

Judicial Protection to Copyright: An Overview

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Abstract – Imitation is a part of human nature. He tries to copy or reproduce the work of some other person. To protect the originality, the concept of copyright came into existence. Law gives protection to literary, dramatic, artistic, musical sound or cinematographic film. In India, the present law on copyright is the Copyright Act, 1957. This Act deals with almost all the relevant matters connected with copyright. It has been amended from time to time to meet the changed scenario. The latest amendment in this Act has been made in 2018.

Judiciary has also been in favour to protect the originality of all works. The Supreme Court of India and various High Courts have explained and clarified various provisions of the Copyright Act. Some of the important cases on copyright are-Indian Performing Right Society Vs. Eastern Indian Motion Picture Association & Others, Tata Oil Mills Co. Vs. Reward Soap work, Najma Heptullah Vs. Orient Longman Ltd. Gromophone Co. Of India Ltd. Vs. Super Cassette Industries, and Eastern Book Co. Vs. D.B. Madok. In all these cases the emphasis of the court relies on the fact that the original author or creator of a work should have a right to protect and preserve its originality.

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Imitation has always been a human practice. It may be in the form of copying, reproduction or change of name of the original work. When the incidents of copying increased, necessity was felt to have some check and control upon this practice. It was through that the original creator of a work must have exclusive control upon his creation. He must have some right for this purpose and the word "Copyright" was given to it. Thus the concept of copyright stands upon the fact that no one should be allowed to "Copy" the original work of another. The original work may be literary, dramatic, artistic, musical, sound or cinematograph film.

"Copyright" is a right given to or derived from works and it is not a right in novelty only of ideas. The increased incident of copying compelled the law makers to make law to check such incidents. In India the earliest statute law on copyright is the Indian copyright Act, 1847. This Act was enacted in new form in 1914. The Act of 1914 protected the interests of creators of original works and prescribed penalties for infringement of copyright.

The present law on copyright in India is the Copyright Act, 1957. The basic features of this Act conform to the provisions of two international Convention on Copyright. The Berne Convention and the Universal Copyright Convention. India is a member of both the Conventions. The Copyright Act, 1957 has been amended in 1983, 1984, 1992, 1994 and 1999. In 2012, this Act has been amendment to insert many new terminologies with new developments in information technology. Recently, in 2018, some

amendments have been made to deal with the changed scenario. These amendments have been incorporated to deal with changed circumstances.

"Judiciary" has always been a strong protector of rights of the people. Copyright cannot be an exception to it. The Judicial attitude has always been in favour to prevent the infringement of copyright. The Supreme Court of India and various High Courts have also explained and clarified important aspects of copy right. Some of the leading/recent cases are discussed here.

In Indian Performing Right Society. V. Eastern India Motion Picture Association and others (AIR 1997 SC 1443), the Supreme Court held that the author of a film song or composer of a musical work who has authorised a film producer to make a film of his work, cannot restrain the owner of the film from producing the accosted portion of the film to be performed or screamed in public for profit or for any others purpose, Justice V.R. Krishna layer observed, "A cinematograph is a felicitous blend a beautiful totality, a constellation of stars, Slurring over the rule against mixed metaphor. Cinema is more than long stripes of celluloid, more than miracles in photograph, more than sang, dance and dialogues and indeed more than the dramatic story, ex citing plot, gripping situations and morevelors acting But it is that ensemble which is the finished product of orchestrated performance by each of the several participants although the

components may, sometimes in themselves elegant entities."

In *R.G. Anand v. Delux Film* (AIR 1978 SC 168), the Supreme Court has held that there can be no copyright of an idea, subject matter, plots, or historical or legendary facts. What is necessary for copyright is the originality only in the form of expression. In this case the defendant made a film which was allegedly based on a play of the plaintiff. The Court declared that although the plaintiff was the owner of copyright of his play but the defendant has not infringe his right, because what is protected is not original thought or information, but the original expression of thought or information in some concrete form. Fazal Ali, J., In this case discussed a number of American, English and Indian cases. He said, "As a violation of copyright amounts to an act of piracy, it must be proved by clear and cogent evidence after applying the various tests."

In *Tata Oil Mills Co. v. Reward Soap work* (AIR 1983 Del. 286), the Delhi High Court has held that the issue of jurisdiction of Courts can not be in question at the time of seeking temporary injunction in the matters of infringement of copyright and trademark. The Court granted injunction restraining the defendant regarding the copyright as well as trademark infringement during the pendency of the suit.

In *Najma Heptullah v. orient Longman Ltd* (AIR 1989 Del. 63), the Court ruled that where there was active and close intellectual collaboration and co-operation between the narrator and the writer of the book, both would be entitled to first and joint ownership. The facts of this case are that Maulana Abdul Kalam Azad entered into an agreement with Prof. Humayun Kabir to write up his thoughts and conversation in English. Fifty percent of the royalty of the book has been paid to the legal representatives of Maulana Azad. The Court ruled that the legal representatives can not challenge the agreement or copyright after 30 years.

In *Gramophone Co. of India Ltd. v. Super Cassette Industries* (1995 PTR 64), the Delhi High Court has ruled that version recording is neither copying nor reproduction of the original recording. In this case, the plaintiff company produced audio records titled "Hum Aapke Hai Kaun." with the permission of the copyright owner the Rajshree Productions Pvt. Ltd. The plaintiffs alleged that the defendants too had launched an audio cassette by the same name, design, colour and layout. However the defendants denied the allegation by saying that what they were doing was version recording and it was done after formalities. The Court directed them not to use similar, design, colour and layout and to use an unoffending alternative title.

In *Gramophone Co. of India Ltd. v. Shanti Films Corporation* (AIR 1997 Cal. 63), the High Court ruled

that the assignment of copyright should be in writing and signed by the assigner or his authorised agent. Oral assignment of copyright is neither permissible nor valid. The Court also said that it has to see whether the damage the plaintiff is likely to suffer can be compensated in money. If the balance of convenience is in favour of plaintiff he may also be granted injunction.

In *Anil Gupta v. Kunal Dasgupta* (AIR 2002 Del. 379), the Delhi High Court has held that where the same idea is being developed in a different manner. It is manifest that the source being common similarities are bound to occur. The Court should examine whether or not the similarities are on fundamental or substantial aspects of the mode of expression. In this case the defendant broadcasters were prevented from telecasting a programme "Swayamvar" which was the original idea of the plaintiff.

In *F. E. Engineering & consultancy Pvt. Ltd. v. L.G. Cable Ltd* (AIR 2003 NOC 267), the Delhi High Court has ruled in order to bring an action within the category of infringement of copyright, it must be shown that there is a reproduction in material form of a work or substantial part thereof in respect of which there is an exclusive right. In this case the defendants used certain words similar to the plaintiff. The Court did not consider it as a violation of copyright of the plaintiff. The Court said that in this era of Science and technology it is not possible to restrict the use of words beyond a certain limit.

In *Hawkins Cookers Ltd. v. Magicook Appliances Co.* (AIR 2003 Del. 191), the Delhi High Court prevented the defendant company from using the same setup of label as that of the plaintiff company. In this case the plaintiff, a well-known manufacturers of pressure cookers filed an injunction suit against the defendants alleging that they have acquired the trademark. "Apsley" in relation to pressure cookers with the label substantially and deceptively similar to that of the plaintiff. The Court observed, "The defendants having infringed the copyright of the plaintiff company in terms of the provisions of section 51 of the Copyright Act, the plaintiffs are entitled to their civil remedies under section 55 of the Act."

In *zee Telefilms Ltd. v. Sundial communications (P) Ltd.* (2003) 6 ILD 76 (Bom), the Bombay High Court has developed the concept of "claim of confidence" in copyright matters. In this case the defendants were prevented from telecasting a T.V. Serial "Kanhaiyya" which was the original idea of the plaintiff Company. The Court observed, "An idea per se has no copyright. But if the idea is developed into a concept fledged with adequate details then the same is capable of registration under the Copyright Act."

In *Khajanchi Films Exchange v. State of MP* (AIR 2003 MP 3), the Madhya Pradesh High Court held that screening of a film before its release by cable operators does not amount to infringement of copyright. In this case the petitioner claimed copyright over the film "Kabhi Khushi Gum". The Court observed that there must be a judicially enforceable right as a legally pro right before and suffering a legal grievance can ask for a mandamus."

In *Eastern Book Co. v. Navin. J. Desai* (AIR 2001 Del. 185), the High Court has held that mere reproduction of a part of the judgment is not the infringement of copyright. However, the Court held that if the head notes are not the reproduced copies of the judgment and were written by using knowledge, labour, Judgment or literary skill or task, the publisher will have copy right to them,"

In *Eastern Book Co. v. D.B. Madok* (2003 PTR 30), the appellants publisher of well-known journal, the Supreme Court Cases (SCC) complained that the respondent were infringed their copyright by copying the former's material by making and selling CD. ROM. The Court restrained the respondents from copying the head notes and editorial notes of the appellants journal. The Supreme Court has accepted the principal that anyone who by his or her own skill and labour creates on original work of whatever character, shall enjoy the exclusive right to copy that work and no one else would be permitted to reap and crop what the copyright owner had sewn.

In *Dhana Vilas Madras Snuff Co. v. Vani Valas Snuff Co.* [2003(27) PTC 417 Mad] the Court ruled that change of name or title does not result in the infringement of copyright. In this case, the appellants were manufacturing and selling the snuff under the name and style of "DS". The defendants were also doing the same under the name of "E.T.S.". The Court held that as the names are not identical, no question of infringement of copyright or trade mark does arise.

In *Expior SA v. Euphorma Laboratories Ltd.* (AIR 2004 SC 1682), the Supreme Court has held that the owner of the copyright may file a suit for infringement of copyright within the jurisdiction of a Court where he receives seize and desist notice from defendant. The Court restrained the defendants from using the deceptively similar colour, combination of cartoons, packing etc., as that of the plaintiffs. The Court also discussed the question of jurisdiction in cases of copyright infringement.

In *My Space Inc. Vs. Super Cassettes Industries Ltd.* (Civil Missc Appeal 17996/2015) the Delhi High Court held that the rapid growth of technology has called for new legislative and judicial approaches to be hold between various stake holders for creating non-discrimination and tempered licensing schemes as well as a mutually acceptable framework for exchanging rights information. In *Navigators*

Logistics Ltd. Vs. Kashif Quresh and others, the Delhi High Court has held that confidentiality and secrecy is claimed in the same works in which copyright is claimed, viz. data, information and trade secrets residing in the electronic devices without again specifying the particular thereof or secrecy thereof. Mere mention of research process, financial / administrative and or organizational matter or transition or affairs of the company or invention or discovery or patent protection does not satisfy the requirements of Copyright.

The above discussion confirms the fact that the judiciary has always been in favour of protection of copyright. It says that the owner of a copy right has no monopoly in the subject matter and he cannot prevent others from doing the same work even from the common source. What is required is that the later should do it independently and the work should be original. Thus, the judicial attitude is in favour of originality. It has emphasised that original creations should be protected from copying.

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