was not the giving of information or pleasure but use for the practical art of dressmaking.

The Court went on to hold that the function of copyright is to protect works designated to interact with the human mind, not works designed to provide a mere practical aid to a manufacturing process, thereby ruling that the subject matter of case i.e. a work of literature containing description about a cardboard pattern sleeve, containing on it scales, figures, and verbal directions for adapting it to sleeves of any dimensions, was an instrument or tool incapable of copyright under the Act of 1842, though possibly the subject-matter of a patent.

The judgement as pronounced in this case was upheld in the case of Exxon Supra, wherein it founded that the word 'Exxon' is not a literary work capable of protection under copyright law, irrespective of the convincing evidence adduced to show the orignaility of the work and of the effort and skill which had gone into its composition and selection for its purpose. Since the purpose of the composition was to be used a corporate name, the same was inconsistent with the purpose of being a literary work, i.e. to interact with the human mind.

A combined reading of the judgements of Hollinrake Supra and Exxon Supra, substantiates the concept by inferring the subject matter intended to be copyrighted, into whether it is a mere idea or is an enactment or expression of the idea. Alas, in both the cases the subject matters failed to pass the test to establish itself as an expression. In the former, it was a mere technical guidebook, and it was observed that is was rather fit to be patented and in the latter it was observed that the same was a corporate name and had an objective falling outside the purview of an objective of a literary work, thereby being ruled to be incapable of being expression and merely an idea.

A reporter's right over its writing

Another interesting interpretation of the separation of expression from its idea was in the case of *Walter v. Lane*[iv], wherein the issue was at hand was that Reporters from The Times newspaper had taken shorthand notes of a series of speeches by the Earl of Rosebery, a

prominent politician who had also served as the Prime Minister of the United Kingdom, and later transcribed them, adding punctuation, corrections and revisions to reproduce a verbatim account of the speeches. These speeches were then published in The Times Newspaper, under the ownership of Arthur Fraser Walter. These speeches were then also published in a book by the name of Appreciations and Addresses, delivered by Lord Rosebery, which were taken substantially from the speeches reported in the Times Newspaper.

The issues before the Court were whether the reporters who had noted and reported these speeches could fall within the purview of definition of authors under the Copyright Act. it was held by the Court that though the idea behind those speeches was not that of the reporters but they had put in efforts to transcribe them and could be differentiated from a mere technical operation of writing for the preparation of the same required considerable intellectual skill and brain labour.

The House of Lords had thereby ruled in the favour of the reporters by a 4-1 majority, thereby reversing the decision of the Court of Appeal. This judgement also serves the purpose of being treated as a landmark judgement for the notion of originality within the English Copyright Law until the word 'originality' was added to the Act.

Ideas are not protected under Copyright

The dichotomy was confirmed in the case of *L.B. Plastics v Swish Products Ltd.*[v], wherein the subject matter were drawings of plastic knock-down drawers. A "knock-down drawer" is a furniture drawer made of components, usually delivered unassembled, which the customer puts together, and which he can if he wishes, dismantle. The defendants in the case had reproduced the drawers from the drawings, the only difference being the drawing were in 2D and the drawers were 3D.

The House of Lord's decision was that an idea and its expression were inseparable because although the defendant did not copy the expression of the plaintiff's work which was entitled to copyright drawing, the defendant was held liable for infringing copyright law as per the Section 9(8) of the Copyright Act which read as follows:

"The making of an object of any description which is in three dimensions shall not be taken to infringe the copyright in an artistic work in two dimensions, if the object would not appear, to persons who are not experts in relation to objects of that description, to be a reproduction of the artistic work."

The House of Lords also stated that although an idea is not entitled to copyright law, on the facts, the defendant had copied details of expression. Lord Wilberforce stated that a mere idea is not entitled to copyright hence all the defendant had done to take from the appellants the idea of external latching, or the unhanding of components or any other idea embedded in their work, the appellants are not allowed to complaint.

CODIFICATION OF THE DICHOTOMY

The Dichotomy being a point of legal jurisprudence as developed through various judicial interpretations over time, is though absent from literal mention in most of the legislation across the globe on the copyright law, like the Copyright Design and Patent Act (CDPA), 1988 of the United Kingdom. But its express mention can still be found in few legisltations as stated below.

Copyright Law of the United States (Title 17 of the United States Code)

The Section 102(b) of the American Copyright Law provides an express mention of the idea-expression dichotomy by stating that,

"In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work."

WIPO Copyright Treaty

The WTC (WIPO Copyright Treaty) was a special agreement signed under the Berne Convention for the protection of the works and the rights of their authors in the digital arena. The treaty majorly revolves around the protection by copyrights over computed programs and databases.

The Article 2 of the WTC expressly provides the dichotomy by stating that,

"Article 2

Scope of Copyright Protection

Copyright protection extends to expressions and not to ideas, procedures, methods of operation or mathematical concepts as such."

TRIPS Agreement

The infamous TRIPS Agreement which came into effect on 01.01.1995 is said to be the most comprehensive agreement on the subject of intellectual property rights, majorly covering the copyrights and related rights, i.e. the rights of performers, producers and broadcasting organizations, trademarks including service marks, geographical indications including appellations of origin, industrial designs, patents including protection over new varieties of plants, the layouts-designs of integrated circuits and trade secrets as well.

The Article 9(2) of the Agreement specifies a mention of the dichotomy as,

"Article 9

Relation to the Berne Convention

1. Members shall comply with Articles 1 through 21 of the Berne Convention (1971) and the Appendix thereto. However, Members shall not have rights or obligations under this Agreement in respect of the rights conferred under Article 6bis of that Convention or of the rights derived therefrom.

2. Copyright protection shall extend to expressions and not to ideas, procedures, methods of operation or mathematical concepts as such."

EU Computer Program Directive, 2009

This legislation was passed by the European Union in order to clarify the stance over the protection of computer programs which was different within different countries of Europe, with a hope to contribute to the proper functioning of the internal market of the same in Europe.

The Article 1(2) of this legislation has a mention of the dichotomy, as stated hereunder,

"Protection in accordance with this Directive shall apply to the expression in any form of a computer program. Ideas and principles which underlie any element of a computer program, including those which underlie its interfaces, are not protected by copyright under this Directive.

MODERN DAY APPLICATION OF THE DICHOTOMY

The actual applicability of the dichotomy can be seen in the Indian Judicial Environment from the lens of a most recent case which was adjudged by the Hon'ble Bombay High Court wherein the Hon'ble Court had not only in-detail analyzed the facts of the case but had also gone through numerous case laws by Indian and Foreign Court in order to contemplate as to whether the Plaintiff's prayers for a grant of temporary injunction as an interim relief was to be granted or not in a copyright infringement suit. The case was the *Shamoil Ahmad Khan v. Falguni Shah*[vi], as adjudged on 26.05.2020.

The facts of the case were of a peculiar nature where the Plaintiff had instituted a Commercial IP Suit against the Defendant for seeking an injunction over the telecast or exhibiting of their web series 'Singardaan', which as alleged was copied from the Plaintiff's story bearing the same title 'Singardaan'. In lieu of the case so instituted, the Plaintiff's were seeking an interim relief in adjudication of which the present judgement was passed. There were 2 issues framed,

I. Use of the name 'Singardaan' by the Defendants

II. Copyright infringement by Defendant's web series of the Plaintiff's story

Names are not Copyrightable

In resolution of the first issue, since the matter was no longer *res-integra* for in the case of *Krishika Lulla v. Shyam Vithalrao Devkatta*[vii], it had been ruled that no copyright subsists in the title of the literary work per se and no case of copyright infringement can be urged against any other user of that title, though a case of passing off could be made out.

In the present case, the Plaintiff had also urged pleadings stating passing off but it was observed that in order to prove the same it is the burden of proof of the Plaintiff to establish that the title or name of his own work has acquired such reputation (as the name of a literary work) that the reading public are likely to identify it with the Plaintiff alone and none else, and, thus, the defendant's use would be likely to result into passing off of the title or name as and for that of the Plaintiffs work by the same name. Therefore, the same being a too high of a bar to achieve, such a relief could be given to the Plaintiff only after the trial of the suit had concluded, on adequate proof being adduced therein.

Was the idea copied or the expression?

The Plaintiff's story was that of a dressing table which was acquired by a man and the same thereafter had adverse effects on his wife and daughters. Such incident had taken place when during riots at the time of independence the man who was a Hindu had taken the table from a Muslim prostitute by barging into her house. In the Defendant's story line, the only difference was that the man was already in an illicit affair with the prostitute and after finding her half-dead body because of riots, took away the table as a memory of her to his house, which lead to drastic effects on his wife and daughter.

It was the defence of the Defendant that except the central idea, namely, a man taking away a dressing table, during the course of riots, from a brothel to his home, and its use leading to changes in the behaviour of the womenfolk at home, which idea, by itself, is not entitled to any copyright protection. Further. besides this idea, there is no similarity between the two works of art.

Thereafter, the Hon'ble Court after pondering upon the arguments of both the parties, went to contemplate the judicial interpretations on the subject of the idea-expression dichotomy. The Hon'ble Court first took into consideration the well known case of Hollinrake Supra, wherein it was founded that copyright does not extend to ideas, or schemes, or systems, or methods, it is confined to their expression and if their expression is not copied the copyright is not infringed.

The above case was for the first time discussed and celebrated in the case of *R.G. Anand v. Delux Films*[viii], which was also a part of the present judgement. In this case a similar set of fact

were presented whereby the Plaintiff had alleged that the Defendant had produced a motion picture which was based around the play of the Plaintiff. The Hon'ble Supreme Court while rejecting the Plaintiff's allegations had ruled that there can be no copyright in an idea, principle, subject-matter, themes, plots or historical fact and violation of copyrights is confined to the form, manner and arrangement and expression of idea by the author of the copyrighted work. At the time of contemplating a case where an idea had been developed in different manners, it is manifest that the since the source is common, similarities are bound to occur and therefore the Courts should determine whether or not such similarities are fundamental aspects of the made of expression adopted in the copyrighted work. If it found that the copy is material or substantial one then it must be concluded that the defendant is guilty of an act of piracy.

The safest test for such determination is the see if the reader or spectator after having read or seen both the works gets an unmistakable impression that the subsequent work appears to be a copy of the original. Such inferences have to be based on cogent evidences adduced by the parties to the suit.

It was noted by the Hon'ble Court every idea, when communicated, is expressed in words or form and it is impossible to conceive of an idea (i.e. idea which is communicable) without such expression. It is meaningless to talk of an expressionless idea and yet courts have to distinguish between a mere idea and its expression for practical purposes, that is to say, for determining what is protected by copyright and what is not. The approach taken by the Court to find out whether the plagiarism is to copy an author's ideas or steals the expression of his ideas, is the notion of "extraction".

In a written work of art, such as the story with which we are concerned here, a germ of an idea is developed into a theme and then into a plot and then final story with the help of characters and settings. It is a combination of all these elements which give a body to the work or a substance to it. If one goes on stripping the final work of these various elements, one may finally come to the bare idea or abstraction which no longer enjoys copyright protection. The task before the court is essentially to find out at what point such stripping lays bare the unprotectable idea. Where to stop or draw a line in this "series of abstractions" is, of course, for the individual court to decide and in doing so, it must perforce impose its own value judgment, by applying its knowledge of a subject matter to a specific expression of that subject.

Everything above this line is a matter of expression capable of copyright protection and everything below unprotectable.

In the present case, the Hon'ble Court had founded that when we strip the story of its embellishments, its description of the mood, the motivations and the tribulations of its characters and their actual actions, we get the plot and the story line. It was observed that some the basic elements of the Plaintiff's Story, which were no doubt a part of the Plaintiff's expression of his idea were copied like,

(i) the protagonist being a Hindu, whilst the prostitute a Muslim;

(ii) the prostitute prizing her "Singardaan", i.e. vanity box or dressing table, as her family heirloom passed on to her by her ancestry;

(iii) the protagonist coming into possession of the 'Singardaan' during communal riots;

(iv) the protagonist bringing it home;

(v) his wife and daughter being attracted to it and using it;

(vi) the appearance, the mannerisms and behaviour of the womenfolk becoming more amorous, enticing and inviting in a manner which befits a prostitute

Hence, it was ruled that the prima facie case of infringement was established by the Plaintiff and since the balance of convenience was in his favor and the Plaintiff shall suffer an irreparable prejudice if interim relief not granted and so the Plaintiss was granted a Temporary Injunction over the broadcast of the web-series by the Defendant.

OBSERVATIONS AND CONCLUSION

Justifications in favour of the Dichotomy

The dichotomy performs major functions like:

- Ensuring a free flow of ideas by authors and creative personnels
- Alienation of boundaries of copyright monopolies

- Facilitation of freedom of expression
- Development of transformative use of copyright works
- Promotes competition in the copyright sector

Weakness of the Dichotomy

The central problem with the dichotomy is that courts and commentators, while relating ideas to expressions, never define or clarify what exactly they mean by the terms 'idea' and 'expression'. It is difficult to draw the line between protected expression and unprotected ideas and therefore in absence of a litmus test for the same, it is the esteemed judicial minds which have to undergo the exercise to draw such a distinction and adjudge a case.

Conclusion

It is in my view that owing to the primitiveness of the dichotomy, there has been a vanishing effect of the idea-expression dichotomy and its ad hoc and inconsistent application in most copyright cases has diluted its value when resolving copyright infringement issues and has in fact lend support to the criticism that it is not a meaningful tool for resolving copyright disputes. However, it is also true to state that in events when a smart application of dichotomy is done, keeping in mind the rights of the author, a well balanced and correct judicial interpretation of the case can be done.

LITERATURE REVIEW AND BIBLIOGRAPHY

Literature Review

In order to write this paper, the following books were referred:

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ENDNOTES

[i] 101 U.S. 99 (1879)

[ii] [1894] 3 Ch 420

[iii] [1982] Ch 119

[iv] [1900] AC 539

[v] [1979] RPC 551

[vi] 2020 SCC OnLine Bom 665

[vii] (2016) 2 SCC 521

[viii] (1978) 4 SCC 118