

COPYRIGHT LAW IN INDIA- A CRITICAL APPRAISAL

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in partial fulfillment of the academic requirement
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Submitted by
Payal
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TOPIC APPROVAL FORM



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CERTIFICATE

I hereby certify that this synopsis entitled “Copyright Law in India: A Critical appraisal” submitted for the award of Degree of Master of Laws (LL.M) is a record of research work done by the candidate “Payal ” during the period of her study under my guidance at School of Law, Lovely Professional University, Phagwara, Punjab, India, and that the synopsis has not formed the basis for the award of any Degree, Diploma, Associateship, Fellowship or other similar titles to the candidate. I further certify that this synopsis represents the independent work of the candidate.

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DECLARATION

I hereby declare that the synopsis entitled “**Copyright Law in India: A Critical appraisal**” submitted to the School of Law, Lovely Professional University for the award of degree of **Master of Laws (LL.M)** is a record of original and independent research work done by me under the supervision and guidance of Ms. Parul Sharma, Assistant Professor, School of Law, Lovely Professional University and that the synopsis has not formed the basis for the award of any Degree, Diploma, Associateship or other similar titles.

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TABLE OF CONTENTS

1. Title form.....	(i)
2. Topic approval form.....	(ii)
3. Certificate.....	(iii)
4. Deceleration.....	(iv)
5. Introduction.....	(v)
6. Statement of problem.....	(xiv)
7. Scope of study.....	(xiv)
8. Objective.....	(xiv)
9. Hypothesis.....	(xiv)
10. Methodology.....	(xv)
11. Review of literature.....	(xv)
12. Scheme of discussion.....	(xvi)

INTRODUCTION

Copyright is a right given by the law to creators of literary, dramatic, musical and artistic works and producers of cinematograph films and sound recordings. It can be termed as “The exclusive right given by law for a certain term of years to an author, composer etc. (or his assignee) to print, publish and sell copies of his original work”.

Indian copyright law is at parity with the international standards as contained in TRIPS. The (Indian) Copyright Act, 1957, pursuant to the amendments in the year 1999, fully reflects the Berne Convention for Protection of Literary and Artistic Works, 1886 and the Universal Copyrights Convention, to which India is a party. India is also a party to the Geneva Convention for the Protection of Rights of Producers of Phonograms and is an active member of the World Intellectual Property Organization (WIPO) and United Nations Educational, Scientific and Cultural Organization ("UNESCO").

ORIGIN AND DEVELOPMENT OF COPYRIGHT

The idea of copyright protection emerged with the invention of printing, which made the literary works to be duplicated by mechanical process. Prior, to that hand copying was the sole mean of reproduction. After, the invention of Guttenberg’s printing press in Germany in 1436, a need to protect the printers and booksellers was recognised and thus certain privileges to printers, publishers and also authors were granted. The art of printing spread quickly in Europe. After 1483, England emerged as a major centre of printing trade in Europe. The spread of this technological innovation led to creation of a class of intermediaries, who made initial investment in bringing out the book, i.e., the printers, who doubled as booksellers as well. They were called the “stationer’s” in England. In 1557, Queen Mary I, granted the privilege of regulating the book trade to the Stationer’s company of London. In 1662, the Licensing Act was passed in England, which prohibited the printing of any book which was not licensed and registered with the Stationers’ Company. This was the first clear law which was aimed at protecting literary copyright and checking piracy. The licence era was short lived. It was only with the passing of the Queen Anne’s Statute of 1709, that, the rights of the authors over their work came to be legally recognised, and the concept of ‘public domain’ was established, though not explicitly.

STATUTE OF ANNE

The first codified law came in existence with the passing of the statute of Anne, which came into force on 10th April 1710. It was the first legal articulation of real copyright. Queen Anne's statute conferred upon the authors for the first time, the statutory right to benefit from their literary works by conferring upon them the sole right to print their works, for a limited period of twenty-one years for works published before the date of enactment i.e. from 10th April 1710, those works which had not been transferred to the Stationer's Guild. Those works which were published subsequent to the enactment of the statute of Anne enjoyed a protection of fourteen years. Prior to the Statute of Anne, the common law of England recognised a perpetual right of property in the author's "copy" in the manuscript. Statute of Anne 'was designed to destroy the bookseller's monopoly of the book trade and to prevent its recurrence and sought to divorce the evil of privileged censorship from free expression, thus facilitating an equilibrium between the rights of the authors and the rights of the public to have access to print material. It has been described that

"The statute of Anne marked the end of autocracy in English Copyright and established a set of democratic principles: recognition of the author as the ultimate beneficiary and the fountainhead of protection and a guarantee of legal protection against unauthorised use for limited times, without any elements of prior restraint of censorship by government or its agents' because prior to the enactment of the statute, common law provided that the sole right of printing and publishing shall continue ad-infinitum.

The Statute of Anne, was a small statute comprising of just 11 parts.

- One, to promote learning.
- Second, to prevent any other person save the author to print or reprint the book/literary work for a limited duration of 21 years in its retroactive operation.

The Act was a respite to ameliorate the conditions of authors by securing them their just dues. The Act aimed at encouragement of learning and spread of knowledge and preservation of culture which can be inferred from the fact that the Book's title had to be registered with the Stationer's register and nine copies of the same was to be deposited in libraries of the listed universities with an express prohibition that such Universities shall not have a right to print such books which have been deposited and the book were meant only for accessibility and advancement of knowledge. The

statute had another positive angle as regards the economics of publishing involved in that it titled the same in favour of the citizen and any person could now bring a complaint against the bookseller or the printer if they charged a price which such a person conceived to be too high and unreasonable. In order for such a complaint to be effectuated and redressed some of the highest ranks of the nobility, clergy, Vice-chancellors of University and the Judiciary were authorised and empowered to limit and settle the price of every such printed book according to the best of their judgments or judgment as the case may be, in their respective jurisdiction, with costs to the complainant to be borne by such defaulting bookseller or printer. Furthermore such defaulting party was to give a public notice in the Gazette of the settled price and enhanced punishment was prescribed for repeating this offence after the price was settled and the defaulting party was brought to book. This Act did not confer a monopolistic status to the authors but only secured them the right to be entitled to their legitimate dues. However the increase in the term of protection to the lifetime of the author was still due and took place subsequently. The Copyright Acts of 1814, and 1842 increased the duration of protection from fourteen, to twenty-eight, to forty-two years respectively. Thus, the phase after 1710 where books over which copyright had been secured were beginning to lapse, witnessed the real tensions in codified copyright law, as to whether there existed a common law copyright, independent of the statute. The booksellers tried their best to claim their copyright after expiration of 21 years in the pre-1710 works. For more than half a century, in what became known as the “Battle of the Booksellers,” the lower courts sustained them in this view by granting injunctions after expiration of the statutory term. Based on Lockean theory that ‘every man has a natural right of property to the fruits of his labour’, the Stationers, claimed their perpetual right to publish and sell acquired copies which were acquired from the authors who sold their manuscripts. The case of *Millar v. Taylor*, brought triumph to the Stationer as their perpetual protection of common right was upheld. However, this decision could not stand the test of time and five years later, the House of Lords overruled *Millar’s* decision that no perpetual copyright existed in copyright law. This principle of balancing the exclusive right of the author or publisher in the work came with the historic judgment of the House of Lords in the case of **Donaldson v. Beckett**.¹ Queen Anne’s Statute was the first statute, which opened the gates for the law of copyright in its true sense and afforded protection to the authors for their creative works, as its prime objective, rather than protecting the monopoly of publishers, who indulged in unjust enrichment of their pockets under the sanction of law at the expense of such ‘men of letters’. The statute was indeed a turning point in the history of copyright laws.

¹ 98 Eng Rep 201 (KB 1769)

HISTORY OF COPYRIGHT LAW IN INDIA

Modern copyright law developed in India gradually, in a span of 150 years. The first brush of India with copyright law happened in 1847 through an enactment during the East India Company's regime. The Act passed by Governor-General of India affirmed the applicability of English copyright law to India. According to the 1847 enactment, the term of copyright was for the lifetime of the author plus seven years post-mortem and could not exceed fortytwo years on the whole. Though the author refused publication after his death, the Government had the authority to give licence for its publication. The act of infringement was inclusive of unauthorized printing of a copyright work for "sale, hire or export", or "for selling, publishing or exposing to sale or hire". The suit for infringement under this act could be instituted in the "highest local court exercising original civil jurisdiction". The Act also specifically provided that under a contract of service copyright in "any encyclopaedia, review, magazine, periodical work or work published in a series of books or parts" shall vest in the "proprietor, projector, publisher or conductor". It was deemed that the copies of the infringed work were the property of the proprietor of the copyrighted work for all purposes. Most importantly, the copyright in a work was not automatic unlike today. Registration of the work with Home Office was mandatory for the protection of rights under this enactment. However, the Act specifically reserved the subsistence of copyright in the author, and his right to sue for its infringement to the extent available in any other law except 1847 Act. At the time of its introduction in India, copyright law had already been in the developing stage in Britain for over a century and the provisions of the 1847 enactment were reflected in the later enactments. The Copyright Act 1911, while repealing earlier statues on the subject, was also made applicable to all the British colonies including India. In 1914, the Indian Copyright Act was enacted which modified some of the provisions of Copyright Act 1911 and added some new provisions to it to make it applicable in India. The Indian Copyright Act 1914 remained applicable in India until it was replaced by the Copyright Act 1957.

COPYRIGHT LAW IN INDIA

In India, the Copyright Act, 1957 (as amended in 1999), the Rules made there under and the International Copyright Order, 1999 govern Copyright and neighbouring rights. This Act has been amended five times i.e. 1983,1984,1992,1999 and most recently in 2012.The Act is divided into 15 chapters with 79 sections. Moreover, the Central Government, by virtue of section 78 is empowered to make rules by notification in the Official Gazette, for carrying out the purposes of this Act. Under the Act, a copyright office was established under the control of a registrar of copyright who was to

act under the superintendence and direction of central government. The principal function of this office was to maintain a register of copyright containing the names or titles of work, the names and addresses of authors, etc. The registrar had certain powers like entertaining and disposing of applications for compulsory licenses and to inquire into complaints of importation of infringing copies. A Copyright Board had been set up under the Act and the proceedings before it are deemed to be judicial proceedings. The definition of copyright included the exclusive right to communicate works by radio diffusion; the cinematograph was given a separate copyright; the term of copyright protection was extended from 23 to 50 years which was again extended to 60 years in 1992; term of copyright for different categories of work was also specified. The right to produce a translation of a work was made coextensive with other rights arising out of copyright. Provisions relating to assignment of ownership and licensing of copyright including compulsory licensing in certain circumstances, rights of broadcasting organisations , international copyright, definition of infringement of copyright; exceptions to the exclusive rights conferred upon the author or acts which do not constitute infringement , special rights of authors, civil and criminal remedies against infringement and remedies against groundless threats or legal proceedings were also introduced.

Berne Convention and Universal Copyright Convention

India is a member of the above conventions. The Government of India has passed the International Copyright Order, 1958. According to this Order, any work first published in any country - which is a member of any of the above conventions - is granted the same treatment as if it was first published in India.

Subject Matter of Protection

Now a day the subject matter of protection of Copyright is same throughout the globe because copyright is become of international nature and due to advancement of technology any one can violate the rights of others from any part of the world. As per different sub-sections of section 2 of Copyright Act,1957 and judicial interpretations from time to time many matters are eligible to get the protection. Analysing all the classifications and categorizations of the works as provided under different sub-Sections of Section 2 of the Copyright Act, 1957 and taking reference from the judicial views of different High Courts and the Supreme Court of India, the following heads of copyrighted and related works will enjoy the copyright protection under the current up-to-date amended legislation:

- Literacy works;

- Dramatic works;
- Musical works;
- Artistic work including sculpture, painting, engraving, architect and all works where artistic craftsmanship is involved;
- Cinematograph film;
- Sound recording;
- Literary, dramatic works or musical works in the form of computer programming or computer generated programme including computer software;
- Adaptation, Translation and Reproduction of work;
- Creating unpublished works;
- Foreign works including the works of International Organisation;
- Literary works such as poems, articles, works of fiction, factual works such as encyclopaedias as dictionaries etc.;
- Thus, question papers set for the examination;
- Research theses and dissertations prepared by students;
- Compilation of a book on household and accounts and domestic arithmetic;
- Schools textbooks;
- Guide books.
- Dictionary;
- A book of scientific questions and answers;
- Questionnaire for collecting statistical information;
- Head notes of a judgment; and
- Lecture notes have all come under the class of literary works entitles for copyright protection.
- Musical work such as songs operas, instrumental music etc.;
- Works of art and architecture;
- Photographs, technical drawings, motion picture (Cinematograph film), computer program etc.;
- Live performance of a drama fixed in a storage devise such as a compact disk etc.

In **Blackwood v. Parasuraman**,² Madras High Court held that: "translation of literary work is itself a literary work and is entitled to copyright protection; reproduction or publication of translation without consent or license of the owner of copyright in the original would amount to infringement"

Registration of Copyright

Under Indian law, registration is not a prerequisite for acquiring a copyright in a work. A copyright in a work is created when the work is created and given a material form, provided it is original.³ The Copyright Act provides for a copyright registration procedure. However, unlike the U.S. law, the Indian law registration does not confer any special rights or privileges with respect to the registered copyrighted work. The Register of Copyright acts as prima facie evidence of the particulars entered therein. The documents purporting to be copies of the entries and extracts from the Register certified by the Registrar of Copyright are admissible in evidence in all courts without further proof of original. Thus, registration only raises a presumption that the person in the Register is the actual author, owner or right holder. The presumption is not conclusive. But where contrary evidence is not forthcoming, it is not necessary to render further proof to show that the copyright vests in the person mentioned in the Register. In infringement suits and criminal proceedings, when time is of essence to obtain urgent orders, registration is of tremendous help. Copyright notice is not necessary under the Indian law to claim protection.

However, registration of works is not a condition precedent to avail copyright protection. Registration serves as a prima facie evidence of copyright ownership in the Court of Law. In the case of **Asian Paints (I) Ltd. Vs Jaikishan Paints & Allied Products**,⁴ the High Court of Bombay has observed:

"Registration under the Copyright Act is optional and not compulsory. Registration is not necessary to claim a copyright. Registration under the Copyright Act merely raises a prima facie presumption in respect of the particulars entered in the Register of Copyright. The presumption is however not conclusive. The Copyright subsists as soon as the work is created and given a material form even if it is not registered".

²AIR 1959 MAD 410.

³ Section 45, Copyright Act, 1957

⁴2002 (6) Bom CR 1: (2002) 4 Bom LR 941: 2002(4) MAH LJ 536

Duration/Term of Copyright

In the case of original literary, dramatic, musical and artistic works, the duration of copyright is the lifetime of the author or artist, and 60 years counted from the year following the death of the author.⁵

In the case of cinematograph films, sound recordings, photographs, posthumous publications, anonymous and pseudonymous publications, works of government and works of international organizations are protected for a period of 60 years which is counted from the year following the date of publication.

Assignment of Copyright

As mandated by Section 19, no assignment of copyright shall be valid unless such assignment is in writing and signed by the assignee and the assignee. Such assignment ought to identify:

- the work and the rights assigned,
- the territorial extent and,
- the duration of the assignment

Where, the territorial extent and the duration of the assignment has not been specified, it shall be deemed that the assignment extends to the territory of India and the duration of assignment is for a period of five years respectively.

Under Section 18 of the Copyright Act⁶, even the copyright in a future work can be assigned in accordance with Section 19⁷, however, such assignment shall come into effect only upon date of creation of the work. It has now been added by the Amendment that no assignment shall be applied to any medium or mode of exploitation of the work, which did not exist or was not in commercial use at the time when the assignment was made, unless the assignment specifically referred to such medium or mode of exploitation of the work.

⁵Section 22, Copyright Act, 1957.

⁶Assignment of copyright.— The owner of the copyright in an existing work or the prospective owner of the copyright in a future work may assign to any person the copyright either wholly or partially and either generally or subject to limitations and either for the whole term of the copyright or any part thereof: Provided that in the case of the assignment of copyright in any future work, the assignment shall take effect only when the work comes into existence...

⁷ Mode of assignment.—No assignment of the copyright in any work shall be valid unless it is in writing signed by the assignor or by his duly authorised agent. The assignment of copyright in any work shall identify such work, and shall specify the rights assigned and the duration and territorial extent of such assignment...

Infringement of a Copyright

A copyright is infringed if a person without an appropriate license does anything that the owner of the copyright has an exclusive right to do. However, there are certain exceptions to the above rule (e.g., fair dealing). The Copyright Act provides for both civil and criminal remedies for copyright infringement. When an infringement is proved, the copyright owner is entitled to remedies by way of injunction, damages, and order for seizure and destruction of infringing articles.⁸

Enforcement of Copyright in India

The law of copyright in India not only provides for civil remedies⁹ in the form of permanent injunction, damages or accounts of profits, delivery of the infringing material for destruction and cost of the legal proceedings. etc. but also makes instances of infringement of copyright, a cognizable offence punishable with for a term which shall not be less than six months but which may extend to three years with a fine which shall not be less than INR 50,000 but may extend to INR 2,00,000. For the second and subsequent offences, there are provisions for enhanced fine and punishment under the Copyright Act.¹⁰ The (Indian) Copyright Act, 1957 gives power to the police authorities to register the Complaint (First Information Report, i.e., FIR) and act on its own to arrest the accused, search the premises of the accused and seize the infringing material without any intervention of the court.

STATEMENT OF THE PROBLEM

There is an acute lack of awareness on various issues relating to copyright and related issues. The awareness of Intellectual Property (IP) Laws is considerably low among the enforcement authorities in India, and most of the IP litigation is confined to metropolitan cities owing to which the major section of the society is deprived of legal remedies as provided by the copyright act and also it needs to be determined that whether the ones filing under the copyright act are vested with remedy or not!

SCOPE OF THE STUDY

This study aims at critically evaluating the various facets of copyright law in India including the historical background of the Copyright law in India as well as keeping in view the international perspective. The study also aims at understanding the concept of copyright infringement and various remedies provided therein.

⁸ Section 51, Copyright Act, 1957

⁹Section 55, Copyright Act, 1957

¹⁰Section 63 A, Copyright Act, 1957

OBJECTIVES OF THE STUDY

The dissertation aims:

- To study the concept of copyright.
- To study the application of copyright law in India.
- To study the impact of registration of copyright.
- To study the infringement of copyright and the penal provisions provided therewith.
- To study the remedies available at the instance of infringement of copyright.
- To study the emerging trends in copyright Law in India.

Hypothesis- The copyright law in India is able to curb copyright infringement instances.

METHODOLOGY

The paper is an attempt of doctrinal research, towards the “Copyright Law in India: A Critical appraisal”. The researcher has taken help of both primary and secondary sources. The primary sources includes – Statutory legislations, Regulations: International and National Judgments. The secondary sources includes – articles, journals, books, newspapers and websites etc.

REVIEW OF LITERATURE

In an attempt to frame a detailed note on critical appraisal on copyright laws in India, the researcher has consulted the following books in compilation of this researcher work:-

- 1) P.Narayaran, Intellectual Property law, ed. 1997.
- 2) P.S. Sangal and K. Punnaswami, Intellectual property law ed. 1994.
- 3) S. R. Myneni, Law of Intellectual property ed. 2001.
- 4) W.R. Cornish ,intellectual property ed. 1999
- 5) Agreement established world trade organization (WTO)
- 6) Draft treaty on copyright of electronic record 1990.

SCHEME OF DISSERTATION / ORGANIZATION OF CHAPTERS

In this study, an attempt has been made to examine and evaluate the provisions of the Copyright Act, 1957 and the amendments made therein. The present study has been divided into 6 chapters.

The concept and significance of copyright protection has been examined in First Chapter. An attempt would be made to explain the meaning of copyright and to define its need and scope. For proper appreciation and understanding, the historical background and different international Conventions have been proposed to be discussed under the chapter.

The Second Chapter deals with the International regime of the Copyright Law. In this chapter, the different conventions and treaties would be discussed.

The Third Chapter deals with the Utility of Berne Convention for the protection of literary and Dramatic works. An attempt has been made to analyze the different articles of the convention which prescribes National treatment to the copyright holders.

The Fourth Chapter deals with the exclusive features of the copyright Law in India. It deals with the framing of the provisions related to copyrights which are conferred and protected in India by the Copyright Act, 1957. An attempt has also been made to analyze the subject matter of copyright and ownership of copyright.

The Fifth Chapter deals with the copyright infringement and remedies provided under the copyright Law. The various exclusive rights of copyright owner, the infringement of these rights and remedies available to the copyright owner would be discussed.

The last chapter, i.e., sixth chapter deals with the conclusion and suggestions of the study. Here, an attempt has been made to draw conclusion from the present study and to provide suggestions for protection of copyright in India.

Throughout this study, the relevant provisions of the legislations, pertaining to the copyright Law, have been examined and evaluated. The important judicial pronouncements of the various High courts and Supreme Court of India have been referred to, analyzed and evaluated at the appropriate places.