

CRITICAL ANALYSIS OF INDIAN COPYRIGHT LAW

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ABSTRACT

Law is a response to social changes and challenges. In this developing phase and building a relationship between society, law, and technology, copyright is the best and finest example through which these social challenges and issues can be called upon. Copyright law in India has been developing slowly and gradually. The law has seen many amendments during the years. This paper will deal with the current problem in copyright laws, in India and internationally. The scope of Indian copyright in the future, its applications, its competency with international treaties, and the amendments that are required in the various fields of protection of copyright holders.

Keywords: copyright, innovation, digitalization, technology, law.

INTRODUCTION

A standard considered copyright has offered a spot to significantly more character boggling proposing to adjust up to the improvements in the procedure for works furthermore the mediums or maybe their miens that validity security by the Indian copyright assurance. Unlimited issues and circumstances make amidst the time spent a virtual draw battle among the genuine proprietors i.e., copyright holders and the violators. Strict cures are made to secure the licensed innovation of the makers whereby the progressions are being done in the present law overseeing protected innovation rights in our nation; additionally, the governing body has built up a law, the law of information technology, 2000 to be tuned into the general issues and the worries as examined in the universal settlements like WIPO for the insurance of licensed innovation all through the globe.

Developing technology to secure and protect the interest of the creators, innovation, and ingenuity of the work. Technology is the mother of copyright, but this technology itself has posed a threat to copyright. The main reason behind enacting copyright law is to provide protection to the creators of innovative work and also to make their work public without any fear of getting violated or their rights getting infringed. The law has given protection but it has also created many issues which has created a kind of dispute between the creators and the infringers. There are several remedies devised for the safeguard of intellectual property rights such as those of authors, performers, artists, etc. which protect the creators. Indian copyright law protects the creators from the infringers. There have been several amendments made to the copyright law, since 1957. The amendment

of 2012, makes the Indian Copyright Act competent with international treaties such as WIPO, TRIPS, and WPPT. Despite amendments in the law, still many challenges are faced by the creators. This paper is going to deal with the controversies attached to the copyright law in India, which still does not have any solution. The issue of piracy, the threat to the copyright holders in the digital world, and jurisdictional issues, as we know that the internet has no boundaries; in case of infringement, it is very difficult to decide the geographical boundaries and the legal jurisdiction over the internet. Digital technology has a great impact on the copyright. Over the internet or say in the era of digitalization it has become very easy to produce, reproduce, manipulate, and distribute protected works. The works available on the internet can be easily manipulated, reproduced, and changed very easily. This has posed a danger to the distribution system over the internet and increased in the use of unauthorized copyright works. There is an urgent need for international harmony concerning intellectual property. As we know, the internet transcends borders, offering boundless possibilities and unparalleled capabilities." The problem or concerns of the copyright holder is not only the potential harm or the infringement of their work but the cost spent on the litigation, which might be unsuccessful also. The difference in countries' laws sometimes creates issues and problems in the enforcement of the rights of copyright holders in other countries. It becomes critical to adjust and make frequent changes to the legal system of a country or countries with the changes in the technology or development of new technology, keeping in view the pace and use of such technological developments in an appropriate way is challenging. The recent amendments in Indian

copyright law have created space for developing various skills in lawyers to develop and cope with the emerging issues and controversies in copyright law. Further, the Indian copyright law was established by the parliament in the year 1957. To ensure the copyrighted work this force was given to the parliament to correct the demonstration under passage entry, 49, of the schedule seventh of the constitution. As given under the section 16, no individual may meet all essentials for copyright or, any relative ideal for any work done or licensed innovation, it may be either distributed or unpublished, in light of present circumstances than under and as showed by the procedures of this Act or of whatever other law until further notice in force.

“Copyright provides support, as per section 13 of the Indian copyright law,” in extraordinary theoretical significance the not being conventional; staggering that can be emotional, musical, and creative works, movies, and sound recording. The word copyright suggests the select right given in the demonstration, under its arrangement, to do or reinforce conduction of any of the showings in huge adoration of a work or any liberal part thereof, as exhibited in the act, under section 14, which was substituted by a change, came into force on, from 10-5-1995. The changes then made in the provisions of the act reflect the uneasiness in the legislature to alter up to the mechanical advances done in the modes and mediums where the work is presented in the different fields or fields. By uprightness of the changed significance in the definition of "imaginative works" popularly known as literary works as contained to some extent 2(o), it joins PC assignments, tables, and aggregations including PC databases. "PC " herein can be also called a computer program in the

language of the act as portrayed in section 2(ffb) “includes any electronic or similar device having information processing capabilities”, and “computer Program” and “PC program” as delineated in Section 2(ffc) means, “a set of instructions expressed in words, codes, schemes or in any other form, including a machine-readable medium, capable of causing a computer to perform a particular task or achieve a particular result”, Focal points of broadcasting affiliation and performers are overseen in Chapter VIII which gives in Section 37(1), each allowing union ought to have exclusive rights popularly known as broadcasting rights. In admiration of its gives. The right of broadcast proposes correspondence to the general open by any method for remote spread, might be in any one or more than one essential measure of the sorts of signs, sounds, or visual pictures or by wire and joins a re-go on, as portrayed by Section 2(dd) as provided by the act. The expression “correspondence to the far-reaching gathering” is portrayed by Section 2(ff) to mean making any work open for being seen or heard or by and large getting a kick out of by individuals when all is said and done unmistakably or by any technique for presentation or dispersal not by actual issuance of the copies of the work, paying little regard to whether any person from the thorough gathering truly sees, hears or for the most part values the work so made available. Thusly, correspondence made via satellites or interface or whatever other methodology for synchronous correspondence to more than one family or spot of living strategy including private rooms of any hotel or any hostel ought to be thought to be correspondence to individuals or the communication made to the general public if all else fails, as indicated by the clarification to this stipulation. The term of

infringement of the copies of the copyrighted work as portrayed by Section 2(m) means, about a literary, dramatic, musical, or artistic work, a reproduction thereof otherwise than in the form of a cinematographic film if made or imported in contravention of the provisions of the Act. How will it be seen is the method how such reproduction is done for the most part portrayed as the re-production "by and large than as cinematographic motion pictures", that would see each other structure in which such work may conceivably be re-passed on. In association with the cinematographic film, "infringing copy" surmises a copy of the film made on any medium by any methodology; and in association with a sound recording, whatever other recording epitomizing the same sound recording, made by any frameworks, if such copy or sound recording is made or imported in refutation of the blueprints of the Act. Fragment 51 of the Act oversees respected infringement of copyright. In the light, in any case, it gives that, with the veritable objective of this zone, the time of a sharp, excited, musical or innovative work as a cinematograph film ought to be respected to be an infringement of the copyrighted work which the section, 52 records some of the certain acts which ought not to constitute the violation of the copyrighted work also under the sub-clause of the section, 1(a), joins the phrase known as fair dealing, along with the literary works, artistic works, that is strictly not a computer works or programs, with the honest to goodness objective only for personal use including examination, research purposes only, in respect of the works specified or also of other works. Copying or duplication of work through making copies of the works or congruity through the computer programs by the veritable proprietor of that duplicate work of that computer Program with the duplicate work

with a particular certified focus for the sole purpose of utilizing the Programme for only the illumination behind for the reason it was provided, and also to duplicate the work through making the copies of the absolutely as a transient insistence against disaster, beating or hurt all together just to utilize the PC program for the explanation it was provided as given under the section 52(1)(aa) of the act, does not consists the violation of the copyrighted works.

Indian legislature, that is the parliament, brought and legislated the act called the Information Technology Act, which came into force in the year, 2000 that has given legal recognition to electronic records and digital. "Electronic records" as delineated by Section 2(1)(t) of that Act derives, data, record or data passed on picture or sound set away, got or sent in an electronic structure or cut back scale film or PC made little scale fiche. Aggravating PC source records is made an offense under Section 65 of the Act, which gives that, whoever deliberately or purposely covers, smashes, alters, or purposely or purposefully causes another to shroud, destroy, or change any PC source code used for a PC, PC program, PC structure, or PC framework, when the PC source code is required to be kept or kept up by law until further notice in force, ought to be at fault with containments for three years, or with fine which may raise upto two lakh rupees, or with both. The expression "PC source code" proposes the posting of activities, PC requesting, arrangement and arrangement, and system examination of PC resources in any structure. Whoever submits hacking may be rebuffed with a limitation of up to three years, or with a fine which may create up to two lakh rupees, or with both, as given by Section 66(2). Hacking is collected by a man who, with the longing to fulfill or understanding

that he is obligated to recognize wrongful catastrophe or mischief to the complete gathering or any individual, crushes or demolishes or changes any information living in a PC resource or decreases its quality or utility or impacts it damagingly by any strategies, as portrayed by Section 66(1) of that Act. The Information Technology Act, 2000 gives in Section 79 that, no individual giving any relationship as a framework affiliation supplier may be in danger under this Act, standards, or headings made thereunder for any outsider information or data made available by him in case he shows that the offense or distinction was submitted without his perception or that he had honed all due resolute quality to keep the commission of such offenses or invalidation.

Dealing fairly

Now, here we will discuss on the fair usage of the copyrighted work. It includes dramatic work, literary work, artistic, that is not the computer Programme, musical and any other work. The doctrine of fair use basically allows the general public to use the copyrighted work or the work of the copyright holder and it may also include any other expression or the term in the special conditions. We can also in a way say that there are many issues related to the fair use doctrine in the Indian copyright law. This trouble or issue is caused because, in the law, it is nowhere defined whether a particular work falls under fair use or not. Whether the use of such work would by mistake fall under the infringement of the copyrighted work. Here also there are no fixed criteria so as to how to draw a particular work under the ambit of fair use. The very reason for the use of the copyrighted work, the circumstances in which the work has been or is being used is very

difficult to define. Nowhere it has been defined or mentioned in the act that, this much amount of copyrighting or the use of the work without the permission of the holder or otherwise would cause the work to get infringed or would go beyond the fair use doctrine. There are precedents laid down in some of the cases, but none of them can be completely relied on, because the facts of the case for the individual cases remain different, and the entire story depends on the facts. The main purpose of protecting the author(s) or the creators is to protect their work(s), and their intellectual property from being infringed by the third party without their permission. So, the doctrine hereby must keep the balance between the protection provided to the creators and the third parties, also to keep the check on the protection not giving the monopolizing powers to the creators with their works. The work(s) created by the creator or the owner of the copyrighted work is not only for them to get protection. Their work is of no use unless it is being communicated or is made available to the general public to view, read, watch or see, etc. There is no point in getting complete control or monopoly over the work. Here the provisions provided in the copyright law give the powers or special rights to the owner of the copyrighted work to assign their copyrighted work or also provide a license in certain cases. Their rights also include their wish to reproduce their work(s) into copies and also distribute (not before distributed. Act is very clear on the rights provided to the copyright owners with the reproduction, and distribution rights. It further clears their rights being available in the public domain, to make not every use of the copyrighted work as the infringement of the same and make it a fair use, for which the owner cannot claim the violation of his rights.

There are many leading cases in India as well as countries abroad. We will discuss the same. In the Sony Corporation case, where the Supreme Court of the USA, it was discussed the issue of, whether the use of the videotape recorder, using for non-commercial purposes at home, the record of the work broadcasted to the public would amount to the infringement of the copyrighted work. The facts of the case say that Sony was the manufacturer of the videotape that it sold to the market. Respondents here were the copyright holders to some TV programs that were telecasted to the public. The claim is that among the general public, some people used the videotapes sold by Sony Corp. to record the programs telecasted by the respondents and some other works. The facts in issue here were whether there is any infringement of the copyrighted work of the respondents from the video tapes sold by Sony Corp. which is used by the public to record the work of the respondents. It was concluded by the court that, the right provided by the copyright law is a statutory right, and it further says that, any individual can reproduce the copyrighted work, under fair use, and the owner of the copyright does not hold any special or exclusive rights to possess the work or charge for the infringement of his copyrighted work. Further, by adding on the court also says that it was the copyright proprietor does not have the prohibitive right to such use. It was found that there was a fundamental likelihood that liberal measures of copyright holders who confirmed their works to go on free TV would not challenge having their present shifted view by the viewers. That is, they are recording the telecasted programs to view them later at their convenience. The court further also held that the videotapes are not liable to be held for infringing the work of the owners here. The public here is only using it for the general purpose

here, which is ultimately the non- commercial use, for their home viewing only which they did only to view later, in case when they cannot watch at the time it was telecasted at the broadcasting. Respondents have no exclusive rights here to prevent the public from recording to view it later at their convenience.

The main purpose of the copyright act is to protect the copyrighted work of the owner with the view that their work remains in within their rights and accordingly they can exercise their rights related to that. This protection is being provided to the owners to exercise as per them which are not always in complete control of theirs; this is so made because the work is not kept out of the reach of the public for a long period. As the protection provided by the law of the copyright law, the limitation period for which the protection is given to the owners of the copyrighted work is kept limited so that the work is not kept out of the reach of the public for a longer period and also the general public can use it and they are not completely deprived of the work(s). It is often said that the protection given under the intellectual property creates a monopoly, and the general public is deprived of their rights to use the work for longer periods, but it is wrong to say because the protection given under the act does not create any monopoly over the rights of the owners and their works. It is also said that limited monopoly is necessary so that it encourages the authors to create more because if they are entrusted with the protection or if they are not ensured of the protection for the works created by them then, it might happen that they would not create new things with the fear of no protection being provided to their work or their work is being infringed by the third party.

India is a growing economy or say a developing economy, where the idea or concept (work) has to ultimately come in the market and survive in the market. The doctrine of fair use has a very wide economic usage and dynamic and measurable extent. The idea of intellectual property has been given recognition in the legal world so that there is a free flow of information and knowledge, as we know our economy is developing, we need more knowledge and information which we want it to flow free for every kind of people of the society. The transaction cost is therefore less so that the general public has access to the works of the authors. The level of the prohibitions should not be so high, that it becomes almost impossible for everyone to access the work, which would have been easily available without the prohibition. There was another case of Luther and Acuff Rose Music Inc. The Supreme Court of the USA said that to quote from the work of the prior author's work into some new material or the elements, can claim fair use because the later author is only commenting over the work, he is not infringing the work of the prior author.

There is also protection being provided to the musical work in the copyright law, which means, a work consisting of the music and includes any graphical notations of such work but does not include any words or any action intended to be sung, spoken, or performed with the music. now, sometimes there lies a question as to whether the music played as the caller tunes when the call is on hold, this question arose in the court of Australia where the court findings were that the defendants were infringing the broadcasting rights when the music was played when the call was on hold.

Folklore:

The expression folklore is very important and is engraved in the traditional concept of the cultural heritage of every country. This is very important for developing countries to protect their folklore as part and parcel of their cultural identity. It is a kind of self-expression and means to provide social recognition to which it belongs. It is a cultural heritage, which is passed on from generation to generation as per the individual's creativity, and artistic skills. This is also the result of the creativity of the members of a group to which the folklore belongs. The protection of folklore is not limited to time because it is generally not known to the number of members of the subsequent generations. Folklore consists of creations such as dances, music, designs, tales talks, etc. which keep on passing and the author remains unknown for these kinds of folklore creations. As we know copyright law is the creator centric, and to get protection under the act, the author must be a known person, but in case of the folklore, there is no author, because the traditions keep going on from generation to generation due to which the author remains unknown. So, the present legal system provides protection to the known authors, and the law, is not adequate to provide security to the folklore.

International conventions like WIPO and UNESCO discussed the protection of the folklore. The draft model was submitted by the committee of experts created by the WIPO and the UNESCO, at Geneva in the year 1982, which adopted the provision for the protection of the folklore, in the national laws. This was to protect the folklore from the illicit exploitation. Also discussed under section 2

of this draft model provisions, about the protection of the folklore of a community that is carried by them for generations and gets depleted because of exploitation of their knowledge for economic purposes or any other purpose. The suggestions provided in the draft were intended to provide national as well as international security to the folklore knowledge. Several categories under folklore can be given protection such as drawings, paintings, music, carving, sculpture, etc. under the copyright law; they cannot enjoy the related rights also called the neighboring rights, but can enjoy the indirect protection for the folklore. Like for example folklore dance, music, etc. are given protection as they are being performed regularly, and therefore they enjoy the statutory protection. The protection of folklore is very necessary because it contains the identity of communities from where it belongs, and also it is the cultural knowledge of one's nation which is to be protected by the nation itself. The protection should be encouraged by the law, studies must be conducted at the national and international levels to provide security to this folklore, as it is the intellectual property not only of the community to where it belongs but also of the country. The provisions existing in the law are not adequate to provide complete protection to the folklore, but the nation must look forward to protecting the knowledge.

Piracy:

“The Internet is the biggest platform in today's time where people can get any information from ant to elephant, online, as it has changed the way it was initially. Likewise, it has also increased the level of crimes committed by people these days. Like hacking, piracy also includes the theft of the intellectual property of the persons through the

medium of internet. It works in a very sophisticated manner all through the internet, like the sharing of the files from one network to another network.” Many pirated files and works are uploaded on websites over the net, and it is being downloaded unauthorized, committing the mistake of infringing the copyrighted work of the owners. This has become a worldwide problem because the internet does not have any geographical boundaries and the person sitting on the internet and uploading the pirated work is also not being easily caught. So, here the only thing that can be done is by bringing awareness among the people about the use of pirated work and the consequences of using such work, infringing the rights of the owners, and the loss caused to them by such act. Unauthorized recording the pictures in the theatres is made offence punishable by imprisonment and also a fine. To educate the people regarding the security and privacy on the internet while they are using it. The value added to the work of the owners and how they would get affected in case of the theft of their work etc.

The Treaties:

The treaty held at the international level, provides for the protection of the computer programs and the compiling of the data in any form or any material which would then constitute the intellectual property or the creation by the person. This was discussed in the WIPO copyright treaty in the year 1996, WCT. This treaty focuses on the right given to the authors, to distribute, rent their work; to communicate the work to the public it is also subjected to certain limitations and exceptions.

The second one deals with the rights of the performers, which includes the actors, singers, musicians, etc. and the other is the producer of the phonograms.

They are regulated in the same instrument in light of the way that a broad fragment of the rights allowed by the Treaty to entertainers is rights associated with their changed, basically aural showcases (which are the subject of phonograms). To the degree entertainers are concerned, the Treaty stipends entertainers four sorts of monetary rights in their presentations changed in phonograms (not in fluctuating media obsessions, for example, films): (I) the advantage of period, (ii) the advantage of diffusing, (iii) the advantage of rental, and (iv) the advantage of making accessible. The Treaty stipends three sorts of cash-related rights to entertainers in vitality about their unfixed (live) shows: (I) the advantage of broadcasting (aside from by ethicalness of rebroadcasting), (ii) the advantage of correspondence to general society (close to where the execution is a grant execution), and (iii) the advantage of obsession. To the degree makers of phonograms are concerned, the Treaty stipends them four sorts of cash-related rights in their phonograms, subject to specific detainments and rejections; (I) the advantage of re-period, (ii) the advantage of transport, (iii) the advantage of rental, and (iv) the advantage of making open. The Treaty obliges the Contracting Parties to give honest-to-goodness cures against the circumvention of mechanical measures (e.g. encryption) utilized by entertainers or phonogram makers as for the activity of their rights and against the clearing or modifying of data, for case, the sign of specific information that perceives the entertainer, the execution, the maker of the phonogram and the phonogram, basic for the association of the said rights.

CONCLUSION

The approaches of the aforementioned two endorsements show that the Copyright security in India is solid and enough persuading to deal with the Copyright of the concerned individual. The insurance stretches out not just to the Copyright as got a handle on in the normal sense likewise in its present-day viewpoint. Hence, online copyright issues are additionally elegantly secured, but not in clear and express terms. To meet the continually broadening challenges, as postured by the changed conditions and most recent headway, the present law can be deciphered to the point that all parts of copyright are attractively secured. This can be capable by applying the purposive interpretation strategy, which requires the present law to be deciphered in such a way as worth is done in reality and conditions of the case. Existing laws ought to be changed by the necessities of the condition. The present law can also be supplemented with extra best-in-class ones, particularly touching and managing contemporary issues and issues. The Information Technology Act, of 2000 requires another perspective and presentation, which can be attractively used to meet the difficulties posed by the Intellectual Property Rights Association in this season of data headway. Till the nation has such a sound and solid lawful base for the assurance of Intellectual Property Rights, honest goodness ought to expect a dynamic part in the confirmation of these rights, including the copyright. The circumstance is, regardless, not as maddening as it is seen and the present good 'old-fashioned framework can viably deal with any issues connected with copyright encroachment.

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