

but also have led various Courts to redefine the very scope of the constitutional provisions especially Article 20(3)⁷.

Conclusion

Our criminal justice system is founded on

sound, just and equitable principles. The maxim “let hundred criminals be acquitted, but no single innocent shall be punishable” is underlying in our criminal administration. The test of narco analysis may be preferred as it was very useful to police in interrogation.

COPYRIGHT INFRINGEMENTS: CHALLENGES AND REMEDIES

By

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The concept and object of knowledge creation changed in the present globalized economy. The paradigm shift in the concept has transformed the knowledge as the property of an individual and excludes others from using it. The law of the land has changed its approach and is recognizing and protecting their rights. The new regime of intellectual property is emerging to safeguard the interests of the owners of IP assets, which includes the copyrights, patents, trademarks, geographical indications, circuit layouts, designs *etc.*

Copyright Law

The law that governs copyrights is known as copyright law. The present copyright law in India and in other countries is the outcome of various national and international conventions and treaties like Universal Copyright Convention and Protocols (UCC), 1952; Geneva Convention 1971, WIPO Copyright Treaty: (Diplomatic Conference) 1996, WIPO Performances and Phonograms Treaty, 1996 *etc.* The copyright law in India is based upon the Copyright Act 1911 of UK. The Act underwent various amendments and

a comprehensive and self-contained law is formulated in the year 1957- the Copyright Act 1957.

The Copyright Act, 1957 has undergone amendments to include provisions of various international conventions and treaties and to also adapt itself with the changing legal environment of the world.

“Copyright” is an exclusive right of an author granted under the provisions of the Copyright Act, 1957¹. The Act provides the exclusive right to the author of a literary, dramatic or musical work to :

- ☐ Reproduce the work in any material form
- ☐ Storing of the work in any medium including electronic media
- ☐ Issue copies of the work to the public not being copies already in circulation
- ☐ Perform the work in public, or communicate it to the public
- ☐ Make any cinematograph film or sound recording in respect of the work
- ☐ Make any translation of the work

7. Dr. B.M. Mohan, Director, Forensic Science Laboratories, Karnataka – “Is Narco analysis a pseudo – science” in Hindu.

1. Section 14, The Copyright Act, 1957

- Make any adaptation of the work.

Computer programs, an artistic work, a cinematograph film, a sound recording, are also protected under the copyrights law.

The copyrights subsist², in the original literary, dramatic, musical and artistic works cinematograph films and sound recording. The copyright or any similar rights in any work, whether published or unpublished, cannot be granted otherwise than under and in accordance with the provisions of the Copyright Act³. The important element to attract the protection of copyright is the originality. The doctrine of 'sweat of the brow' is not applicable to the copyrights. The discovery has no place of protection⁴. Copyrights are also granted to the data 'compiled' by the persons from different sources. The composers of the music recordings shall have right on their musically composed songs written by others⁵. The copyrights are granted to maps, charts, plans, tables and compilations and are treated as part of literary works. Forms, coupons designed and having the originality are also protected as copyrighted material⁶. 'The advertising catch phrases are entitled to copyright protection. It is the original work of the advertiser and should be protected⁷.

The 'work' is the result of intellectual exercise of an author. The author is the owner of the 'work' as he created it by making application of his skills and knowledge. But, sometimes the ownership may be different from the authorship. 'If a

work is made in the course of other's employment under a contract of service or apprenticeship, the employer is the first owner of the copyright, in the absence of any agreement to the contrary⁸. In the case of a photograph taken, or a painting or portrait drawn, or an engraving or a cinematograph film made, for valuable consideration at the instance of any person, such person shall, be the first owner of the copyright therein. In case of Government works, Government shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein.

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 of the copyright or any part thereof⁹. The assignment should be in writing and signed either by the assignor or his authorized agent¹⁰. The assignment should state the identity of work, particulars of the rights assigned, duration of assignment, territorial jurisdiction, and royalty payable with the terms of payment and escalations of royalty of assignment.

The term of the copyrights is the period during which the authors/owners exercise their rights and the law provides protection. Once the term is expired, the 'work' devolves into the public domain and every person can access the same without obtaining any permission or paying any royalty. Term of copyright in published literary, dramatic, musical and artistic works published within the lifetime of the author until sixty years from the beginning of the calendar year next following the year in which the author dies¹¹. Registration of copyrights is not

2. Section 3, the Copyright Act, 1957

3. Section 16 of the Copyright Act, 1957

4. *Fiest Publication Ins v. The Rural Telephone Service Co. Inc.*, US, decided on 27.3.1991

5. *Sulamangakam R Jayalakshmi and another v. Meta Musicals, Chennai and others*, 2001 (1) CTMR 73, Madras HC

6. *Ladbroke (Football) v. Win. Hill*, 1964 1 ALLER. 465 HL

7. *Pepsi Co Inc and others v. Hindustan Coca Cola Ltd. and another*, FAO (OS) No.432/2001, High Court of Delhi, 2003 (27) PTC 305 (Del.) (DB)

8. *Burlington Home Shopping Pvt. Ltd. v. Rajnish Clibber and others*, 1996 PTR

9. Section 18, The Copyright Act, 1957

10. Section 19, The Copyright Act, 1957

11. Section 22 of the Copyright Act, 1957

compulsory under the provisions of Indian Law and it is optional.

The infringement is using the copyrighted material without the permission from the owner or and using the copyrighted material beyond the authority granted by the owner and beyond the purpose for which it is granted. It is an unauthorized use of the work done by others. The objective of protection against the infringement is to safeguard the interests of the owner and stopping the non-owner to reap the benefits out of others works. Any act, which is in contravention of the rights granted to the owner by the Act amounts to infringement of rights of the owner and the Act, also grant remedies for the infringement. Other important activities of infringement include sale, distribution, hiring of counterfeit copies, public performance, exhibition of copies by way of trade, importation of infringing copies into India.

- ☐ Essential ingredients to prove the infringement are:
- ☐ Reproduction in material form
- ☐ Publication of work
- ☐ Communication to public
- ☐ Performance of work in public
- ☐ Reaping the benefits from the works of others.

Making of adaptations and translations of work also amounts to the infringement of copyrights. 'When an employee, after resigning from the employment of a company, manufactures a crane which is substantial reproduction of three dimensional form of the drawing of the employer, he is said to be guilty of infringement of copyright and passing off'¹². 'If two logos or works are alleged to be similar one with the other and dispute arose and when observed by the

legal eye and both of them are found to be 'substantially identical' a decree for perpetual injunction is granted in favour of the owner whose logo was copied against the wrongdoer and he will be restrained to infringe the copyrights'¹³. 'Infringement can be established only by comparing and showing similarity of details events, situations, expressions of language and imagination'¹⁴.

The doctrine of fair use balances the rigid principles of monopoly rights of the owners and need of the society. Using the literary, dramatic, musical or artistic works for the private use including research, criticism or review, for the purpose of judicial proceedings, report of judicial proceedings, copying of works created by the. 'To find out whether dealing is a fair dealing or not, motives of alleged infringers have to be taken into account, the extent and purpose of use and whether the extent was necessary for the purpose of reporting or publication and based upon the merit it has to be decided whether it is a fair deal or not.'¹⁵.

- ☐ The copyrights pose following challenges to the owners and administrators of justice.
- ☐ The advent of information technology has facilitated accessibility of the copyrighted material across the globe. As such it is difficult to find the infringement.
- ☐ The accessibility of the material has facilitated the translation of the copyrighted material into different languages operated and used in distant places. It is impossible to trace out the unauthorized use of the material for translation or if the same converted into any different formats of the copyrights.

12. *Escorts Construction Equipment Ltd. v. Action Escorts Construction Pvt. Ltd.*

13. *Fenner (India) Ltd. v. Farms and Farms (I) Ltd.*, 2004 (28) PTC, 358 Delhi.

14. *Barbara Taylor Bradford v. Sabara Medial Entertainment Ltd*, High Court of Calcutta, 2004 (28) PTC 474.

15. *Hyde Park Residence Ltd. v. Yelland*, 2001 LR Ch. 143

- ❑ Jurisdiction of the Courts is another important challenge as it is difficult to file a case in the Courts of foreign lands or try the case in our Courts against the infringers of different nations.
- ❑ It is very difficult to assess the losses suffered by the owners because of global infringements.
- ❑ It is difficult to receive royalty equal to the sales of copies as per the agreement as the publishers or assignees may not disclose real quantum of sales.
- ❑ Valuation of royalties payable is another challenge,
- ❑ Plagiarism and piracy are other pests as they drain the profits of the owners/authors unnoticeably.
- ❑ As the registration of copyright is not compulsory, it is difficult to know the real owner of the copyrighted material.
- ❑ Understanding, tracing and contacting the owners of the copyrighted works for the purpose of obtaining the permissions or licences is another Hercules task

In addition to the challenges stated above, different categories of copyrights possess challenges to the law seekers and providers in different manner.

The Copyright Act, 1957 provides for the remedies to the owners of the copyrighted material for the infringement of their rights. The owner can exercise his rights by invoking criminal and civil actions against the infringers.

A complaint/petition may be filed with the police for confiscating the pirated copies of infringed material.

The offender shall be punishable with an imprisonment for a minimum term of six months which may be extended up to three

years and fine of fifty thousand rupees, which may extend to two lakh rupees.

In case of second and subsequent offences, the infringer will be punished with imprisonment for a term, which shall be in-between one and three years and fine in-between one lakh and two lakh rupees.

Every person in possession of plates or other raw material for purpose of making infringing copies are committing an offence and are punishable with imprisonment, which may extend to two years and shall also be liable to fine.

Any person who publishes a record or video film and infringes the rights of the owners, and or makes false entries or particulars of publications in the registers are committing an offence and are punishable with imprisonment which may extend to three years and shall also be liable to fine. Only the Courts – Metropolitan Magistrate or Judicial Magistrate of the first class and above rank can handle the cases related to the copyright issues.

Every author whose works are infringed may approach the Court of law to grant of injunction against the infringers. The Court may grant interim or perpetual or permanent injunctions.

The author/owner may request the Courts for compensation for the loss suffered they suffer due to the infringement and Court may direct the payment of damages. The damages may be either nominal damages or liquidated damages. In *P.N. Krishnamurthy v. Co-operative for American Relief Everywhere*¹⁶, the plea for exemplary damages was rejected and only ordinary damages were paid, as the purpose of the copying is to distribute the books free of cost to children.

The Court may also grant the costs of the litigation to the owner who suffered due to offence committed by the infringer.

16. 2001 (2) Raj 97 (Del)

The author/owner may prefer for appeal against the awards of the Copyright Board and the Courts.

In the current knowledge driven economy, the copyrights poses challenges of different nature, which requires immediate attention, and cautious management. The authors/owners should formulate the Copyright Societies or Associations to share the news of their works at national, regional and international levels and have to maintain data of the new creations so that they can inform their counterparts about the infringement of works in their area. The police should be given extra powers or separate task force should be created to

take immediate action against the infringers. Instead of litigations, alternative methods of settlement of dispute such as non-payment of royalties, disputes between the authors/owners and assignees and related matters, may be used. Software should be developed to trace out the person accessing the copyrighted material. The administrators should have enough powers to catch and reprimand the culprits and the law should have sharp teeth to bite. Unless the legislations are powerful to handle the worst situations with effective enforcement, though the rights granted to the owners/authors have no meaning. A message of caution has to be given to the public in general and infringers in specific through awareness programs.

GENESIS OF PEOPLES REPRESENTATIVES

By

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Whether it is a “A” Political Party in power or “B” their approach to the people’s problems and issues related to the Nation are the same. After the Political Stalwarts who strive for progressive march of the nation towards prosperity were laid to rest umpteen number of Mushroom growth street hunters projected themselves as National Leaders. Their experience and qualifications according to them are that they are second to none with their Muscle Power and Pots of money extracted from public to feed handful of vagabonds to entrust them with the task of castigating the voice of citizens while chasing them out from political arena. Another set of Leaders based their claim on Religious patronization with a handful of empty-headed followers who know nothing about religious prescriptions as to what for the religion stands. As a matter of

fact the power of such religious leaders progress so fast and rapid that innocents and ignorants fall as easy prey to them to their fake and fissiparous sermons. Such of them will be under the religious protection which is more a solid base to shield themselves from their criminality which gives them a fool proof protection to their activities in all fields.

Of late in a Parliamentary Democracy which is being projected by the present feather weight Leaders of straw from the very first day of their entry in the Parliament and Legislative Assemblies the issue is that of Lung Power of one against the other without any substance or cause. More so when it is being Televised. Immediately followed after the Presidential and Governor’s address they expose their Lung Power ventilating the acts