

Ph D Thesis

**EXAMINING DEFINITIONAL CLAUSES IN INDIAN
COPYRIGHT LAW: AN ANALYTICAL STUDY OF
THE COPYRIGHT ACT, 1957**

Under the supervision of

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Submitted by

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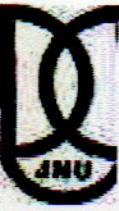
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INDIA

2016



15th of July, 2016

DECLARATION

I declare that the thesis entitled “**Examining Definitional Clauses in Indian Copyright Law: An Analytical Study of the Copyright Act, 1957**”, submitted by me to the Centre for the study of Law and Governance, in partial fulfilment of the requirements for the award of the **Degree of Doctor of Philosophy, Jawaharlal Nehru University** is my own work. This thesis has not been submitted for the award of any other degree in this University or any other University.

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Dedicated

To

My Lovely

Daughter

Sanghamitra

ACKNOWLEDGEMENT

Availing any measure of help in the pursuit of one's endeavour in life is the essence of man being a social animal. No more acknowledge can express my depth, however, I must mention with gratitude to all those who aided me in the course of this work till its completion.

In writing this thesis, we have had comments, criticism generous cooperation, unseen influence, active support and encouragement from a number of sources. I am grateful and highly indebted to my esteem supervisor Prof. Jaivir Singh whose intellectual ingenuity and able guided cleared my blurred vision. My words are few to describe the kind of cooperation encouragement, sympathy and above all the concern that I received from him in the course of this exercise. Without his guidance and counsel, this piece of work would have not got the final shape. I am richly indebted to him. My gratitude also goes to Prof. Amit Prakash and Associate Prof. Pratiksha Baxi for encouraging me to carry on when I was about to almost gave up my studies.

I would like to acknowledge the librarians of J.N.U. Library, CSLG Library, Exim Library, BHU Library, BBAU Library, and ILI library who directly or indirectly have provided their extended cooperation in the collection of source for the research work.

Formal thank is not enough to my family members, without whom this work would have not been realized. I always remain indebted to my parents, my wife Preety, my daughter Sanghamitra and my brothers Sattya Prakash, Vinod, Ajay, bhabhi and sister Usha Devi for their unflagging support and steadfast appreciation that really kept me on the right track of life.

I express my appreciation and thanks to Ajay Kumar, Amardip Kumar, Anil Kumar Baheliya, Asst. Prof. Anil Kumar, Asst. Prof. Sushil Kumar, Asst. Prof. Vinod Bhaiya, Bala Ji, Gagandeep Singh, K. K. Loung Nathan, Kant Piyush Sharma, Mukhtyar Singh, Phuireingam Hongchui, Prateek Atal, Purva, Rajesh Pal, Ramratan V. Dhumal, Sanjay, Safique, Solomon Zingkhai, Vikas Kumar, Virendra, Wungmathot Mahong, Zheer Ahmed and all my batch-mates who always encouraged and inspired me to do better.

In spite of having the advantage of guidance, cooperation and instructions from the able persons, I am responsible for my errors or omissions in this research work.

Pramod Kumar

Abstract

Copyright law came into existence after the invention of printing press. The term copyright means "right to copy". Copyright is a legal concept which is granted by the law or authority. Earlier the protection granted by Copyright was to the printing presses. However, later, it provided protection to the printing presses as well as authors. It protects the economic and moral rights of the author's works or owner of the copyright. The protection granted in terms of economic rights is limited whereas moral rights always subsist with the authors/creators. The first copyright Act was the Statute of Anne Act, 1710 followed by the Copyright Act, 1911 and the Copyright Act, 1914. Initially, this Act was implemented in European Countries and British and Commonwealths Countries and they tried to find a Uniform Copyright System though conventions such as Paris Convention, the Berne Convention, and Stockholm Convention. However, they could not succeed in finding a Uniform Copyright System. Thus, all the member nations have their respective copyright law in place. For example, India has its own Copyright Law in the form of Copyright Act, 1957. This Act has been amended several times.

The objective of the Copyright Act 1957 is to protect all original works. These protected works covers diverse area of work, such as, artistic, literary, dramatic, sound recording, cinematograph film, photography, etc. In fulfilling these objectives the Act has defined the import of the terms literary works,

originality, and authorship, ownership of copyright and etc. In addition, the Courts have also played a significant role towards the fulfillment of the objectives of the Copyright Act, 1957 in elucidating the connotation of such terms through various judgments it has given. Therefore, doctrines such as Doctrine of Sweat and Brow, Doctrine of Merger and Standard of originality has over the years have gradually developed.

Rather than restricting it reach to matters that concerns the copying of the original works Copyright Act, 1957 also deals with provisions that allows for permissible restrictions to copy the original works. This is known as the principle of fair dealing and also falls under the Copyright Act, 1957. This doctrine has an exhaustive list that evidently demarcates its limited area.

Key Works- Copyright, Literary Works, Originality, Authorship, Joint Author, Fair Dealing, Doctrine of Sweat and Brow, Doctrine of Merger, Standard of Originality, Copyright Infringement.

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Chapter 1

Introduction

1.1 An Overview of Copyright Act

The Indian Copyright Act of 1957 was enacted with the aim of “protection of several rights of the copier and copyright holders”. In defining certain important terms, this act set the precedence for the future course of copyright act in India. Thus, our research is based on whether these terms have proper definitions or whether the objectives of this act can be fulfilled within these definitions. Falling under the ambit of this Act are literary works, dramatic works, artistic works, various recording works, and photographic works etc. Given that, the objective of this act is to protect several kinds of works, it involves a vast area of research yet our research will be restricted to those provisions that seek to protect literary works. In addition, apart from this Copyright Act there are other several acts such as Patent Act, Trade Mark Act, etc., acts that also help to fulfill the objective of Copyright Act.

To start with, copyright is a form of Intellectual property. It designates a bundle of exclusive rights vested in the owner or author of the work. These exclusive rights are indicative of rights that can be exercised by the owner or person authorized by the owner. Generally “copyright” is understood to imply the exclusive right to dispose off, sell and commercially make use of an intellectual work, by means of photography, printing, graphic production, lithography, gramophone record, recitation, a cinematography film, theatrical representation, translation, adaptation, performance, broadcast transmission or any other form of reproduction, multiplication of copies. However, an important qualification that has to be always kept in mind is that it seeks to protect the expressions of ideas rather than idea themselves.

It is with the invention of printing press, which provided an easier means to reproduce copies of work within a very less time and effort, that Copyright law came into existence. We hereby deal with the historical understanding of copyright law, followed by an analysis of the origin and meaning of copyright and the problems of copyright law in India in digital era. The first copyright law act was enacted by the by the British

parliament in 1662. The real copyright act was enacted by the British parliament with the title Anne Act (1710), which provided a fixed period of copyright time to the publishers.

In case of Indian copyright, we have some interesting historical facts. In the ancient world education was given freely and received freely because it was considered as a gift of God. However, the approach to education and learning has changed over the centuries, especially with the introduction of new economic models and the coming in of western style universities and schools. Old traditions gave way to new ones. New technologies came to be incorporated in the educational institutions. Thus, the concept of copyright emerged. The concept of copyright started in India by 19th century. The first copyright law in India was enacted in 1847, titled as “An Act for the encouragement of learning in the Territories subject to the Government of the East India Company, by defining and providing for the enforcement of the right called copyright therein”. By the end of 19th century the Bombay High court in a judgment held that “British Copyright Act, 1842” will be applicable to India also. In 1911, British parliament amended the British Copyright Act, 1842, which was applicable to all the British dominions including India. Consequently, the Government of India enacted the Copyright Act, 1914. This Act remained in force till 1958, until the Copyright Act, 1957 was passed by the Indian Parliament. Therefore, any Copyright of original works is now protected in the India by the Copyright Act, 1957. The Act has undergone many amendments, the, last being Copyright Amendment Bill 2012.

1.2 General understanding of copyright

As it has been often discussed, copyright is a form of law that gives protection to authors over their works (such as artists, musician, writers, and other creators) including granting ownership or property rights (or utilization rights) basically with regard to material interests.¹ It grants protection to authors against unauthorized use of their works and to a possible share in any earnings from its use in the public sphere. In addition to this, it also gives protection to another set of interests, rights that are more of a personal nature, which are known as the “moral rights” of authors. These rights give permission to claim of authorship, to the authors, over their works and grants respect to their integrity. On

¹ UNESCO, “*ABC of Copyright*”, (Paris: UNESCO, 2010): p.10

these line, for instance, the Universal Declaration of Human Rights (1948) and the International Covenant on Economic, Social and Cultural Rights (1966) have recognized moral and material interests as a human right which are the result of any artistic, literary or scientific production.²

Copyright is also the kind of intellectual property law that gives protection to other subject matter such as designs, integrated circuits, patents, plant seed varieties, trademarks, trade secrets, topographies and geographical indications of source.³ In the course of granting these entitlements, apart from establishing the individual rights for the benefit of authors, it also takes into account the needs of users and of society towards a larger access to knowledge and information. Consequently, copyright protection is subject to a number of exceptions and limitations that help maintain a fair balance between the conflicting interests.

1.3 History before Copyrights

Tracing the Origin of copyright act, Edward Ploman and L. Clark Hamilton have pointed out that the emergent characteristic of the modern conception of copyright existed in ancient Greece, in the Talmudic principles of ancient Jewish law, and in the Roman publishing system.⁴ The oral poetry of ancient Greece, including the Homeric poems had been developed and been recited by muses who today remain anonymous.⁵ This tradition can be explained in terms of both the existing nature of oral cultures and the organization of artistic and literary production of those societies. However, in practice, at the level of communications, practice, oral cultures are less conducive to the preservation of exact versions of texts and records due to the limits of human memory.⁶ Therefore, it follows that the recording of claims was equally constrained to authorship. Moreover, claims to

² Ibid, p. 10

³ Ibid, p. 10.

⁴ Polam, Edward. and Hamilton L. Clark. "*Copyright: Intellectual Property in the Information Age*", (London: Routledge and Kegan Paul, 1980)

⁵ Thomas, Rosalind. "*Oral Tradition and Written Record in Classical Athens*", (Cambridge: Cambridge University Press, 1989)

⁶ Betting V. Ronaldz. "*Copyrighting Culture: The political Economy of Intellectual property*", (U.S.A.: Westview Press, 1996): p. 11.

personal creativity may not have been made in the first place as the Greek's poets saw their work which was in the form of oral traditions as a "combined success, the common and undividable possession of a school, guild or group" rather than like a personal effort that could be personally owned.⁷

Arnold Hauser on the other hand is of the opinion that the said intellectual property rights seems to originate at Athens by the 6th century B.C., when a new sense of the personal self emerges in all fields of cultural life.⁸ This can be observed from the first recorded personal claims to artistic and literary creativity and is attributed by Hauser to the evolution of commerce and urban society. To this equation, cultural historians of communications would add the factors of literacy and the highly developed Greek alphabet that allowed authors to explore and discover inter subjectivity.⁹ However, books were rare and there are no other evidence of things resembling a copyright that subsists during the Greek classical period.

In the same way, quiet interestingly the verbal newsmen of the Hebrew Talmud were introduced primarily to identify the contributors of new principles to the already existing body of civil and religious law. Victor Hazen comments that this authorization to report a thing "in the name of him who said it" enable us to draw a parallel between ancient Jewish law and the modern "universal copyright".¹⁰ However, such practice perhaps implies "natural" recognition of an author's right to attribution or understanding of oral culture. Additionally, our understanding of verbal cultures suggests that this practice may just as well have been an effort to maintain a historical record of scholarship. This view stems from the perchance that claim to the authority of the spoken or text is more important than citation or preservation. Overall, the practice of attribution appears rooted in concerns about the correctness and authority of the verbal record rather than an idea of property rights as Hazen suggests. At most, judging from the above

⁷ Hauser, Arnold. *"The Social History of Art"*, (New York: Alfred A. Knopf, 1952): p. 87.

⁸ Ibid, p. 87.

⁹ Betting V. Ronaldz. *"Copyrighting Culture: The political Economy of Intellectual property"*,(U.S.A.: Westview Press, 1996): p. 12

¹⁰ Hazen, Victor. *"The Origins of Copyright in Ancient Jewish Law"* (Bulletin of the Copyright Society of the U.S.A., 1970): pp. 25-28.

discussion, one can say that ancient Jewish law gives something analogous to an author's moral right to attribution, whether it had consideration for such aspect or not.¹¹

Although there is evidence that some authors had signed contracts with booksellers for publishing yet in written Roman law there is no trace of copyright.¹² According to Ploman and Hamilton, a workable trade in literary works existed in Rome preparing the right conditions for a copyright.¹³ By the middle of the 3rd century A.D., Reynolds and Wilson observed that the world of books had become very much a part of the world of the educated Roman, writing was considered a respectable profession of the leisured class.¹⁴ Nevertheless, it does not mean that poets and authors made a living by selling their works and earning royalties as some currently do, since the dominant form of literary compensation at this time was the patronage system.¹⁵ In addition, much of the manuscript production of the time was geared towards the copying, reproducing, and correcting of existing works. Regarding this, most readers depended on borrowing books from friends and getting their own copies made for them by either their own slaves or those owned by and working for booksellers.¹⁶ Furthermore, an author or poet unless he was rich and sufficient to publish his own book would have to provide or sell his own book to a bookseller who by virtue of being the owner of the parchment and slaves came to own the copies of the work. Lastly, whether the publishing agreements existed or not is not at all clear, since Roman law makers does not talk either about it or of property interests in immaterial things in general.¹⁷

¹¹ Betting V. Ronaldz. *Copyrighting Culture: The political Economy of Intellectual property*, (U.S.A.: Westview Press, 1996): p. 11.

¹² Polam, Edward. and Hamilton L.Clark. *Copyright: Intellectual Property in the Information Age*, (London: Routledge and Kegan Paul, 1980): p.7

¹³Ibid, p. 7.

¹⁴ Reynolds, L.D. and Wilson, N. G. *Scribes and Scholars: A Guide to the Transmission of Greek and Latin literature* ", (Oxford: Clarendon, 1991): p. 19

¹⁵Betting V. Ronaldz. *Copyrighting Culture: The political Economy of Intellectual property*",(U.S.A.: Westview Press, 1996): p. 12

¹⁶ Betting V. Ronaldz. *Copyrighting Culture: The political Economy of Intellectual property*",(U.S.A.: Westview Press, 1996): p. 12

¹⁷ Wittenberg, P. *The Law of Literary Property*", (Cleveland: World Publishing, 1957): p 25.

Looking into the history of the world, the early history of India is one of people rather than persons, where the great literary works and philosophical masterpieces were all nameless. Of the many existing Societies without copyright ancient India also counts as one. In this verbal culture, “who said what” was not as important as “what was said.”¹⁸ Likewise, in the more recent verbal culture of Bali there was no notion of personal possession. For the Balinese, production of culture rather than being an individual process was a participatory process and community-oriented, and was intended to be an expression of combined thought.¹⁹ Therefore, artistic awareness was not confined to a group of a special intellectual class.²⁰ Likewise, in the People’s Republic of China there was no copyright system till 1991. All these discussions show that there was no concept of intellectual property in the societies of Southeast Asia.

Ploman and Hamilton are of the view that different cultural attitudes, social organization, and legal conceptions are reasons behind the emergence of copyright in Europe but not in Asia.²¹ Apart from these factors, the mode of communication also played a crucial part. Despite the fact that the Chinese developed writing and introduced paper to the world third millennium B.C., yet in China the art of writing was employed more for religious rather than literary purposes.²²

Moving towards a study of the medieval period of Europe, we sense a lack of the notion of literary property owing due to several factors such as the general formations of output, the particular organization of literary output, the dominant form of communication, and the role of culture in society. Starting with the organization of particular literary creativity of this age, it is well known that within a monastic system, the Roman Catholic Church centralized the conservation, output, and diffusion of artistic

¹⁸ Oliver, Robert. “*Communication and Culture in Ancient India and China, Syracuse*” (New York: Syracuse University Press, 1971): p.21.

¹⁹ Covarrubias, M. “*Island of Bali*” (New York: Alfred A. Knopf, 1937): p. 164.

²⁰ Ibid, pp. 160-166.

²¹ Polam, Edward. and Hamilton L. Clark. “*Copyright: Intellectual Property in the Information Age*”, (London: Routledge and Kegan Paul, 1980): pp. 141-142

²² Goody, Jack. “*the logic of Writing and the Organization of Society*”, (Cambridge: Cambridge University Press, 1986):p.91

and intellectual knowledge.²³ Due to this tight control over manuscripts and their reproduction and control over education and literacy, the Church exercise a monopoly over knowledge, particularly during the Early Middle Ages. The Benedictine monasteries which were involved in loaning and exchanging of manuscripts did discovered steadily the value of their libraries as access to them could mean command over land, cattle, money, or other privileges.²⁴ George Putnam thus considered the practice of having to pay for the right to copy a manuscript, the first European copyright, though it had “nothing whatever to do with the rights of an original producer in the literary output”.²⁵

The dominant mode of communication was not conducive to an idea of literary property as Europe during the Medieval Age was primarily practicing an oral culture, so it is understandable why the medieval listener had a greater respect for form than for authorship.²⁶ The real Middle age historical events upon which the poems and songs were based belonged to a literary commons from which anyone could draw.²⁷ The verbal performance was not itself something that could be kept or owned in any way. In support of a verbal poet, the moment of composition takes place at the time of performance, and each realization of the songs and stories is different.²⁸ Therefore, there is no “original” work but merely a combination of principle, spontaneity, and forgetfulness, a creative artist making the tradition.²⁹ Due to the personality and creativity of the performer, variation is implicit to verbal performance in the context of reception, and the limits of human memory. In medieval Europe, Elizabeth Eisenstein proposed that scribal culture “worked against the concept of intellectual property rights” as this way of communication

²³ Betting V. Ronaldz. “*Copyrighting Culture: The political Economy of Intellectual property*”,(U.S.A.: Westview Press, 1996): p. 13.

²⁴ Ibid, p.13.

²⁵ Putnam, George. “*Books and Their Makers During the Middle Ages*”, (New York: Hillary House, 1962): p.484

²⁶ Mline, M. “*Rabelais and the Age of Printing*”, (Geneva: Librairie Droz, 1963): p.5

²⁷ Burke, James. “*The Day the Universe Changed*”, (Boston: Little Brown, 1985): p.97

²⁸ Lord, A. “*The Singer of Tales*”, (Cambridge: Harvard University Press, 1960): p. 5

²⁹ Betting V. Ronaldz. “*Copyrighting Culture: The political Economy of Intellectual property*”,(U.S.A.: Westview Press, 1996): p. 14

lacked the essential factors required for preserving personal contributions to art, literature, and inventions.³⁰

In contrast, Hauser holds that concepts of the artist as a genius and intellectual property could not emerge until the disintegration of the Christian culture.³¹ He observed that within the larger social system the cultural unity of the Middle Ages deprived art of any structural autonomy. In the medieval worldview, artistic creativity meant the personification of the Divine spoken through the artist, the medium through which the eternal, supernatural order of things was made perceptible.³² Due to lack of structural autonomy, various kinds of intellectual expression established all meaning and purpose from above whereas the importance of any creative work was based on its fidelity to the truth. It follows that monastic chronicles and church music were not formally encumbered with property rights in the modern sense of the term. One way of explaining this is perhaps the monks' freely used and reproduced literary works, often without concern for attribution. Instead, authorship was attributed to the monastery which like a moral being was conferred with the duty to record and conserve the Word of God.

While we move straight to the relations of output that dominated medieval Europe, we come across causes that worked against the idea of literary property. One of them is the corporate structure of medieval society where people saw themselves primarily as members of a group rather than like persons.³³ Since God assigned every person to a station in life, few believed that they could earn their way out through fame or fortune.³⁴ On these grounds, E. K. Hunt said that the feudal ideology that was based on a Christian paternalist ethic was decidedly anti capitalist.³⁵ Hence, covetousness, greed, selfishness, and the desire to better oneself materially or socially are qualities that were

³⁰ Eisenstein, Elizabeth. "*The Printing Press as an Agent of Change*", (Cambridge: Cambridge University Press, 1979): p.229

³¹ Hauser, Arnold. "*The Social History of Art*," (New York: Alfred A. Knopf, 1952): p. 327

³² Betting V. Ronaldz. "*Copyrighting Culture: The political Economy of Intellectual property*",(U.S.A.: Westview Press, 1996): p. 14

³³ Menache, Sophia. "*The Vox Dei*", (Cambridge: Oxford University Press, 1990): p. 9.

³⁴ Darnton, Robert. "*The Great Cat Massacre and Other Episodes in French Cultural History*", (New York: Basic Books, 1984)

³⁵ Hunt, E.K. "*Property and Prophets (6th ed.)*", (New York: Harper and Row, 1990): pp. 8-10

equally denounced and reviled in the Middle Ages.³⁶ This is illustrated through the doctrine of the just price and the prohibition against usury.³⁷ Clearly, the result of such practices was to prevent social mobility and to conserve the class relationships, which characterized the European feudal system. Finally, Hunt said that the Christian paternalist ethic had to be abandoned for capitalism to take root. In summation, Eisenstein stressed on the mode of communication and Hauser stressed on the structural position of artistic creativity as the keys to understanding the nonappearance of an idea of literary property up through medieval times. However, both seem to take into account considerations of the relations of output based on collective forms of creativity and consumption. Thus, putting together the analysis of modes and relations of output and communication provides a materialist grounding that connects the origin of intellectual property to the appearance of the printing press and the rise of capitalism.

1.4 The Origins of Copyright

With the onset of the central Middle Ages (1000-1400), Sophia Menache argued that owing to interests and demands of Europe's *culture savante* that was inclusive of the clergy and the nobility, an European communications system was developed. Communication in terms of the exchange of letters and books established two vital means of communication. A secular trade in manuscripts appeared in the twelfth century, first in Paris and then in other university towns, indicating the impending demise of the Church's monopoly of knowledge.³⁸ The book trade of the secular age was organized around the universities. It had found a growing in urban centers, one that was primarily based on the reproduction of the works of religious authorities and classical authors.³⁹ Copies of texts were still prepared through hand. However, this system was rationalized through the stationer who organized the reproduction of texts on behalf of buyers looking for

³⁶ Betting V. Ronaldz. "*Copyrighting Culture: The political Economy of Intellectual property*",(U.S.A.: Westview Press, 1996): p. 14

³⁷ Hunt , E.K. "*Property and Prophets (6th ed.)*", (New York: Harper and Row, 1990): p.10

³⁸ Betting V. Ronaldz. "*Copyrighting Culture: The political Economy of Intellectual property*",(U.S.A.: Westview Press, 1996): p. 15.

³⁹ Thomas,Michal. "*Introduction: The Coming of the Book*", (London: Verso, 1984) pp. 15-27.

particular titles for a fee. The first stationers worked under the strict guideline of the universities, whose authorities verified essential works for textual exactness, controlled prices, and needed that books be loaned to anyone wishing to make copies or have copies prepared for them.⁴⁰ Therefore, it was not possible for anyone owning or producing a text to demand remuneration for making his work available since the system forbade exclusivity.⁴¹

With the emergence of an embryonic middle-class and the increasing autonomy of the nobility from the Church, a growing reading public permitted some stationers to break free from university and guild control. The response to the literary needs of these emerging classes prompted the production of books, on practical concerns, for example on law, politics, and science and also lessons on moral treaties, works of literature, romances and translations.⁴² In the beginning, stationers produced adaptations of old works and Latin translations of medieval classics. Later they started seeking out original works to keep their operations going. Therefore, the structural autonomy of literature improved with the growing middle-class as well as secular nobility demanding their own cultural fare and as enterprising stationers sought to exploit new markets which Hauser linked to the disintegration of Christian culture.⁴³ As it is popularly said, the stationers acted as the midwives of the origin of printing. They as merchant capitalists laid the foundation for the change of the book trade for investment in print technology and manuscripts by using their accumulated capital and organizing the book trade along capitalistic lines.

As Eisenstein justly observed the manuscript-based production system could never have generated the surplus of books necessary for a capitalist book trade so they needed the printing press.⁴⁴ Therefore, the printing press is among the first inventions to be exploited by capitalists. Gutenberg discovered the printing press with the help of a

⁴⁰ Ibid, p. 21.

⁴¹ L. Febvre and H. Martin, *"The Coming of the Book"*, (London: Verso, 1984): pp. 159-160.

⁴² Michal Thomas, *"Introduction: The Coming of the Book"*, (London: Verso, 1984): pp. 15-22.

⁴³ Hauser, Arnold. *"The Social History of Art,"* (New York: Alfred A. Knopf, 1952): p. 327.

⁴⁴ Eisenstein, Elizabeth. *"The Printing Press as an Agent of Change"*, (Cambridge: Cambridge University Press, 1979): p. 49

merchant capitalist Johann Fust. He finished up with the equipment when Gutenberg could not repay the loans. This appropriation of Gutenberg's intellectual creativity symbolizes the nature of the dawning capitalist system.

1.5 The Concept of Copyright

Copyright essentially plays an important role on deciding how knowledge is distributed and who controls it. It involves every aspect of the knowledge business that concerns the distribution and dissemination of knowledge, starting from rewards that are available to an individual author and the control exercised over intellectual work right to the extent of international relations among big corporations and nations of the publishing industry. The concept of copyright is based on three approaches. These are moral right of individual (natural right of individual), economic right (commercial right), and societal right. The first approach of copyright as the moral right of the individual is for the purpose of essential control over that property, which is his/her own intellectual property. It is a work of art, an invention, or a book⁴⁵.

European copyright laws and the Berne Convention are the two major oldest and largest international legal instruments of copyright, which have characterized copyright as a kind of moral right of individual. The approach of copyright here might also be summarized as a 'natural right' of the individual⁴⁶. The second kind of approach of copyright is adequately summarized in the United States Constitution. It holds that the intention of copyright is to stimulate creativity and invention. Furthermore, it holds that this is a privilege, which have been granted to individuals for the benefit of society.⁴⁷ In general, the American approach of copyright can be summarized in terms of a commercial right. Societal right is the third approach of copyright.⁴⁸ The societal theory

⁴⁵ Altbach, Philip G. "Knowledge Enigma Copyright in the Third World", *Economic Political Weekly*, Vol.21 September, 1986, p. 1645

⁴⁶ Ibid, p. 1645

⁴⁷ Ringer, Barbara "The Demonology of Copyright", *Publishers Weekly*, 206 (November 18, 1974), pp 19-28.

⁴⁸ Altbach, Philip G., "Knowledge Enigma Copyright in the Third World", *Economic Political Weekly*, (Vol.21,September, 1986): p. 1645

exemplified by the Soviet copyright system. In this system, the society has certain basic rights over intellectual work. The copyright laws reflect a compromise between personal rights and interests, interest that are recognized as belonging to collective enterprise.

The concept of copyright as property that was considered as a key to the market economies in both American and European countries is absent from societal theory⁴⁹. Not everyone agrees that copyright is a good thing. Thomas Macaulay gives one of the classic anti copyright statement that copyright was a tax on readers for giving reward to writers.⁵⁰ Philosophical arguments have raged over the centuries regarding the nature of copyright and the justification for it. The debate is also concerned with questions on what constitutes the suitable limits on copyright when balancing the various interests of the individual and society off against each other. The controversy has grown more complex in the past few years such as copyright has been applied to non book products such as computer programmes. A good example of the argument regarding regulations governing photocopies is how copyright has grown in recent years. The arguments revolve around rights of individuals and publishing firms on the one hand and those of the public on the other to knowledge and to the dissemination of photocopied material.⁵¹

Copyright stems from particular historical and socio-economic circumstances. Furthermore, copyright emerged and gained strength in Europe, while industry developed, the printing and distribution grew more sophisticated, and the mass market of cultural goods became important. Literacy became wide spread and newspapers, magazines, and books became artifacts on coeval culture⁵². The way of economic organization was capitalist. Thus, artistic creation was increasingly linked with the growing industrial revolution, the outlook and the institutions that mushroomed alongside

⁴⁹ Ploma,n Edward W. and Hamilton, L. Clark. "Copyright: Intellectual Property in the Information Age", (London: Routledge and Kegan Paul, 1980), p 123.

⁵⁰Breyer, Stephen. "The Uneasy Case for Copyright: A Study of Copyright in Books, Photocopies and Computer Programmes", *Harvard Law Review*, 84 (December, 1970): p. 281.

⁵¹ Henry, Nicholas L. "Copyright- Information Technology Public Policy and", *Science*, 1983, (February, 1974): pp 384-391.

⁵² Altbach, Philip G. 'Knowledge Enigma Copyright in the Third World', *Economic Political Weekly*, (Vol.21,September, 1986): p. 1645

this key variation of the 19th century. The role of the artist and writer on the question of copyright protection was defined by capitalist relations and woven around the inter-relationship between culture and profit. The basis to understand the European and American ideologies of copyright lies with the underlying idea of the artist and writer as an individual creator who profits from his/her work and who is engaged in a competitive enterprise with other individual creators⁵³. All this functions in a market oriented system where intellectual goods can be bought and sold and are assigned a monetary value. Edward Ploman says that it is surprising that copyright has gained such wide acceptance in societies with quite different economic orientations and value structure⁵⁴. Copyright is a way of bringing the world of intellectual life into the world of contemporary commerce stripped of its idealistic claims.

Historically, as most of the copyright laws of Third World nations were based on the colonial regulations that were in place at the time of independence they chiefly inherited the European approach to copyright. However, in due course of time, these nation countries have progressed gradually to indigenize their copyright laws. Furthermore, there has been a good deal of controversy regarding the suitable orientation to copyright. In the long run, current Third World thinking on copyright reflects elements of all three of the basic approaches discussed here and may contribute to the distribution of knowledge and a synthesis of theoretical perspectives on copyright. In the post-war era, the emergence of the Third World nations has added another dimension to the copyright concept. The issue of the use of information, dissemination and creation in the 'global village' has been raised mainly in Third World discussions and has stimulated controversial debates in UNESCO and elsewhere on the 'New World Information Order'. Issues of equity control over the means of dissemination and related matters are raised in these debates⁵⁵.

⁵³ Ibid, p. 1645

⁵⁴ Ploman, Edward. "Copyright: Where Do We Go From Here?" in P G Altbach, A Arbolada and S Gopinathan, eds, *Publishing in the Third World: Knowledge and Development* (Portsmouth, N H: Heinemann, 1985): p. 27.

⁵⁵ Irwin, A Olian Jr. "International Copyright and the Needs of Developing Countries", *Cornell International Law Journal*, 7 (May 1974), pp 81-112.

1.6 Meaning of Copyright

Copyright is a creation of statute under private property law regime that subsists in certain specified types of creative works.⁵⁶ By virtue of its definition as a private law it defines, regulates, enforces, and administers relationships among individuals, associations and corporations. Therefore, it concerns with those rights where both the person in whom the right inheres and the person upon whom the obligation rests are private individuals.⁵⁷ In case of Copyright, these provisions covers a wide range of literary and artistic expression, including books, computer programs, dance, dramatic works, movies, paintings and sculpture, conferred by statute to an author of an original literary, dramatic, musical and artistic work, sound recording and cinematograph film.⁵⁸ It in granting protection for original works of authorship in published literary, dramatic, artistic and musical works, grants protection for a limited period of time. In case of India the term of protection ordinarily covers the lifetime of the author plus sixty years after his or her death whereas, in countries like United States of America and England, protection is granted for the lifetime plus seventy years after the death of the author.⁵⁹

However, as discussed earlier, it does not subsist in the idea in itself, as protection is granted in the particular form of expression and not the idea *per se* and thoughts on which the expression is based.⁶⁰ Consequently, there can be no infringement in respect of any idea. For instance, in a judgment the Delhi High court held that if a person writes a book on mathematics adopting his own innovative methods in making the subject easily understandable, such a work would be the result of his or her innovative thinking and would be a subject matter of copyright protection.⁶¹ Therefore, others are free to write about the same subject matter or theme. Section 14th of the copyright Act, 1957 define “copyright” as the exclusive right, by virtue of, and subject to the provisions of this Act,

⁵⁶ Jitendra Kumar Das, “*Law of Copyright*,” (Delhi: PHI learning Private Limited, 2015), p.9.

⁵⁷ Julie E. Cohen, “Copyright’s Public Private Distribution,” *Case Western Reserve Law Review*, Vol. 55, (Jan., 2005), pp. 963-970.

⁵⁸ Section 13 of the Copyright Act, 1957.

⁵⁹ The Copyright Act, 1957.

⁶⁰ *Deepak Printer v. the Forward Stationary Mart*, (1976) 17 GLR 338.

⁶¹ *Syndicate of the Press of the University of Cambridge v. B.D. Bhandari*, 185(2011) DLT 346.

to do or authorize the doing of any of the following acts in respect of a work or any substantial part thereof, namely-

In the case of literary work, dramatic or musical work, not being a computer programme-

- i- To reproduce the work in any material form including the storing of it in any medium by electronic means;
 - ii- To issue copies of the work to the public not being copies already in circulation;
 - iii- To perform the work in public, or communicate it to the public;
 - iv- To make any cinematograph film or sound recording in respect of the work;
 - v- To make any translation of the work;
 - vi- To make any adaptation of the work;
 - vii- To do, in relation to a translation or an adaptation of the work, any of the acts specified in relation to the work in sub-clauses (i) to(vi);
- a- In the case of a computer programme-
- i- To do any of the acts specified in clause (a);
 - ii- To sell or give on commercial rental or offer for sale or for commercial rental any copy of the computer programme;

Provided that such commercial does not supply in respect of computer programme itself is not the essential object of the rental;

b- In the case of an artistic work-

- i- To reproduce the work in any material form including depiction in three dimensions of a two dimensional work or in two dimensions of a three dimensional work;
- ii- To communicate the work to the public;
- iii- To issue copies of the work to the public not being copies already in circulation;
- iv- To include the work in any cinematograph film;

- v- To make any adaptation of the work;
- vi- To do in relation to an adaptation of the work of the acts specified in relation to the work in sub clause (i) to (iv);
- c- In case of cinematograph film-
 - i- To make a copy of the film, including a photograph of any image forming part thereof;
 - ii- To sale or give on hire, or offer for sale of hire, any copy of the film regardless of whether such copy has been sold or give on hire or earlier occasions;
 - iii- To communicate to the public;
- d- In case of sound recording-
 - i- To make any other sound recording embodying it;
 - ii- To sale or give on hire, or offer sale or hire, any copy of the sound recording regardless of whether such copy has been sold or given on hire on earlier occasions;

Therefore, keeping these provisions of the Indian copyright Act, 1957 in consideration, a number of issues arises that would be addressed in the course of the study here. Questions such as, What is the nature, scope and significance of copyright law? Whose rights are protected under this provisions and what kind of a right is granted protecting? Can copyright be considered as an economic right or a moral right? What is the definition of literary works? Who qualifies as the owner of a work under its provisions? If copyright grants protection to the author of the work what are the conditions under which it can be considered proper? Can there be any exceptions to it? What does permissible exception or Fair Dealing meant? What is the scope of Indian Copyright Act, 1957 and what are the possibilities that it throw open for us in the light of the above question? And What probably is the future course and action of copyright in India especially in response to changing dynamics of the society that is informed by a rapid growth in technological advancement?

1.7 Basic justification of copyright protection

A proper study of Copyright act shows that the basis for its justifications stems from two different sources. We can see that there are two major traditions in copyright law such as the Anglo-American, or common law copyright system as well as the continental European, or civil law authors' rights system.⁶² The first one is rooted in economic considerations and the second one comes from theories that had its source of origin in natural law. Almost all copyright enactment, though divergent in different countries, resulting from the varying nature of emphasis given to different factors owing to differences in their basic principles, yet they can be broadly classified into two lines of argument. Granting an exclusive right from an economic point of view, assures that the author will receive economic remuneration for the exploration of the work for a certain period and hence constitutes an incentive for creativity.⁶³ On the other hand, the justification based on natural law says that each person has a natural right of property. The argument here is that natural law must also apply to those cases of intellectual creations. The argument from the economic point of view has been the stand that is particularly prevalent in Anglo-American nations, while the argument based on the doctrine of natural law has been adhered to by the Europeans and the rest of the nations that have established their copyright laws following the Roman law traditions.⁶⁴

1.8 Moral Right

Apart from economic considerations, the work as a creation of the mind reflects the author's personality. Therefore, the author may have interests in the work such as the right to claim authorship and to object to derogatory uses which are not strictly financial or monetary. Prerogatives like these are referred to as the author's moral rights, as opposed to his or her economic rights. Though the scope and implementation of these rights still vary considerably from one country to another, by virtue of international treaties, most copyright laws in the world today have embraced the notion of moral

⁶² UNESCO, "*ABC of Copyright*", (Paris: UNESCO, 2010), p.10.

⁶³ Ibid.

⁶⁴ Ibid.

rights.⁶⁵ Accordingly, International law entails recognition of two kinds of moral rights. They are the right of attribution (or the right to claim authorship) and the right of integrity. Apart from these moral rights of the author also includes claims, such as the right to determine whether the work should be published or not, usually referred to as the right of disclosure, and the right of withdrawal.

The root of these moral rights can be traced to natural law and personal rights. It is prevalent in those countries where the tradition of civil law exists. France in the first half of the nineteenth century, was the first to recognize “droit moral”, which, when translated comes close to the contemporary expression ‘moral rights’.⁶⁶ In contrast, in common law countries where traditionally importance is given more to the investment embodied in the work, moral rights are less favoured.

With the introduction of a prerequisite for the contracting states to provide protection for the rights of attribution and integrity, the 1928 revision of the Berne Convention (the ‘Rome Act’) became the first international treaty that gave recognition to moral rights. Today, these rights are enshrined in the famous Article 6bis of the Berne Convention. Subsequent international accords, such as the WIPO treaty of 1996, also include provisions for moral rights. In practical terms, the Berne Convention agreement require that for any country accession to the Convention, including those belonging to the common law family, means providing protection of moral rights in their domestic laws.⁶⁷ However, the Convention leaves it to contracting states to determine the way in which they will fulfill this international obligation and so some have afforded protection of these rights mainly on the basis, for instance, under tort and contract law.

Moral rights, unlike property rights, are by their very nature connected to the person of the author, so, even though the economic rights may have been transferred to someone else, it belong to authors. In other sense they are not assignable. Authors cannot transfer their moral rights to someone else, whereas they would be allowed to sell their economic rights. For example, an author may have transferred the right to reproduce and distribute his or her novel to a publisher. However, that does not affect the providence of moral rights as it continues to belong to the person who may hence claim authorship of

⁶⁵ UNESCO, “*ABC of Copyright*”, (Paris: UNESCO, 2010), pp. 29-32

⁶⁶ *Ibid*, 32

⁶⁷ *Ibid*

the work. This means that the publisher cannot remove the author's name from the work, and replace it with another one. However, under certain conditions, some countries, especially those that adhering to the common law system, allow these rights to be waived (or renounced).

Another very crucial issue that can be raised with regard to this right is on the issue of its duration, i.e., for how long should moral rights be protected? This issue gives rise to two divergent views. While in countries that follow the civil law, traditionally, moral rights are regarded as perpetual but in countries where common law prevails, the rule is to provide moral rights till his or her death. Meaning, in case of the latter, after the author's death it ceases to be, however, in case of the former, the rights in question may be exercised posthumously by the author's heirs or, as provided under some national laws, by certain public or private bodies for the benefit of a country's cultural heritage. The Berne Convention, under its Article 6b, has made a compromising provision that grants that the rights should last as long as the author's economic rights lasts.⁶⁸ Today, many Member States have adopted this model and granted the same term of protection for both moral and economic rights. Under it, the term of protection for economic rights is 50 years after the death of the author but some countries do extend the term of protection to 70 years.⁶⁹

1.9 Economic Rights of Authors

Generally, economic rights are exclusive rights.⁷⁰ In contrast to moral rights, economic rights enable authors to earn a living from their creative works. In most cases, the author or the creators do not exercise these rights personally, but through professional partners such as book publishers or record producers to bring their works to the market who are entrusted upon such responsibility which is executed in their name. Practically speaking, this has two main implications. Firstly, the author, who by virtue of his creation is the owner of the work, has the right to authorize others to carry out any act which falls within the scope of the copyright provisions. Accordingly, any person who wishes to use the

⁶⁸ UNESCO, "*ABC of Copyright*", (Paris: UNESCO, 2010), pp.32-34.

⁶⁹ Ibid, 35.

⁷⁰ UNESCO, "*ABC of Copyright*", (Paris: UNESCO, 2010), p.37

protected work falling under the author's economic rights (for instance publishing a novel, or recording a song), must obtain the owner's permission to that effect. The author can thus determine the conditions of the use, including the remuneration that is attached to it. Secondly, the author also has the right of refusal or the authority to deny permission to the would-be user. In case, the user go against the consent of the author, for example, perform in public a play for which authorization has been refused, it amounts to infringement and they may be sued for copyright violation.

It may be worth mentioning that economic rights are not always of an exclusive nature. There are situations when in some instances national legislations as well as international treaties allow for the uses of the work to be made in particular situations after the user pays an agreed upon remuneration, without having to seek or obtain authorization from the right owner.⁷¹ Such provisions are made, provided, that the author is compensated for the use of the work. Here, his or her rights are no longer of an exclusive nature but is limited to a right of remuneration. The public lending right and the resale right (*droit de suite*) are two examples of the so-called remuneration rights.⁷² In such situation, Economic rights are granted as a set of single prerogatives that may be exercised separately in accordance to the different mediums in which a work may reach its audience. For instance, a dramatist in assigning to a publisher the right to publish his or her play in a book format should not be understood as granting permission to the public performance of the play. Today, most countries in compliance with the several international conventions have adopted a certain standard catalogue of economic rights, which is correspondingly expanding with the ever growing efficient means of reproduction and communication and explosion of information technology.

1.10 Theories of Copyright

William Fisher proposed that there are four theories as a basis for intellectual property right. These theories are the Utilitarian theory, Labour theory, Social Planning theory and

⁷¹ UNESCO, "ABC of Copyright", (Paris: UNESCO, 2010), p. 37

⁷² UNESCO, "ABC of Copyright", (Paris: UNESCO, 2010), pp.36-40

Personality theory. Since copyright comes under the intellectual property rights therefore these theories are also relevant for the copyright.

A. Utilitarian Theory

Utilitarian theory is propounded by Bentham and in the economic sense of the term it is known as social welfare theory. Since, this theory holds that greatest happiness of the greatest number is the foundation of legislation. Therefore, the objective of conferring copyright is to give greatest good to the greatest number. In other words, this approach claims that these rights: (a) induce people to behave in ways that increase socially valuable goods and services and (b) goods and services are distributed in a way such that it maximizes the net pleasures people reap from them.

Basically, the intention of the Utilitarian theory of copyright is that it favors the greatest good for the greatest number of people. Furthermore, it also encourages the interests of the entire society and also balances incentive to produce with mechanisms to make works largely accessible for the advantage of each and every one. This theory unlike the personality theory talks about collective goods rather than individual centric rewards. Additionally, it also varies markedly in its attitude of holding intellectual property as a required evil that is necessary to facilitate greater production of public goods. This theory is analogous to the Anglo- American approaches to which states and justify property rights on intangibles to encourage production of information through economic reward.

B. Labour Theory

This theory of copyright springs from the proposition that an individual who labours upon resources that are held in common has a natural right to property over the fruit of his or her efforts and that the state has a duty to respect and enforce that rights. The intention of this theory is that the law ought to give authors what they deserve. In other words, hard works of the individual should be rewarded by virtue of it being his or her creation. In addition, the creator should retain control of the fruits of their intellectual labours. In this case, for instance, exclusive rights provide a limited monopoly to the creators and the opportunity to benefit from their work. However, the purpose of this theory is also on fair compensation for contributors to composite works. This theory is

comparable to natural right theory, which maintains that the creator is entitled to intellectual fruits of his or her labour. It has a big influence in case of countries like United States and United Kingdom.

C. Personality Theory

This theory is derived loosely from the writing of Kant and Hegel. It holds that private property rights are crucial to the satisfaction of some fundamental human requirement and interests and so the policy makers should make an effort to select the set of entitlement that are essential for human development. Basically this theory is less concerned with compensating labour. Personality theory has its roots on moral rights. This theory encompasses a bundle of rights such as the author's right to be credited for her or his labour, his right to demand that a work be returned, to determine when to publish a work, to protect the integrity of her or his work, to be protected from excessive criticism and to collect a fee when a work is resold. Personality theory and moral rights are popular in the European Countries.

D. Social Planning Theory

The fourth and last theory is social planning theory. It is also known as Culture Theory. This theory is rooted in the proposition that property rights in general and intellectual property rights (such as copyrights) in particular can and should be fashioned so as to help foster the achievement of a just and attractive culture.⁷³ This theory argues that the law should promote a just and attractive culture. Moreover, since this theory assumes to promote works for the betterment of humankind rather than limiting the scope to those works. Cultural theory is also prospective like the welfare theory because it says that the law should motivate persons to act like they will create a better society in the future.

The provisions of copyright polices may be most influential in cultural areas such as art, democracy, and education. Therefore, social planning theory insists on a reform of the copyright. The insistence for such a reform is made on the hope that it might seek to

⁷³ Fisher William "Theories of Intellectual Property" in *New Essays in the Legal and Political Theory of Property* (Cambridge University Press, 2001) p. 6

identify and improve barriers on educational uses of copyrighted material, which is imposed by copyright law.

After seeing collectively of these theories, it is found that these theories exemplify how copyright serves as the means to multiple ends, however imperfectly. Persons obtain moral and economic rights to encourage the creation of new works by which the rest of society may also benefit. Finally, the different theories come down to fine tuning the system as it is seen with the examples accompanying each theory above.

1.11 Chapter Plans

A. Chapter 1- Introduction

The focus of the introductory chapter would be to lay down the aim, the scope and the course of action that the study intends to achieve keeping in mind the definitional clauses of Indian copyright act, 1957. Therefore, this chapter in asking questions as to what is the concept of copyright, what was the history before copyright, what is the meaning of copyright, what are the theories of copyright, how copyright can be justified, what is the economic and moral right in context of copyright will throw open up the discussion for a deeper analysis of copyright in the rest of the chapters. It will also include in brief a sketch of the intended chapter plans so as make clear the path in which the discourse is heading.

B. Chapter 2: Historical Development of the Copyright Law

Historical understanding of copyright law becomes very important because it provides a good exposition on how copyright law had emerged and what are the reason behind its growth and development till date. Hence, the first Chapter of the thesis is devoted to an explication of the Historical development of the Copyright. To begin with, this chapter will examine the legislative development of copyright law at the international and national level. It will start with a discussion on the international laws, which serves as a background for engaging in a deeper understanding of the existing copyright law, especially in the Indian context. The Anne Act of 1709 will form the opening point of the study as it set the precedence for the institution of the first Act in the history of copyright. This will be followed by a discussion of the several Acts such as Rome Conventions,

Paris Conventions, and Stockholm Convention, Berne Convention at the various places, the objectives of all these conventions and conferences were to come up with a uniform codification of copyright laws. Following this exposition, in the second part of the chapter, the focus of the study will be on how the copyright act came about in case of India in particular. The discussion will be divided further into two parts, such as, the history of the copyright before independence and history of the copyright after the independence. In the process of discussing the evolution of Indian Copyright act it will look into a series of amendments starting right from the Copyright Act, 1957 till the recent amendment, the 2012 amendment.

C. Chapter 3: Examining Definitional Clauses of the Indian Copyright Act, 1957

Following a study of the historical background of the international as well as Indian copyright act in the preceding chapter the focus of this chapter will be specifically on the Definitional Clauses of the Indian Copyright Act, 1957. The objective of the copyright Act 1957 is to protect the original works of the authors or creators. In fulfilling these objectives, the Copyright Act has made provision for some definitional clauses with the intent to delineate clearly the scope and area of the copyright act. It is also true, at the same time that the provisions are not to be read as something fixed but is open to interpretation in response to the need of the hour. if one is to successfully engage with them in a productive manner. Thus, chapter two examines the important terms of the definitional clauses of the copyright Act. In this discussion an exposition of certain terms, such as, the meaning of the literary works, computer database, meaning of the publication, meaning of the work, meaning of ownership, meaning of the authorship, meaning of the joint authorship, copyright owner etc with the help of High Court and Supreme Court judgments will be dealt with.

D. Chapter 4: Copyright Infringement and the Principle of Fair Dealing

If copyright is a legal device that gives a bundle of exclusive privilege to a person (or to any party to whom he or she transfers ownership) to make copies of the same, for publication and sale for a limited period, by virtue of being the author of certain literary

or artistic productions then the question now is there any possibility of improving or expanding upon the work. Is there any provisions for the work to be used for further exposition and development upon the idea reflected in the work or now that it has been copyrighted any usage of it would amount to an infringement of the right of the owner? If it is true of the latter then problem arises as there can be no further development or progress in the area of the work which is protected and which would result in the world of knowledge coming to a standstill. But if what is true of the former, then also question arises as to what are the condition under which a created work can be used for further advancement of the idea. In answer to this there arise a number of questions that has to be worked out. Therefore this chapter will examined what amounts to infringement of copyright and what are the conditions under which reproducing a permissible quantity of the said work is allowed? In doing so, this chapter will deal with the doctrine of fair dealing. It will first examine the conditions under which the unrestricted usage of a work results in infringement of copyright, what is the permissible limit? Following which it will seek to address the conditions under which a permissible exception of a work is allowed under particular conditions. The study would also make a comparative examination of the doctrine of fair dealing and fair use and seek to underline the rationale behind the use of fair dealing in India and in the process compare it with the prevailing laws in countries like Britain, Canada , U.S or Europe for that matter.

E. Conclusion 5-Conclusion

The concluding chapter will apart from summarizing the findings of the thesis will include a critique of the copyright act and open further the discussion as to what would suit best the nature of Indian copyright act, either the principle of Fair dealing or Fair use. This chapter will also in the light of the objectives of the copyright Act, 1957 and the challenge thrown up the inevitable process of rapid technological advancement examine as to what are the current challenges and what are the future prospects of copyright .

Chapter 2

Historical Development of Copyright

“The right of authors is now to be determined; not of any particular bookseller. From the industry of the author, a profit must arise to somebody; I contend it belongs to the author; and when I speak of the right of property, I mean in the profits of his book, not in sentiments, style, etc.”¹

2.1 A General Outline of the Development of Copyright Act

The origin of law of copyright at international level can be traced back to a period prior to the advent of printing technology.² Probably during the second century, the Roman jurist Gaius (A.D. 130-180) held that where an artist had painted upon a *tabula*, has a superior right over it³ and this opinion was adopted in the *Code of Justinian* in the six century.⁴ The rights of an artist are recognized by the Roman jurist *Gaius* was applied in a drawing upon wood in *Finnian v. Columba*⁵, the first record of copyright case of sometime around 560 A.D. The copyright law became more important after the advent of new technologies such as printing press. Therefore, copyright law enacted to regulate all printers and protected the authors or creators rights at national and international level.

The history of copyright law starts with early privileges and monopolies granted to printers of books.⁶ Before the invention of printing, to recreate a work was a challenge

¹Wedderburn who later held the office of Lord Chancellor between the years 1793-1984 in *Tonson v Collins*, (1761) 1 Black W 301 in arguing for the plaintiff and in anticipating the objection even if such property was born of invention, it was incapable of possession, he held that the property in question was incorporeal one; it was no more or less than the profits in a book. This captures aptly the spirit of the transition in the history of copyright, when the felt need of protection shifted from that of the printer's right to that of the author.

² Justin Huges, “A Short History of “Intellectual Property” in Relation to Copyright”, *Cardozo Law Review*, Vol. 33.,(2012), pp. 1293-1340

³ Frederic J Haskin, “First Use of Anesthetics” *Salt Lake Tribune Newspaper Utah*, April 19, 1926, p. 6.

⁴*Code of Justinian* known as in Latin term *Corpus Jusis Civilisor Codex Justinianus* means “Body of Civil Law” which is the collection of laws and legal interpretations developed under the sponsorship of the Byzantine emperor Justinian-I From 529-565 AD

⁵Richard Rogers Bowker, “*Copyright: Its History and Its Law*”, (Boston and New York: Houghton Mifflin Company, 1912), p. 3

⁶http://www.liquisearch.com/history_of_copyright_law accessed on 21/01/2014

in itself as it involved a highly laborious physical work⁷ and error-prone process of reproduction of copying by scribes. With the advent of printing, now one could easily make multiple exact copies of a work, leading to a more rapid and widespread circulation of ideas and information. Now with the copy of the work in their hand, and the licenses to reprint them, printers enjoyed the exclusive right to print the particular work for a fixed period of years, and at the same time were granted the right to prevent others from printing the same work during that period. The British Statute of Anne 1710, which had the full title “An Act for the Encouragement of Learning, by vesting the Copies of Printed Books in the Authors or purchasers of such Copies, during the Times therein mentioned”, was the first copyright statute. Initially, the law of copyright was confined to the rights of book copying.

But over time the list of issues subject to copyright increased to other uses such as translations and derivative works and currently under the term copyright a wide range of works, including maps, performances, paintings, photographs, sound recordings, motion pictures and computer programs are covered. Modern copyright law has behind the story of its evolution a numerous range of older legal rights that have been documented, accepted and practice throughout history, including the moral rights of the author who created the work, the economic rights of the patron who paid to have a copy made, the property rights of the individual owner of a copy, and a sovereign's right to censor and to regulate the printing industry. The origins of some of these rights can be traced as far as the ancient Greek culture, the ancient Jewish law, and the ancient Roman law.

Today, the various national copyright laws existing in different states have been made consistent and systematized to some extent through international and regional agreements such as the Berne Convention and the European copyright directives. The Berne Convention, for instance, was established to afford reciprocal recognition of copyright between nation states, and to encourage the advancement of international standards for copyright protection. Although there is a fairly good amount of consistencies among the various copyright laws of the different nations', yet on a proper

⁷http://www.liquisearch.com/liberation_of_expression/freedom_of_speech_dissent_and_truth accessed on 05/06/2014

examination of each jurisdiction it has found that there exist separate and distinct laws and regulations about the respective nation's copyright law.

The implication of taking up a discussion on the history of the evolution of copyright act at this stage is that in facilitating a study of the past and the legacies of the past in the present context will help us to appreciate and assess its emerging importance. Far from being an often-biased perception that this is a 'dead' subject, an exercise in this direction at this stage will help connect matters through time and encourages us to take an extended view of such connections. The fact that understanding the linkages between past and present is absolutely basic for building a better understanding of secure foundation simply goes on to show how history matters in the course of elucidating the what, how and why of the issue at hand.

Therefore, the aim of this chapter is to examine the copyright law at national and international level. It is our endeavor here to examine what and when was the first copyright Act enacted? Whether this Act was able to justify its said project of protecting the printers and authors? What kind of amendments took place in the course of the development of copyright laws? What kinds of conventions were organized to improve the copyright law? In doing so we will broadly address these questions at two level, one a study of the international copyright act in general and next the Indian copyright law and its providences. We shall seek to understand the origin, the reason for the institution of, and the amendments thereby, of Indian Copyright Act and in the later portion of the work as we proceed examine as to whether the Indian Copyright Act is able to measure up to its objectives.

2.2 The History of Copyright Law

Understanding the history of copyright law may be done, by broadly dividing its stages of development into three major periods. These periods are generally known as the Period of privileges, Period of General Legislation and Period of International Legislations. The aims of this chapter is to examine the historical development of copyright law, with reference to the legislations made in relation to copyright, and examine the historical development of International copyright law. Moreover, in doing so, it will also examine the history of how Indian Copyright Law came into being and what is its present status.

A. Period of Privileges

In the 15th century, the printing press was invented. With this invention it became easier to copy any manuscript.⁸ Therefore, authors started to protect their manuscript as well as gain privileges from their creation. Thus, the period of privileges started with the invention of printing. It is believed that prior to the invention of printing there was no recognition of legal rights of the author. Any assumption of the existence of such recognition in ancient Greece and Roman seems idle. There is no trace as such of any legal provision against copying a literary or artistic work, though plagiarism was undoubtedly condemned by public opinion.⁹ This public act of condemnation, rather than law, served as the agency of social control in the interests of the authors earlier. To start with, the production of each copy of the literary and artistic creation was long and costly. Additionally, the lack of economic value of the work in itself did not bring about the need for legal recognition and protection of the created works. Rather the authors were more concerned with the honour accruing to them, resulting from the circulation of their creations than the possibility of earning profit through their sale. Their only solicitude was about the accuracy of the copies made by transcribers.

However, this does not mean that a large numbers of copies were not produced. The Roman booksellers, for instance, did a flourishing business and slave labour was employed to furnish copies promptly, cheaply and on a large scale¹⁰. Thus, one can say that though the usage of manuscript had been developed yet the idea of property in the literary work had not been developed at that time¹¹.

As it was stated earlier, with the invention of the printing press in 1451, the work of reproducing literary works became particularly easy and things began to change. Now, an economic value was attached to a literary work, since it could be reproduced in a large numbers and distributed by means of the ordinary channels of trade. Authors came

⁸ Benjamin, Kaplan, "*An Unhurried View of Copyright*", (New York :Columbia University Press, 1967), pp.1-25

⁹StephenP. Ladas, "The International Protection of Literary and Artistic Property.", *Harvard Law Review*, Vol. 52, No. 8, (June,1939), p.13

¹⁰Dr. FaizanMustafa, "*Copyright A Comparative Study*", (New Delhi: Institute of Objective Studies, 1997), p.27

¹¹ Ibid p.27

to have an economic interest in securing the exclusive right of making or getting someone else to make copies of their work. They found themselves confronted with a situation in which they lost the actual physical control of the vehicle of their work, which previously had been maintained by the possession of the original manuscript. Now, the power to make copies or reprint them was in the hand of any possessor of one of the printed copies. Yet even at this stage the pressure of the interests of author was still not strong enough to obtain general recognition and protection. Thus, personal privileges were alone granted. Original authors were rare in this time. Most of the published books were printings of the works of the ancient authors and the Church.

The kind of investment involved required much expenses and work of scholarship in comparing manuscript and revising the texts. Printers thus employed the services of learned men. No wonder then that publishers were the first to obtain privileges of patents giving them a limited period of time. Even when the work published was one of a new writer, the stake of the publisher appeared greater than that of the author and thus the protection was granted in the name of the former. Furthermore, an additional reason was that printers and publishers had formed guilds and corporations and therefore the interests of printers and publishers were protected by regulations covering such guilds and corporations.

It is interesting to note that the invention of printing coincided with the period of Reformation and facilitated the later by expanding its doctrines. Needless, to say that the intellectual and religious movement of the times caused anxieties to established monarchs. Therefore, the control of the press seemed a necessity to them. They came to organize censorship, and prohibit the printing and publication of any work without royal authorization. However, in doing so, the declared object of the crown in organizing the stationers company was done in the name to protect the propagation of the reformed religion, and it seems to have been thought that imposing the severest restrictions on the press could most effectively bring this about¹². In this period several decrees and ordinances of the Star Chamber were passed regulating the manner of printing, the

¹²Davies Gillian, HarbottleGwilym and Caddick Nicholas, "*Copinger and Skone James on copyright*", (London: Westlaw, 12th edition, 1980), p.7.

number of presses throughout the kingdom, and the prohibition of printing anything against the force and meaning of any of the statutes of laws of the realm. It was for these reasons and for the discouragement of printing objectionable articles that privileges were granted individually in the name of the king. Hence, they were revocable at will and their term differed in each case¹³.

In England, for instance, the royal grants of privileges to print certain books were not copyright, they were far removed from it. They were not granted to encourage learning or intended for the benefit of authors. They were commercial monopolies, licenses granted to tradesmen to follow their calling. As gradually monopolies became unpopular, printers sought to base their claim on the other grounds, calling the “right to copy” not a monopoly, but a property right. The Stationers Company had a register in which its members entered the titles of the works they were privileged to print.¹⁴ Thus, a custom developed by which members refrained from printing books, which were enlisted on the register in the name of another printer. Therefore, members respected each other’s “copy”, as it was called, and there grew up a trade recognition of “the right to copy” of copyright. This right was subsequently embodied in a by-law of the stationers company’. The entry in the register was regarded as a record of the rights of the individual named. Additionally, it was assumed that possession of a manuscript carried with it the right to print copies.

The assumptions of control of all printing by the Star Chamber in 1637, and the Licensing Acts of 1641, 1642 and 1643 were all meant for the benefit of the booksellers and preceded in the direction of strengthening the commercial monopoly in the art of printing which the company had so long enjoyed¹⁵.

Over this period of individual, personal privileges, there was no question of international protection of the author’s rights. Cases are referred to where privileges were

¹³ R.R Bowker, *“Copyright, its law and its Literature”*, (New York: Office of Publishers’ Weekly, 1986), p. 54

¹⁴ The Stationers’ Company which was established in 1403 in England received a royal charter in 1557 by which it had the monopoly over the publishing industry and was officially responsible for setting and enforcing regulations until the enactment of the Statue of Anne, in 1710.

¹⁵ E. Sylvester Drone, *“A Treatise on the Law of Property in Intellectual Productions in Great Britain and the United States: Embracing Copyright in Works on Literature and Art, and Playwright in Dramatic and Musical Compositions”*,(Boston: Little Brown and Company,1879), p.54

granted to foreigners whose work was published within the country. Therefore, Grotius, a Dutchman, published his famous treaties in Paris in 1625 and obtained a privilege for 15 years.¹⁶ During this period, as a general rule, books printed for the first time in one country could be freely reprinted in other countries. Thus, foreign privileges were not recognized.

With the invention of printing the book industry of Germany became most prosperous. Now the privileges of printing were granted either by Emperors of the Holy Roman Empire or by the Sovereigns of various states. German cities such as Leipzig and Frankfurt became great centers of book publishing and book selling, and many foreigners visited their famous fairs. They recognized the author's or editor's property right in a book, regardless of the existence of a privilege. In addition to this concern, it has to be noted that a Decree of the Electors of Saxony dated February 28, 1686 appears to be the first enactment protecting foreign publications to the same extent as national. It even reduced the formalities to be complied with by the foreigners¹⁷.

The fact that the works of certain eminent authors, such as Voltaire, could not be published in the author's country on account of the censorship, and were published in foreign nations gave a certain dignity to illegal reproduction. Thus, the liberty of thought was encouraged by reprinting in Holland and Switzerland of works suppressed by Royal censors in France.

B. Period of General Legislation

With the restoration in France of the freedom of the press, the period of personal privileges that was granted to the individual authors and publications by the Sovereign came to an end. The growth of public sentiment and the stronger pressure with focus on the interests of the authors led to views that the right of the authors should be fully and adequately protected. In England all these causes generated more interest than in any

¹⁶Dr. FaizanMustafa, "*Copyright A Comparative Study*", (New Delhi: Institute of Objective Studies,1997), p.30

¹⁷ StephenP. Ladas, "The International Protection of Literary and Artistic Property." *Harvard Law Review* 52, No. 8(June,1939), p.16

other country. The Licensing Act, 1662¹⁸ expired in 1694. Repeated attempts were made to renew it, as proprietors of copyright felt that they had no adequate protection under the common law, without the summary measures provided in the Act. Many petitions were presented to Parliament in 1703, 1706 and 1709 on this account and in 1709, the Act of Anne, C.19 was passed (“An Act for the encouragement of learning, by vesting of the copies of printing books in the Authors or Purchasers of such copies, during the times therein mentioned”). This was the first general legislative enactment in any country designed to protect the right of authors.

Starting from April 10, 1710, this Act gave authors of books the sole right and liberty of printing them for a term of 21 years if it published before that date and the sole right of printing for 14 years if it was published after the date mentioned above. Moreover, with the expiration of 14 years the sole right of printing or disposing of copies should return to the authors thereof, if they were then living for another term of 14 years. The titles to books had to be registered in the register book of the stationers company and 9 copies had to be delivered to certain libraries¹⁹.

This Statute was passed with a view to giving a greater protection to copyright but it had the unexpected result of curtailing it. For example in the case of *Donaldson V. Beckett*²⁰, the House of Lords held that the copyright in published works was not perpetual and was instead subject to statutory limits. The Universities alarmed at the consequence of this decision, applied for and obtained by an Act of Parliament, establishing in perpetuity their right to all the copies given or bequeathed to them or which might thereafter be given to or acquired by them thereafter²¹.

Similarly, after its independence, the United States of America was not long in adopting copyright legislation. Both Connecticut and Massachusetts had passed an Act in

¹⁸ This was “An Act for preventing the frequent abuses in printings seditious treasonable and unlicensed books and pamphlets and for regulating of printing presses” was later repealed by the statute Law Revision act 1863.

¹⁹ Davies Gillian, HarbottleGwilym and Caddick Nicholas, “*Copinger and Skone James on copyright*”, (London: Westlaw, 12th edition, 1980), p.30.

²⁰ (1774) 4 Burrs. 2408

²¹ Davies Gillian, HarbottleGwilym and Caddick Nicholas, “*Copinger and Skone James on copyright*”, (London: Westlaw, 12th edition, 1980), p.30.

1783²² and additionally, Congress in the same year recommended that various states grant copyright protection to authors and publishers who were citizen of the United States. Only New York, New Jersey and the State of Virginia followed this recommendation. In 1789, the constitution of the United States of America provided (Article I, Section 8, Clause 8) that Congress was authorized “to promote the progress of science and useful arts by securing for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries.” The Federal Copyright Act of May 31, 1790 was passed in accordance with this constitutional provision.²³

The next country to legislate generally on the rights of author was France, with the law of July 19, 1793,²⁴ that followed the abolition of the privileges by the French Revolution. The French law of 1793 was extended to different European countries such as Belgium, Holland, Italy and Switzerland, because they came gradually under Napoleon’s sway. It forms the point of departure of copyright legislation in the civil-law countries.²⁵

With regard to the rights of foreigners, the British Act of Anne, 1709 did not make any distinction between citizens and foreigners provided the work was published within the country. In the *Gurichard V. Mori*²⁶ case it was held that anyone had the right to publish in England a work that had been first published in a foreign country. This situation was remedied in England by enacting the International Copyright Act in 1837. In England, this Act provided protection to the authors of books, first published in foreign countries. Furthermore, on the condition of reciprocity in such foreign countries authors of books first published in England were protected.

²²Beginning in the 1780s, a group of American authors banded together to lobby state legislatures for copyright protection. The authors also pressed the Continental Congress for support. In March 1783, the Congress appointed a committee of three (including James Madison) to consider the question of protecting literary property. Thus, a resolution was passed on May 2, 1783.

²³Susan IsikoStrba, “*International Copyright Law and Access to Education in Developing Countries Exploring Multilateral Legal and Quasi-Legal Solution*”, (Geneva: MartinusNijhoff Publishers, 2012), p.15

²⁴Dr. FaizanMustafa, “*Copyright A Comparative Study*”, (New Delhi: Institute of Objective Studies, 1997), p.32

²⁵StephenP. Ladas, “The International Protection of Literary and Artistic Property.” *Harvard Law Review* 52, No. 8(June, 1939), p.19.

²⁶(1831) 9 L.J. Ch. 227.

Likewise, the United States Federal Act of 1790 granted protection to the citizens of the United States and foreigners resident therein.²⁷ Section 8 of the an amendment Act 1831 made it clear that “there was no prohibition to the printing, charts, engraving, importation or sale of books, publication, photographs, dramatic and musical compositions, written composed or made by anyone who is not a citizen or resident of the United States”²⁸. Under the common law no protection could be availed by foreigners, in view of the construction given to the Act by the United States’ Supreme Court. Thus, in *Wheaton V. Peters*²⁹, the Supreme Court held that the statute of 1790 did not sanction an existing right but created one.

The French law of 1793 referred generally to “authors” and it might seem that its provisions covered foreigners as well as nationals. This seemed to be confirmed by a Decree of February 5, 1810, Article 40 of which dealt with the right of “author”, either nationals or foreigners to assign their rights to a publisher or any other persons. However the dominant opinion in France as well as its judicial decisions upheld the view that works of foreigners were protected only if they were first published under French jurisdiction.

C. Period of International Copyright Legislation

The 19th century brought profound changes in the conditions upon which the rights of authors were based. With the expansion of press, the creation of new universities there was an introduction of the new process of reproduction of literary and artistic works. Additionally it has to be noted that there was the development of bookselling and the wider circulation of books, the learning of foreign languages and in general a growing amount of travel of people from one county to another county. All these factors created new conditions for the works of authors and artists. Consequently, authors began to demand full protection of their rights, and to raise much outcry against the injustice done to them by pirating of their works in foreign nations. It was said that the treatment

²⁷Stephen Pericles Ladas, “*The International Protection of Literary and Artistic Property*”, (California: Macmillan, 1938), p.21

²⁸Dr. Faizan Mustafa, “*Copyright A Comparative Study*”, (New Delhi: Institute of Objective Studies, 1997), p.34

²⁹*Wheaton v. Peters*(1831), 33 U.S., 8 Peters, 591.

afforded by law to the fate of an author's creation, of which he was robbed as soon as it crossed the boundary of a state was comparable with to a bale of cotton shipped to St. Petersburg.³⁰

Moreover, authors were increasingly becoming reluctant to yield their interests of those of foreign authors and foreign publishers. On the other hand, foreign works were badly adapted or mutilated for the domestic market. Furthermore, persons who were interested in art and literature began to organise themselves into groups. They demanded that the social interest in the production and publication of genuine works of foreign authors be secured and protected. Moreover, writers and artists at home found their interests were prejudiced by the abundant publication and sale of unauthorized foreign works at a cheap price. Thus, it is from the awareness of the conflict of these various interests and the attempt to harmonize them that international protection of foreigners slowly developed.

As it has been noted above that in the previous period many countries incorporated provisions in their own law for the protection of the rights of foreign authors on the condition of reciprocity, or attempted to negotiate treaties for reciprocal protection of their citizens in this area. However, till 1852 the number of treaties that were signed were very few. Certain countries remained outside this effort. Belgium and United States constituted an outstanding illustration of this exception by refusing to grant protection to foreign authors.

In the United States, the Copyright Act of 1790 was further amended by the Act of February, 1831. This Act protected only citizens and residents of United States and explicitly permitted the piracy of works written, exposed or made by persons who were not citizens or residents of the United States of America. In view of this state of the law, systemic piracy was committed in the U.S. of works published in all foreign countries, especially in England. Since immigrants came to the U.S. from all countries, pirated reprints of books in all languages were made, though English books were the most commonly pirated. Any work that was considered likely to sell and of which the cost of

³⁰ Dr. Faizan Mustafa, "*Copyright A Comparative Study*", (New Delhi: Institute of Objective Studies, 1997), p.35

reproduction was moderate, was reprinted in U.S. without any hesitation whatsoever.³¹ Committees of the authors were setup by the Senate and Congress in England and in the United States to put an end to this situation, without success. Since this went for a considerable length of time, there gradually grew many vested interests in the reprinting books, which could not be easily curbed.

The so-called “courtesy copyright” among American publishers, which was protecting the first American reprinted, did not last long. The competition that ensued resulted in the publication of English novels on bad paper, with bad print at a cheap price of ten, fifteen or twenty five cents. Thus, increasingly elite publishers faced competition from firms that utilized new technology to undersell them in the market place for cheap reprints of English novels. For this reason, the most important publishers in U.S. took their place at the head of the movement to secure protection to foreign authors.³² They were joined by those American authors who could not find a publisher or a market for their books due to the disastrous price of cheap reprints.

This movement which started with Henry Clay’s Report of February 6, 1837,³³ did not achieve success until 1891.³⁴ It is only after a tremendous amount of educational work and strong pressure by publishers of American books and also of American authors that the Chace Act, formally known as the International Copyright Act of 1891 was enacted – this Act extended limited protection to foreign copyright holders from selected nation. This Act was only partially successful. It did away with the requirement that the author be a citizen or resident of the United States. However, under this Act the protection of foreign authors was qualified by the stipulation that all books must be setup in the United States in order to acquire copyright³⁵, and there was also the requirement for reciprocity on the part of the state to which the author belonged.

Comparatively, the greatest impulse to general international recognition of author’s right was given by the French Decree of March 28, 1852 which constituted a

³¹Dr. Faizan Mustafa, “*Copyright A Comparative Study*”, (New Delhi: Institute of Objective Studies, 1997), p.36

³² G. Haven Putnam, “*The Question of Copyright*”, (New York : G.P. Putnam’s Sons, 1896), p.30

³³ Ibid, p.33

³⁴ Act of March 3, 1891(26 Stat. L. p 1106)

³⁵ An Amending Act of March 3, 1905 (33 Stat. L. p1000)

landmark achievement in this field. From 1840 to 1852, France attempted to secure copyright protection for French works by entering into treaties that granted reciprocal treatment with the other countries. However, this effort failed to a large extent. Treaties were secured with Sardinia in 1843 and with Portugal, Hanover and Great Britain in 1851. But it was not possible to conclude treaties with Belgium or Holland, the two principal “hot-beds” of French piracies. Even the above four treaties were inadequate, especially with regard to the right of translation of an author’s works as the French example was not generally followed by other nations.³⁶ However, it did provide substantial impetus to the adoption of widespread system of treaties for reciprocal copyright protection.

In the meantime, France came to realize that bargaining was not the best, method of securing international protection of author’s rights. Furthermore, it realized that if France should begin declaring that piracy of a foreign work in France was a crime punishable by the law, then other governments would be more willing to take the same step. This was done by the French Decree of March 28, 1852, promulgated by Louis Napoleon, President of the Second French Republic. Thus, counterfeiting in France territory of works published in foreign countries was prohibited and so was the sale, exportation and transportation of counterfeited works. Consequently, during the decade from 1852 to 1862, France was able to conclude twenty-three treaties for the reciprocal protection of author’s rights, using to the best advantage the initiative taken by her in promulgating the law of 1852.³⁷

In 1858, the first congress of Authors and Artists was held at Brussels. It was in this congress that a resolution proclaiming the principle of international recognition of author’s rights without the condition of reciprocity was arrived at. It called for a uniform legislation on literary and artistic property by all countries. Thus, this congress started the movement, which brought about the International Copyright Union in 1886.

³⁶ Dr. Faizan Mustafa, “*Copyright A Comparative Study*”, (New Delhi: Institute of Objective Studies, 1997), p.37

³⁷ Ibid.

Prior to considering the Copyright Union and the protection of copyright after its enactment in 1886, it would be of great interest and benefit to look at the situation existing at that time, under different municipal laws of the various nations and examine the various treaties concluded among them.

2.3 National Law and Treaties and Conventions on Copyright

At the time when the International Copyright Union was organized in 1886, it has to be noted that already 24 countries including United Kingdom and United States of America possessed the general legislation on the copyright protection.³⁸

These different legislative enactments were far from being uniform, and they did not offer a uniform solution to various questions of copyright. A certain similarity existed only between the laws of countries where the legal traditions sprang from the same soil, or when one country consciously copied the law of another. Therefore, the Belgium law of 1886 followed the principles of the French law. The Australian law of 1886 had adopted the resolutions of the Diet of the German Confederation and was similar to the laws in force in the German States prior to the adoption of the Imperial Act of 1870. The Hungarian law of 1884 was modeled extensively on the German law. There was great similarity between the laws of the Denmark, Sweden and Norway.

The first treaties for the reciprocal protection of author's rights were concluded between Prussia and other states of the German Confederation. These treaties were entered into between 1827 and 1829. England in the meantime enacted the International Copyright Act, 1837, and on the basis of thereof a Copyright Convention was entered into with Prussia in 1846, to which ten German States acceded in 1847. This was the second example of sort of multipartite agreement in this field. It appeared that in 1886, there were in force 43 bipartite agreements between 15 countries for the protection of Copyright.³⁹

³⁸Stephen Pericles Ladas, *"The International Protection of Literary and Artistic Property"*, (California: Macmillan, 1938), p.30.

³⁹Stephen Pericles Ladas, *"The International Protection of Literary and Artistic Property"*, (California: Macmillan, 1938), p.49

2.4 History of International Copyright Union

The International Copyright Union came into existence as a result of the following conventions and the accompanying resolutions they adopted:

(I) Brussels Congress 1858

The origin of the movement for the creation of International Copyright Union may be traced to the Congress of Authors and Artists which met in Brussels in 1858, under the impetus given by the French Decree 1852 - 300 delegates including, authors, publishers, lawyers, the learned societies, journalist and others attended this congress.⁴⁰ It was a remarkable Congress for its time, as it for the first time in the history of international recognition of author's right seeks to address their issue with or without reciprocity, and with or without the necessity of complying with any formalities, including the international protection of author's rights.

The congress adopted five resolutions on International Copyright Law. These resolutions considered the rights in literary and artistic works in general, rights in dramatic and musical works in particular. It also considered rights on economic questions such as tariffs on literary and artistic works. These resolutions on International Copyright Law were as follows⁴¹

- (1) That the principle of international recognition of copyright in favour of authors must be made part of the legislation of all civilized countries.
- (2) This principle must be admitted regardless of reciprocity.
- (3) The assimilation of foreign to national authors must be absolute and complete.
- (4) Foreign authors should not be required to comply with any particular formalities for the recognition and protection of their rights, provided they have complied with the formalities required in the country where publication first took place.
- (5) It is desirable that all countries adopt uniform legislation for the protection of literary and artistic works.

⁴⁰Catherine Seville, "*The Internationalization of Copyright Law: Books, Buccaneers and Black Flag in the Nineteenth century*", (Cambridge: Cambridge University Press, 2006), p.39

⁴¹ Dr. Faizan Mustafa, "*Copyright A Comparative Study*", (New Delhi: Institute of Objective Studies, 1997), p.40.

(II) Artistic and Literary Congress, 1878

At the Universal Exposition of 1878 in Paris, there assembled an International Literary Congress and an International Artistic Congress.

The Artistic Congress met from September 18 to 21, 1878. It voted for 21 resolutions, the most important of which were the following. The artistic right in its right constitutes property right and its duration should be limited. It was desirable that the period should be fixed at one hundred years from the date of the publication of the work. Another provision was that no formality should be required for protection of the copyright, and that foreign artists should be dealt with as nationals, without the condition of reciprocity.

It was decided that the international treaties for the protection of copyright should be independent of treaties of commerce. It was desirable that a “general Union” be constituted among the several countries, which should adopt uniform legislation. The Congress appointed a committee to present the resolution to the French Minister of Education and Fine Arts and requested that he take the initiative of calling together an “official international commission” for the creation of the desired International Copyright Union.

The Literary Congress met from June 17 to 29, 1878. It was presided over by Victor Hugo. After long discussion on the nature of author’s rights and the proper legislation to ensure their protection in all countries, it voted the following five resolutions

- (I) The right of an author in his work does not constitute a grant of law, however one of the forms of property which the legislation must guarantee.
- (II) The right of the author of his heirs and legal representatives is perpetual.
- (III) After the expiration of the period fixed for the duration of the author’s right by the laws in force in the various countries, any person may freely reproduced literary work, subject to payment of a royalty to the author or his legal representatives. The rights recognized in favour of heirs cannot

prevent the publication of a new edition, provided this is accurate. Furthermore, this new edition must be preceded by real offers of payment of an indemnity and two summonses repeated at intervals of six months. Nevertheless, the heir will be deemed bound by the wishes of the author whenever he may justify this

- (IV) Every literature, scientific or artistic work shall be treated in the countries other than the country of origin in the same way as works of the national origin.
- (V) In order that this protection be secured, it will be enough for the author to have complied with the ordinary formalities in the country where the work was first published.

(III) International Literary and Artistic Association

In June 28, 1879 the Literary Congress decided to create an International Association of which literary societies and authors of all countries could be members. With these objectives “the propagation and defense of the principles of intellectual property in all countries, the study of international conventions, and working towards their improvements”, the Association was organized. It held important meeting from 1879 onwards. It was in 1884 that the Association become to be known as *L’ Association Litterire et Artistique Internationale* in its Brussels meeting, therefore incorporating artists, authors and extending its task to the protection of artistic as well as of literary property. It still exists today under the same name.⁴²

In 1882, Dr. Paul Schmidt representing the German publishers in the meeting of Association at Rome caused a resolution to be adopted. Furthermore, it is stated that the need for the protection of intellectual property was the same in all countries, and that complete satisfaction of this need could be gained by the Constitution of “a Union for the Literary property” similar to the Postal union.

⁴² Dr. Faizan Mustafa, “*Copyright A Comparative Study*”, (New Delhi: Institute of Objective Studies, 1997), p.42

(IV) Berne Conference of 1883

The International Association unanimously approved this proposal, and decided to call a conference at Berne. It was held on September 10, 1883.

The Conference appointed a Committee of seven members to prepare a project for the Union. The Committee prepared a draft of ten Articles⁴³, which was remarkable for the time, notwithstanding its many defects. In particular, it contained the principle of national treatment and provided that no other formalities were to be required so long as those prescribed in the country of origin was complied with. It recognized the protection of translation rights during the entire term of the copyright of the original work and provided for the establishment of an International Bureau of the Union.

(V) Official Conference, 1884

As the proposal met with general approval on June 28, 1884, the Swiss Government extended an official invitation to various governments to attend a Conference. This conference met at Berne on Sept.8, 1884. Fourteen countries were represented and Numa Droz was elected as president.

At the first meeting of the conference, the German delegation submitted the following important question for discussion:

“Instead of concluding the Convention based on the principle of national treatment, would it not be preferable to consider at this time a codification regulating in a uniform manner for the entire Union, and within the framework of a convention, the whole of the provision relating to the protection of copyright.”

Generally, the delegates expressed their sympathy with this ideal⁴⁴, but questioned its practicability. However, before finishing its work, the Conference adopted a resolution in the spirit of general proposal to substitute an international codification of copyright legislation based on the principle of national treatment and protection of the right of the

⁴³ The draft of the Conference on September 13, 1883

⁴⁴StephenP. Ladas,“The International Protection of Literary and Artistic Property.” *Harvard Law Review* 52, No. 8(June,1939), p.1677

authors as well their works. It was stated in the convention that the international codification of copyright law was bound to come in the future.

This first Diplomatic Conference of delegates of the various states adopted the Draft Convention. It was accompanied by a draft with additional article maintaining that the existing Conventions were not contrary to the general Convention.⁴⁵

An exception to the principle of full national treatment of foreign authors was admitted by the Conference with regard to the duration of copyright. It was provided that this could not exceed the term granted in the country of origin. Another limitation was made by the Convention. It protected only authors who were nationals of the Union and publications of works published within the Union.

(VI) Official Conference, 1885

This official conference was held in Berne on September 7, 1885 with delegates from twenty nations. The adopted draft of 1884 included various provisions, constituting a beginning of international codification in copyright law. Part of the work of previous conference was now partly undone. Indeed, it appeared that an insistence on these provisions of the draft would alienate a number of countries, and the Union would have to be restricted to a smaller number. It was thought that it would be more practical to refer to the desire of certain countries not to divert much from their national law, or to leave certain matters to the exclusive province of such law. This step was taken in order to obtain their adherence first and with the hope that the future Conferences, revision might be done more in the matter of codification.

(VII) Conference of 1886

At Berne, the Draft Convention was sent to 55 countries on September 6, 1886 by the Swiss Government inviting them to sign the Convention at a Conference. The Conference was bound by the understanding reached at the previous Conference that it would not in

⁴⁵ Dr. FaizanMustafa, "*Copyright A Comparative Study*", (New Delhi: Institute of Objective Studies, 1997), p.44

any way change the draft Convention, and so had practically nothing to do except sign the Convention.

A year later on, in September 5, 1887 delegates of the signatory countries met at Berne and exchanged ratifications of the Convention. Only Liberia failed to deposit its rectification.

(VIII) Outline of Berne Convention, 1886

The purpose of the Berne Convention as outlined in its preamble was to “protect, in as effective and uniform manner as for as possible, the rights of the authors in their literary and artistic works”. Article 1 of the Convention, 1886 said that the countries to which the Convention applied constitute Union for protection of the rights of the authors in their literary and artistic works.

The basic principle of this Convention was “national treatment”, which means a person is entitled to enjoy in each country of the Union the advantages accorded by the law of such country to its own nationals. However, this was subject to the limitation that the duration of copyright could not exceed that of any country of the Union (the term provided for the country of origin).

Another important feature of this Convention was the principle of automatic protection, according to which such national treatment was not dependent on any formality. It means that protection was granted automatically and was subject to any formality of the registration, notice or deposit.⁴⁶

The Convention also contained a beginning of codification on copyright by provisions forming common legislation for the Union. Therefore, a compromise solution was arrived at with the translation rights fixed at a term of ten years from the publication of the original work for the third world countries.⁴⁷ Other provisions of the Draft Convention dealt with the reproduction of the articles of the newspapers and periodicals.⁴⁸ Furthermore, the reproductions of copyrighted works in publications intended for instruction in the work of scientific character were also brought into the

⁴⁶ Article 2 and 3 of the Berne Convention 1886

⁴⁷ Article 5 of the Berne Convention 1886

⁴⁸ Article 7 of the Berne Convention 1886

fold.⁴⁹ It was provided that articles of the newspapers or periodicals might be reproduced, provided the authors or editors had not explicitly forbidden reproduction. The reproduction of articles of political discussion of daily news was unrestricted.

Article 9 spoke of the right of public presentation of dramatic or dramatically musical works, whether published or not. The national treatment principle of article 2 was made applicable in this matter. No compliance with any formalities was required except those prescribed in the country of origin. Authors were also protected against the presentation of a translation of such works during the term of protection of other translation right accorded by the Convention. Article 2 of the Berne convention also applied to the public execution of unpublished musical works and published musical works the author of which had explicitly forbidden public execution. Furthermore, provisions of the Convention discussed indirect appropriations of literary or artistic works, such as adaptations, musical arrangements. In addition to this, the convention protected the presumption of authorship of works, the seizure of pirated reproductions upon attempted importation, the measures which might be taken by several nations to control the circulation, representation or exhibition of works and application of the Convention to work already created.⁵⁰ The contracting nations were permitted to enter into special agreements among themselves, provided these conferred to author larger advantages than those granted by the Convention.

The Berne Convention also came up with an International Bureau which was established for the Union. In addition to this, an additional article and a Final Protocol were signed and ratified. The former retained, in effect, the existing bipartite treaties that granted authors broader rights than those protected by the Convention. The latter contained explanations of several provisions in the Convention.

Overall, this Convention was a successful Convention when compared with the text now in force, after the latest revision at Paris in 1971. Of course, the original Convention appeared inadequate. However, after considering the state municipal law ratified by several nations in 1885 and the discussion that were taken up at the

⁴⁹ Article 8 of the Berne Convention 1886

⁵⁰ Article 10 to 14 of the Berne Convention 1886

Conferences of 1884 and 1885 it was found that the Berne Convention 1886 was a great step ahead in guaranteeing protection to authors and artists, a more complete protection than they ever enjoyed up to that time in the international area.

(IX) Paris Conference, 1896

According to paragraph 6 of the 1886 Final Protocol, the first Conference of revision was to meet within a period of four to six years. Therefore, after taking the advice of the International Bureau, the French government was to fix the date within these limits. However, it was subsequently felt that the time was too short to attempt a revision of the Convention, and French government convened the conference on April 15 1896. With the cooperation of the International Bureau, a programme was prepared on the basis of resolutions accepted in intervening years by the literary and artistic associations in several nations. This Convention of 1896 was held at Paris, where 13 member nations were present in addition to the 14 non-member delegate nations, including the United States of America.

The substance of the provisions which were adapted in this Convention were as follows: the fundamental principle of Article 2 which include production in the literary, scientific and artistic domain as expression of “literary and artistic works,” was made clearer by drafting its first paragraph and adding a new paragraph to the effect that posthumous works were included among the works protected. In addition, subject to condition of exclusively compliance with the conditions and formalities, prescribed by the law of the nation of origin, the second paragraph was secure under the convention.

The two most important amendments of the Convention were in Article 3 and Article 5. The original Article 3 extended protection of the Convention to publishers of works published in a country of the Union by an author who did not belong to a member country. However member countries like Switzerland, Belgium and German delegations proposed that this Article be rewritten so that protection is extended to author belonging to non-member nations who published their works for the first time in a country of the Union. Therefore, under the amended Article 3, these authors were protected under the Convention for their published works, when their first publication takes place in a

country of the Union or simultaneously in a country outside the union. Moreover, the term “publication” was defined as “manufacture of copies” that satisfies the reasonable requirement of the public, having regard to the nature of the work. It also includes presentation of a dramatic or dramatic-musical work, the execution of a musical work however, the exhibition of a work of art and construction of a work of architecture is not deemed to constitute as publication.

Originally Article 5 of the Convention provided translation rights only for a period of ten years. The amended Article 5 granted that author and their legal representative were to enjoy exclusive translation rights for the whole term of copyright in the original work. Further, it provided that the author’s exclusive right ceased if he failed to make use of his right for ten years from the publication of the original work in the nation where protection was claimed.

(X) Berlin Conference 1908

In this Conference, it was proposed that protection of the rights of authors be extended and simplified. With these objectives, it was proposed to extend the protection of the Convention to works of art applied to industry, to photographs, architectural works and cinematographic works. In addition, the same protection was extended to artistic and literary works to assimilate translation to other forms of reproductions and to provide translation rights equal to the term of copyright. Furthermore, it extended the deal to newspaper articles involving political discussion as with other literary article, to recognize the exclusive right of execution of musical works as residing with their composers without the formality of their reserving their rights upon publication. In addition, finally, it extended to the composer right to authorize the adaptation and execution of his works by mechanical instruments.

The objective of simplification was sought by abolishing the reference in Article 2 of the Berne Convention 1886 that had laid down conditions that restricted the rights of the author to the law in the country of origin. An important amendment adopted at Berlin Conference was that the Convention made it clear that the literary and artistic works were to be protected and that those contracting nations were bound to afford protection by their

law for all of these works. Furthermore, protection was made subject to no formality whatsoever and independent of the existence of protection in the country origin. In addition, photographic works were explicitly included. The convention also granted protection for the lifetime of the author and 50 years after his death. However, this protection would be subject to different legislation by the law of each country. Now, translation rights were recognized for the entire term of copyright without any restriction. In addition, the recognition was granted to the right of authors of musical works to authorize the adaptation of their works to mechanical instruments and public execution of such works by such instruments. This principle was subject to the provision that legislation of the contracting nation's rights would be relative to its adaptation. Likewise, the Convention recognized the exclusive right of authors to authorize the reproduction and public presentation of their works by cinematography.

(XI) Additional Protocol 1914

On March 20, 1914 delegates of the 18 member nations of the Union signed at Berne an Additional Protocol to the revised Convention of 1908. The circumstances under which it came about are as follows: the revised Convention of 1908 provided to authors belonging to non-member country where their work was first published, a unionist treatment in the other member countries. Therefore, every member country was bound under the Convention to treat works of such authors published in its territory precisely as if they were works of national authors and without any regard to the existence of reciprocity in the country to which the author belonged. Particularly, Great Britain and British dominions were bound to protect works of American authors published in their territory, as works of national authors published in their territory and as works of national authors. In addition, they were also bound to extend to them unionist protection if they were published in another nation of the Union.

In 1891, United States enacted the Chace Act which for the first time extended copyright protection to foreign authors, who were not residents of the States. However, on the contrary, as a result of this enactment, instead of enhancing their rights the burden of getting printed their work in U.S. was made obligatory. Now it became mandatory that copies to be deposited and the copies to be offered for sale in the United States have

to “be printed from typeset within the limits of the U.S. or from plates made there under or from negatives or drawings on stone made within the limits of the united states, from transfers made there under.⁵¹”. Therefore, foreign authors were prevented from following the natural and convenient course of having his work set up in his own country. Thus the result of this Act was that it prohibited foreign authors from offering their work, printed outside U.S, for sale in America. But the Act of March 4, 1909 relieved foreign authors in general from the effect of this clause, but this was restricted as to works written in the English language. This amounted to a discrimination against Great Britain and its dominions and colonies.

Following this, an Imperial Copyright Conference was held on May 18, 1910 to discuss the question of ratification of the revised Convention of 1908 and to consider the elaboration of an Empire wide law on copyright. It completed its work on July 10 with the adoption of a memorandum containing various resolutions.⁵²

After this, Great Britain came up with a new Copyright Act, 1911, in conformity with the revised Convention of 1908. This Copyright Act provided protection to American authors without regard to any formality whatsoever, provided their works were first published in Great Britain or any other Union country.⁵³ In 1912, Great Britain ratified the Convention of 1908 without any reservation. However, it proposed the adaptation of an Additional Protocol to the member nations of the Union. This Protocol would grant the right to each member nation to restrict within its territory the benefits of the convention with regard to authors of a non-member country.

Consequently, on March 20, 1914 all member nations of the Union accepted the text of an Additional Protocol proposed by Great Britain and signed at Berne. The Protocol constitutes a restriction of the regime of the Union by providing power to a member country to limit the protection of the works of authors and nationals of a non-member country who at the time of publication were not domiciled in the country of the Union. This power could be exercised when a non-member country did not sufficiently

⁵¹ See Section 3 of *Act of March 3, 1891*, C 565,

⁵² The Report of Imperial Copyright Conference 1910 (Cd-5272)

⁵³ Section 23 of the Copyright Act, 1911

protect works of authors belonging to the member country. The latter is free to determine the absence of “sufficient” protection for works of its authors in a non-member country.

(XII) Rome Conference, 1928

In the Conference of 1908, at Berlin, it was agreed that the next conference could be held at Rome between 1914 and 1918. But it was postponed due to the World War. However, on May, 1927 a conference was arranged. Accordingly, the International Bureau communicated to the member and non-member countries about the Conference out of which 36 countries participated.

The Italian government and the International Bureau prepared the programme of the Conference with the proposal to amend in form and in substance the provision of the 1908 Convention. The most important proposals were as follows - Firstly, it was proposed to abolish the liberty given by Article 25 and 27 of the 1908 convention to member countries. This proposal was also applicable to the new acceding countries, of making reservation with regard to the application of certain provisions of the Convention. Thus, it created a very unhealthy environment and went against the very objective of the Convention.

Furthermore, it was proposed to make the period of copyright of 50 years *post mortem auctoris* compulsorily uniform for all member nations of the Union. In addition, it was proposed to secure to authors and artists the exclusive right of authorizing the communication or execution of their works by radio and analogous means. In this convention, the Italian government submitted proposition for the recognition of the moral right of authors. Various committees were created in the Conference such as a plenary committee, an editing committee and sub-committees on the moral right of authors, radio, cinematographs and photographs and mechanical reproduction of musical works.

The most important amendments adopted by this Conference were the following: oral literary works, such as lectures, addresses, sermons, were included among the works to be protected under Article 2 of the Convention. An additional Article 2b reserved the liberty of each country to exclude totally or partially from protection, political discourses and discourses made in judicial debates and to determine the condition under which

lectures, addresses and sermons might be reproduced by the press. Upon the proposal of Great Britain, the text of the Additional Act of Berne (1914) was inserted in Article 6 of the Convention. Furthermore, the proposal of the Italian government of the moral rights of the authors formed Article 6 bis of New Convention. This provided that independently of the proprietary rights and even after the assignment of these rights, authors possess the right to claim authorship of their works and to object to any deformation, mutilation or modification thereof prejudicial to their honour or reputation. The legislation of each country was left free to determine the conditions for the exercise of these rights of authors.

The proposition that the term of copyright be made compulsorily uniform in all nations of the Union for fifty years *post mortem auctoris* was not adopted by the Conference. Moreover, new Article 7bis was adopted by the conference which related to the period of protection of works of joint authorship. Minor amendments took place in Article 13 and 14, which is related to articles of journals and periodicals, the retroactive application of the Convention and cinematographic works. Aside from recognizing the moral right of authors, the important amendment to the Convention consisted in the exclusive right of authors to authorize the communication of their works to the public by the radio.

Consequently, the results of the Rome Conference were rather insignificant. Discussions were lengthy and laborious yet many of the objectives of the programme were not accomplished. The conference had limited impact, for apart from the recognition given of the moral right of the authors and of the exclusive right to authorize public communication of works by radio; the other amendments adopted were inconsequential. .

(XIII) Brussels Convention 1948

After the Second World War was over, it was thought proper to take a long due revision of the Conference. Therefore, the Brussels Convention was held in 1948. Some of the main proposed features of this Conference were as follows: Article 4 granted that first publication in the non Union nation would mean loss of protection. Moreover, protection

is to be afforded to nationals of non Union countries habitually resident in a Union country. In addition, it was also open to any nation of the Union to restrict protection of works whose authors are nationals of a non Union country which does not give reciprocal rights and are not habitually resident in a country of the Union.

The big achievement of Brussels Convention was that it removed the provision of Article 7 (2) of the Rome Convention. For the first time, it was added in the Rome Convention, 1928 that the minimum term of copyright in works of joint authorship which would expire with the death of the author who dies last. However, the Brussels Convention dropped this provision and provided that in case of joint authorship the term of the protection was to be calculated from the date of the death of the last surviving author.⁵⁴ The Convention also provided that the protection of the Convention was not applicable to news items of the day nor miscellaneous information having the character of only item of news.⁵⁵ Therefore, no copyright protection is offered by the Convention to news or facts constituting press information.

For the first time, the Rome Convention, 1928 had introduced provisions intended to extend the author's rights beyond those generally comprehended in the term copyright. Therefore, firstly, the Brussels Convention extended these provisions which provided that even after the assignment of the copyright, the author should have the right during his life time to claim authorship of the work, and to object any distortion, mutilation or other alteration thereof or any other action in relation to the said work which would be prejudicial to his honour or reputation. Secondly, after the death of author, it was provided that the rights granted to the author as aforesaid should be maintained at least until the expiry of the copyright. Thirdly, the means of redress was left to the national law.⁵⁶

The Brussels Convention also introduced a new right, which was known as *droit de suite*. It provided that the author or after his death, the persons or institutions are authorized by the national legislation are with respect to original work of art and original

⁵⁴ Article 7(bis)

⁵⁵ Article 9(3)

⁵⁶ Article 6(bis)

manuscripts are to enjoy the inalienable right to an interest in any sale of work subsequent to the first transfer thereof by the author. However, this matter was left to the legislation of individual member and can be claimed in any country that does not have such legislation.⁵⁷

(XIV) Stockholm Convention, 1967

This convention was a revision of the Berne Convention and was held on 11 July, 1967 at Stockholm.⁵⁸ Basically, this Convention introduced a Protocol that addresses the needs of developing countries to who considered the protection provided by the Berne Convention beyond their scope of interests.⁵⁹

The protocol provided that any country regarded as a developing country that has ratified and acceded to the convention might make reservations in respect of certain matters. This in turn, would have the effect of giving less protection in that country than what was afforded in other countries of the Berne Union.

There was opposition to the adoption of the protocol that in a sense resulted in a stalemate as far as the International Copyright field was concerned. Thus, although Article 21 made the protocol an integral part of the Berne convention, Article 28, made a provision that any country may declare its ratification or accession does not apply to the substantive provisions of the Conventions and the protocol. Thus, none of the major developed countries ratified or acceded to this proposal. Owing to this disagreement among the nations, the Stockholm convention in the true sense of its meaning became a dead letter.

(XV) Paris Revision of 1971

The disagreements evident in the Stockholm Conference led to its revision at the Revising Conference held in July, 1971 at Paris. It was the first time where India also

⁵⁷ Article 14 (bis) of the Berne Convention, 1886

⁵⁸ Dorothy M Scharder, "Analysis of the Protocol Regarding Developing Countries," *Bulletin of the Copyright Society*, Vol. 17, No. 3, (1970), p.160

⁵⁹ R. F. Whale, "Protocol Regarding Developing Countries," (London: British Council Copyright, 1968), p.25

participated and signed the Convention. The Convention entered into force on 10th October, 1974.

The situation created by Stockholm Convention was especially unfortunate, since it was hoped that one of the outcomes of the Stockholm revision would be that U.S.A would make a revision of its existing national law and thereby join the Berne Convention.⁶⁰ Therefore, the Paris Convention presumed an added importance.

In the Paris Convention, the common code was formed as the Paris Act. Article 3 of this Act that contains the general criteria of eligibility for protection provides

1- The protection of this Convention shall apply to:

- a- Author who are nationals of one of the countries of the Union, for their works whether published or not;
- b- Authors who are not nationals of one of the countries of the Union, for their works first published in one of those countries, or *simultaneously* in a country outside the Union and in a country of the Union.

2- Authors who are not nationals of one of the countries of the Union but who have their habitual residence in one of them shall, for the purpose of this Convention, be assimilated to nationals of that country.

This article has wider scope than the Brussels Convention, since the works of nationals of the Union countries was to be protected even if the first publication takes place in a non-Union country. However, the Paris Act is similar to the Brussels Convention in that it allows for any country of the Union to restrict protection of works to those authors who are from a non Union country and does not guarantee reciprocal rights to those who are not habitually resident in a country of the Union.⁶¹

Moreover, Article 4 of the Paris Act also contains special criteria of eligibility for the protection of cinematographic works and works of architecture. Further, Article 3(3)

⁶⁰ Barbara Ringer A., "A Horizon for International Copyright," *Bulletin of the Copyright Society* Vol. 17, No. 2, (1970), p.81

⁶¹ Article 6 of the Paris Act, 1971

of this Act provides that the expression “published works” means works that may be published with the consent of the authors, whatever may be the means of manufacture of the copies, provided that the availability of such copies had been such as to satisfy the reasonable requirement of the public, with regard to the nature of the work. However, the performance of a work of dramatic or musical work, the exhibition of a work of art and the construction of a work of architecture do not constitute publication. Then, how can such works be published? In response to this it can be pointed out that, in case of musical and dramatic works it would be the case of printing and publishing the text or score. In addition, in case of a work of art such as a picture, it can presumably be understood in terms of publishing sketches, photographs and so on of the work.⁶²

Article 5 of the Paris Act deals with the extent of protection such as “Author shall enjoy, in respect of works for which they are protected under this Convention, in countries of the Union other than the country of origin, the rights which their respective laws do now or may hereafter grant to their nationals, as well as the right specially granted by this Convention.”⁶³ Protection in the country of origin is of course governed by domestic law, however, when the author is not a national of the country of origin of the works for which he is protected under this Convention, he ends up enjoying in that country the same rights as national authors.

It is interesting to note that there is disparity in the extent of protection in the country of origin and in other countries of the Union, since the domestic law governs protection in the country of origin. However, in the countries other than the country of origin, the author is given not only rights, which are given under the domestic laws, but also the rights granted by the Convention. Therefore, an author can be worse off in the country of origin than in other countries of the Union.

The Paris Act further provides that the countries of the Union may grant a term of protection in excess of those provided by Article.⁶⁴ As far as the works protected by the

⁶²Gillian Davies, Gwilym Harbottle and Nicholas Caddick, “*Copinger and Skone James on copyright*”, (London: Westlaw, 12th edition, 1980), p. 566

⁶³Dr. Faizan Mustafa, “*Copyright A Comparative Study*,” (New Delhi: Institute of Objective Studies, 1997), p. 63

⁶⁴ Article 7(b) of the Paris Act, 1971

Paris Convention are concerned Article 1 is particularly important. This Article states that the nations to which the Convention applied are constituted into a Union for the protection rights of author in their literary and artistic works. Article 2(1) goes on to provide that the expression “literary and artistic works” shall include every production in the literary, scientific and artistic domain, whatever may be mood or from of its expression such as books, pamphlets, other writings, literature, address, sermons and other works of the same nature , etc. Moreover, several protections were provided by the Paris Act such as translation, adaptation, broadcasting, etc.

2.5 International Copyright System

International copyright protection is a recent development that came into existence as a result of the rapid growth of technologies, of the increasingly international use of such languages as English, French, German and Spanish and of the emergence of international centers of book publishing and scholarship.⁶⁵ Prior to the 19th century, international protection of copyright was rare, and it was possible only through an increasingly complex web of bilateral treaties. By the mid-19th century, the web of copyright treaties in Europe was sufficiently confusing that an international conference was called that resulted in the International Convention for the Protection of Literary and Artistic Works, popularly known as the Berne Convention, in 1886⁶⁶. As it has been discussed earlier, it is the oldest copyright treaty in the world and it has gone through several revisions, the most recent of which directly concerns Third World nations and aroused a good deal of controversy. As of 1979, there were 71 states in the Berne Convention, with the notable exceptions of the United States, China and the Soviet Union.⁶⁷

The Berne Convention is administered by the World Intellectual Property Organisation (WIPO), which helps to solve disputes, provides interpretations and keeps records and statistics. The Berne Convention reflects the Western European concept of

⁶⁵Phillip G. Altbach, “Knowledge Enigma: Copyright in the Third World”, *Economic and Political Weekly*, Vol. 21, No. 37 (Sep. 13, 1986), pp. 1643-1650

⁶⁶UNESCO, “*The ABC of Copyright*”, (Paris: Unesco, 1981), p 66.

⁶⁷De Freitas Denis, “*The Copyright System: Practice and Problems in Developing Countries*”, (London: Commonwealth Secretariat, 1983), p 5.

copyright and was developed to protect interests of the European nations as publishing and printing became major industries as a result of the industrial revolution and the rise of mass literacy and public education. The national copyright laws of the European powers were altered to place them in conformity with the requirements of the Berne Convention.

The second major international copyright treaty was established, under the auspices of UNESCO and currently administered by UNESCO, in 1952. The Universal Copyright Convention (UCC) was developed largely as a means of bringing the United States and a number of Latin American nations into the international copyright system. It was, simply stated, a compromise between the Berne Convention and United States view on copyright.⁶⁸ American copyright law traditionally has offered significantly less protection to copyright holders than European rules, and the ICC similarly is less inclusive than the Berne Convention, although both treaties provide basic rights of copyright and many countries are members of both the Convention and the UCC.

2.6 History of Indian Copyright Law

For a better understanding, broadly the history of Indian copyright law can be divided into two parts, such as, the Pre Independence Indian Copyright law and Post Independence Indian Copyright Law.

A. History Of Indian Copyright Law Before Independence

The question whether or not, prior to the colonization, there exists in India any institutions for legal protection of creative artists has not been asked. Any such tentative approaches to the question appear quite ambitious at this stage. This is a question which the Legal and social historians of ancient and medieval India are yet to attend to.⁶⁹

In the middle of the eighteenth century, English Common Law was introduced into those parts of Indian Territories subject to the Government of the East India Company, whereby a charter from the Crown, Courts of Judicature was established,

⁶⁸ Phillip G. Altbach, *The Knowledge Context Comparative Perspectives on the Distribution of Knowledge*, (New York: State University of New York Press 1987), p. 93.

⁶⁹UpendraBaxi, "Copyright Law and Justice in India", *JILL*, Vol.28, No. 4 (1986), p. 498

which, inter alia administered the copyright law of England that related to matters of copyright.

In 1842, the Literary Copyright Act, 1842 was enacted to amend and consolidate the law of copyright in the United Kingdom.⁷⁰ It was extended throughout the British Dominions. As a result of this, the provisions for copyright in published book could be enforced in British India. Under this Act the term “Books” included every volume, pamphlet, letter, press sheet, music sheet, map, chart and plan. In addition, it directed registration of every book at the stationer’s hall in London. It also protected the performing rights in both dramatic and musical works.

Again on 18th December, 1847 the Governor-General of India got passed an Act for the encouragement of learning in the territories subject to the government of the East India Company by defining and providing for the enforcement of copyright therein.⁷¹ Its preamble speaks of doubts which exist or which may exist concerning recognition and enforcement of copyright as a part of the “justice, equity and good conscience” or as regards the application of British Statutes to territories then administered by the East India Company.⁷²

The significance of this Act was that under it was clearly laid out that the period of copyright covered the lifetime of the author plus seven years after the death of the author. However, the total term of the copyright was not to exceed 42 years. In case, if the owner of the copyright upon the death of the author refused to allow its publication then the government was given the power to issue license for the purposes of publication of the book. Moreover, the Act provided that under a contract of service unauthorized printing of copyright work for “sale, hire or exportation” or for selling, publishing or exposing to sale or hire of “any encyclopedic review, magazine, periodical work or work published in a series of books or parts shall vest in the proprietor, projector, publisher or conductor” shall constitute an infringement of copyright. Action or suit for infringement was to be instituted in the “highest local court exercising original civil jurisdiction.”

⁷⁰ Dr. FaizanMustafa, “*Copyright A Comparative Study*”, (New Delhi: Institute of Objective Studies, 1997), p. 72

⁷¹Ibid, p. 72

⁷²UpendraBaxi, “Copyright Law and Justice in India”, *JILL*, Vol.28, No. 4 (1986), p. 499

The formality of registration with the Home Office was the condition precedent for the enforcement of copyright under the Act. However, the proviso to section 14 of the Act specifically reserved the subsistence of copyright in the author, and his right to sue for its infringement to the extent available in law other than the Act, 1847. The question of amending the Act, 1847 was considered on various occasions ever since 1864, on the ground that this Act was incomplete because among the other matters, it did not provide for the protection of copyright in photographs, translations, newspapers, telegraphs etc. However, legislation had been deferred in view of the possibility of amendment of the English Act on the subject of Copyright.⁷³

In 1910, a departmental committee was appointed by the Board of Trade in order to consider the question of rectification by England of the Berlin Revision Conference (1908). The Committee came to the conclusion that Convention should be accepted by Britain with as few reservations as possible. Here after, in 1910, an Imperial Copyright Conference was held in London to consider the recommendations of the said Board of Trade Committee. The recommendations included:

- (a) that an Act dealing with the essentials of the Imperial Copyright law should be enacted by the Imperial Parliament.
- (b) that this Act should be expressed to extent to all British dominions and possessions to modify or add to its provisions by legislation criteria cases affecting only procedure and remedies.

The Conference endorsed the recommendations of the Board of Trade Committee and in giving effect to those recommendations; a Bill was prepared and introduced in both the houses of Parliament. This Bill was enacted with several modifications known as the Copyright Act, 1911.⁷⁴ It came into force in the United Kingdom on 1st July, 1912.

However, the non-application of the said act to India was creating undue hardship and loss to the English authors who saw this as an unfair imposition upon them. Thus,

⁷³ Dr. FaizanMustafa, "*Copyright A Comparative Study*", (New Delhi: Institute of Objective Studies, 1997), p. 73

⁷⁴ Dr. FaizanMustafa, "*Copyright A Comparative Study*", (New Delhi: Institute of Objective Studies, 1997), p.74

keeping these difficulties in mind, the application of Copyright Act, 1911 was extended to all the British dominion and accordingly in case of India, it was brought into force on 31st October, 1912 by a proclamation in the Gazette of India.

In the meantime, based on the feedback of several local governments, the question of modification or additions to the said Act was postponed for subsequent consideration. Later, after the receipt of views of the local governments, the government of India concurred with them and by virtue of powers conferred by Section 27 of the Copyright Act, 1911, prepared a Draft Bill embodying modifications and addition to the Imperial Copyright Act, 1911 which were considered desirable together with certain formal necessary alterations due to the difference between English and Indian administration and procedure. Eventually, this Bill was enacted into an Act that came to be known as Indian Copyright Act, 1914.⁷⁵ The Indian Copyright Act, 1914 was known as a short Act because it had only 14 sections, which had as its first schedule, the annexed portion of the whole of the Imperial Copyright Act, 1911.

According to Professor Upendra Baxi, the said Act of 1914 introduced two major changes- First, it introduced criminal sanctions for copyright infringement⁷⁶ and secondly, it modified the scope of the term copyright under section 4 the “sole right” of the author to “produce, reproduce, perform or publish a translation of the work shall subsist only for a period of ten years from the date of publication of the work.”⁷⁷ However, the authors retained their “sole right” if it was within the period of ten years of their publishing or authorizing translated publication of their work into any language.

The modification of the term of copyright for translation rights cannot be explained by any reference to dominant characteristics of colonial policy. The language of the Act might suggest a laudable policy of promoting wider diffusion of Indian works from one language to other Indian languages, a consideration that can be said to be distinctive to India as compared to United Kingdom. In addition, there might also have

⁷⁵ Ibid, p.75

⁷⁶ Upendra Baxi, “Copyright Law and Justice in India”, *JILI*, Vol.28, No. 4 (1986), p. 498

⁷⁷ Ibid, p. 498

been the desire to promote the growth of publication industry in numerous Indian languages.⁷⁸

However, even if the intention of British was laudable in enacting the legislation in 1914, the Act ended up with disastrous consequences and disadvantageous to the authors and a real boom for the publishers. This is provided by the assessment of the Act, 1914 in a note of dissent when the joint select committee of the parliament in 1956 was considering the recommendation for the continuation of the Act, 1914.⁷⁹

It was strongly argued by R.D. Sinha Dinker that the Act has “worked to the utter detriment of the authors”. He observed in a hard-hitting argument “Most of the novels which were written by the Sarat Chandra Chatterjee were translated in Hindi, while the author was alive. The author’s novels in translation sold thousands of copies, but the author did not get a pie out of the sale proceeds. Something like this happened in the case of Rabindranath Tagore. Publishers in Hindi and other languages were making good money out of the translations of his works, but the poet, served by the nation, was in his extremely old age touring the country for money to support Shanti Niketan.”⁸⁰

It seems that publishers of Hindi language were the major beneficiaries from the modification of the term of copyright regarding translation however, and then this fact is of great political importance as Hindi was now emerging as a dominant language in North. In fact, ultimately it became the national language as well.

The Act continued with the minor modification till 24 January, 1958 when the Copyright Act, 1956 came into existence.

⁷⁸UpendraBaxi, “Copyright Law and Justice in India”, *JILL*, Vol.28, No. 4 (1986), p.498

⁷⁹ Dr. FaizanMustafa, “*Copyright A Comparative Study*”, (New Delhi: Institute of Objective Studies, 1997), p.76

⁸⁰ Ibid.

B. History of Indian Copyright Law Post Independence

2.7 The Copyright Act, 1957

The Copyright Act, 1914 had become outdated. Therefore, a bill was introduced in the Council of States on October 1, 1955 to revise the copyright law in India. The Bill was enacted. It was a remarkable achievement of Independent India's legislature that it attached so much of importance to intellectual property rights in general and that of copyright in particular. In fact, there were number of factors which necessitated the early revision of the copyright law.

First, it clear that continued existence of the Act, 1911 through the Act, 1914 was unbecoming to the changed constitutional status of India. Secondly, the Act, 1914 did not accord with the Brussels Act, 1948 of the Berne Convention and Universal Copyright Convention 1952. Thirdly, the new and advanced methods of communication rendered modernization of the law necessary. The need for an "independent self contained law" was also felt in the light of the experience of the "working" of the Act, 1911. In addition, it was more important of "the growing public consciousness of the rights and obligations of the authors."⁸¹

Reports of many committees and deliberations of International Copyright Convention were taken into account while considering the Draft Bill, 1957. The Joint Select Committee also benefitted from the evidence of many Indian and foreign organizations such as Institute of Education and Cultural Freedom, All India Centre of PEN, The Indian Council for Cultural Freedom, All India Hindi Publishers Association, Indian Phonographic Industry, All India Radio, British Copyright Council, International Confederation of Societies of Authors and Composers (Paris), Performing Right Society (London) and Columbia Gramophone Company Ltd.⁸² Interestingly, the satsangis of Radhaswami Faith, a purely religious organization also came with its suggestions and gave evidence before the Select Committee. However, despite such lengthy deliberations,

⁸¹Upendra Baxi, "Copyright Law and Justice in India", *JILI*, Vol.28, No. 4 (1986), p. 502

⁸² Mustafa, Dr. Faizan, "*Copyright A Comparative Study*", (New Delhi: Institute of Objective Studies, 1997), p.78

the report of the Select Committee was brief report of just ten pages of majority report and seven pages of dissent by six members.

All the major recommendations of the Select Committee were ultimately accepted such as its definitions of “authors”, “artistic works” and “dramatic works”. Its recommendations as to enhance prison sentences were also accepted by the Independence of Copyright Board. It also defined civil jurisdiction for the infringement proceedings and same was approved by the Parliament while enacting the Act. The original proposal to reduce the term of copyright for life of the author and 25 years *post mortem* was not accepted by the Select Committee on the ground that India must fall in line with International Conventions. The Committee also opposed the Bill’s proposal on similar grounds making the formality of registration a pre-condition for infringement.⁸³ Perhaps, the only significant matter on which committee’s proposals were not accepted in view of powerful dissents pertained to a ten year term of copyright for translations.

Finally, the Copyright Act, 1957 was enacted. In addition, it was not in any sense a replication of the English legislation proposals. In this sense the Copyright Act, 1957 was first truly Indian Legislation after more than 200 years of the subjection to the Imperial Law. The Copyright Act, 1957 included 79 sections, divided into 15 chapters. Furthermore, the government has been empowered to enact copyright rules by virtue of section 79 of the Act, 1957. Therefore, the government enacted the Copyright Rules which deal with matters of procedure for application of licences for translations, performing rights societies, relinquishment and registration of copyright and related matters.

Chapter I, III, IV and V discuss copyright and its ownership, Chapter XI with infringement, Chapter IX with International Copyright, Chapter X with registration of Copyright and remedies and Chapters II, VI, VII and X with the powers and functions of the Registrar of Copyrights and Copyright Board. Chapter VIII discusses the rights of broadcasting authorities.

⁸³ Dr. Faizan Mustafa, “*Copyright A Comparative Study*”, (New Delhi: Institute of Objective Studies, 1997), p.79

In spite of this, the Act was not sufficiently farsighted. For example, it does not protect the right of the performers adequately. However, the fact remains that the country had its own law of copyright for the first time in contemporary history and for weal or woe it represented the law-policy by its independent legislature.⁸⁴

2.8 The Amendments of 1983 and 1984 of the Copyright Act, 1957

Despite the leading role, which India played in the revision of the Berne Convention and Universal Copyright Convention leading to the Paris Act, 1971, it was not until 1983 that the Indian legislature could take up the revision of the Act 1957. The new sections 32(A) and 32(B) were inserted by these amendments. These provisions granted “compulsory licences” for publication of copyrighted foreign works in any Indian language for the purposes of systematic instructional activities at a low price with the permission of the Copyright Board on certain conditions. Another amendment was brought in section 19 (A). This amendment empowered the Copyright Board to order revocation of the assigned copyright where either the terms are “harsh” or where the publication of the work is unduly delayed, upon a complaint. Therefore, the Board has been empowered to publish unpublished Indian works and for the protection of “oral works”. The 1984 amendment also granted for the stringent punishments for piracy and effective procedures to inhibit it.

2.9 The Amendment of 1994 of the Copyright Act, 1957

The amendment of the Copyright Act, 1957 was necessary, to cope with the new challenges of technology. Therefore, in 1992, with this view a Bill was introduced to amend the Act, 1957. The Bill had become necessary because it had become much easier for anyone to copy sound recordings, films and printed works through photocopy than in the past. The Bill was referred to Joint Committee and was finally enacted in 1994.

This amendments basically granted protection for the musical works, film, video tapes audio tapes with few exceptions such as for private use or for news reporting. These amendments also regulate hire or resale of any copies of films including videotapes or

⁸⁴Upendra Baxi, “Copyright Law and Justice in India” *JILI*, Vol.28 No. 4, (1986), p. 503

sound recording or computer programs. It has also enlarged the scope of protection of computer programs.

The amendment effectively eliminated the “first sale” doctrine that was developed in American jurisprudence under which a legitimate owner of a copyrighted work could further sell, transfer, lease or rent the work to another. The amendments of 1994 brings Indian Law in conformity with the Uruguay Round Agreement on Trade Related Intellectual Property Rights (TRIPs) which requires nations to provide authors and their successors in title the right to authorize or to prohibit the commercial rental of originals or copies of their copyright works. However, it is to be noted that the TRIPs agreement is less stringent than the amended Indian Law.

A traditional exclusion from infringement permits use of a copyrighted work for research, criticism or private use known as “fair dealing”. The 1994 amendment eliminated the “fair dealing” exclusion with respect to computer programs. This is an unusual step as “fair dealing” has been a long standing exclusion which is part of well settled copyright. At the same time, a new exclusion from copyright infringement of computer programs has been added. A lawful possessor of a copy of a computer program may make backup copies purely as a temporary protection against loss and the destruction or damage in order to use the computer program for the purposes for which it was supplied. Such acts will not constitute either copyright infringement or violation of moral right of the author.

Another important aspect of this amendment is narrowing down of the author’s moral right. Now, an author may restrain or claim damages in respect of any distortion, mutilation or modification of the works if it is done before the expiration of the term of the copyright and if such act would be prejudicial to his honour or reputation. However, an exception has been carved out in the law for adaptation of computer programs for the purposes of debugging.

In addition to the moral right, a new *droit de suite* (resale share right) has been created by this Amendment, 1984. This provides author of original copies of paintings, sculptures or drawings of the original, manuscript of literary, dramatic or musical works

the right to share in the resale proceed of such original copies where the proceeds exceed rupees 10000. The share of proceeds shall be as the Copyright Board may fix but may not exceed 10 percent of the resale price. The *droit de suite* ceases to exist on the expiration of the term of copyright. However, the infringement of the *droit de suite* does not give rise to any criminal liability because of the *bonafide* difficulties which may exist in locating the author at the time of subsequent sale.

The penalty for copyright infringement is imprisonment for a minimum of six months and a maximum of three years and fine ranging from rupees 50,000 to 200000. The 1994 amendment creates a new *de minimus* punishment of imprisonment for less than six months or a fine of less than rupees 50,000 where the infringement has not been made for gain in the course of trade or business. Moreover, this amendment also creates a *de minimus* punishment for second and subsequently convictions of imprisonment for less than one year or a fine of less than rupees 100000 where infringement has actually not been made for gain in the course of trade on business. This amendment also provides provisions for the punishment for an infringement of computer program.

Finally, it can be said that the copyright law is of relatively recent origin. The need for the protection of author's right came to be firmly realized only after the invention of printing press. Since then the copyright has seen many ups and down. Yet it is heartening to note that with every passing decade, more and more countries are realizing the danger of not giving adequate protection to creators of intellectual property and are thus joining the Copyright Union and bringing change in their National Laws. The Indian law after the 1994 amendment is an excellent piece of example in this context through it is also true that in certain aspects under the U.S. influence and in order to comply with the TRIPS agreement, the amendment has an effect of narrowing down the copyright protection as well.

2.10 The 2012 Amendments of the 1957 Indian Copyright Act

The 2012 amendments made significant changes for India's Copyright Act, 1957. It has brought Indian copyright law into compliance with the World Intellectual Property Organization "Internet Treaties". This is a result not of a sudden move but of significant

amendments through the course of years, it has been amended five times prior to 2012, in the years 1983, 1984, 1992, 1994 and 1999, to meet with the national and international requirements. Thus, the Copyright Amendment Bill, 2012, while introducing technological protection measure that is in compliant with the Internet Treaties – the WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT) has ensured that fair use survives in the digital era by providing special fair use provisions. Overall, the amendment could be said to have a positive effect as the changes brought in were author-friendly amendments, with special provisions for the disabled, amendments that facilitated easier access to works and amendments that reorganize the copyright administration in a more systematic way. Thus, some of the significant changes made by this amendment are:

(1) Definition of ‘Commercial Rental’

Section 2(fa) of the 2012 Act brings in a new definition for the term ‘commercial rental.’ Thus, Section 14 in providing exclusive rights to the owners of the copyright in computer programmes, films and sound recordings grant to them the right ‘to sell or give on commercial rental or offer for sale or for such rental, any copy’ of these works.

(2) Definition of ‘Communication to the Public’

The definition of ‘communication to the public’ of Section 2(ff) has been expanded. Earlier prior to the 2012 amendment the definition was inclusive of “works” only, however, as a result of the amendment, 2012, it now includes both works and performances. Also, the definition is very clear in stating that the nature of communication is wider as it does not matter whether the communication is ‘simultaneous or at places and times chosen individually’. As such, it appears to be inclusive of multicasting, narrowcasting and unicasting.

(3) Performers and their rights

Under the newly introduced Section 38A, the performer’s right has been reorganized. The important difference now is that performers are ‘entitled for royalties in case of making of the performances for commercial use,’ a welcoming change that earlier amendments have failed to address.

Moreover, under the newly introduced Section 38B, performers have also been accorded moral rights. Rights that basically encompass the rights to paternity and integrity and right that are on the lines granted and enjoyed by authors.

Section 2(qq) introduces a change in the definition of the term ‘performer’ in holding that, only those performers credited in cinematograph films would be entitled to the performer’s right and to the right to integrity with respect to film actors. However, now, all performers whether credited or not in cinematograph films, are granted the right to integrity.

(4) Person deemed to be the author / publisher

Section 55(1) now presumes that the person named as the author or publisher does not apply only a literary, dramatic, musical or artistic work but also to the author/publisher of a non-infringing film or sound recording.

(5) Authors of underlying works in cinematograph films and sound recordings

To ensure that the authors of underlying works (i.e. music, lyrics and scripts) in cinematograph films and sound recordings have a continuing right to royalty for the non-theatrical use of their works in films, and for any use of their works in sound recordings various revisions were made to Sections 18, 19 and 33.

(6) Copyright Board

Section 11 makes a substantial amendment in terms of the composition of the Copyright Board. As opposed to the earlier provisions of ‘not less than two or more than fourteen other members’ now the board is to comprise of a Chairman and two other members.

(7) Definition of ‘Visual Recording’

The new Section 2(xxa) defines a visual recording as any recording that involves, “the recording in any medium, by any method including the storing of it by any electronic means, of moving images or of the representations thereof, from which they can be perceived, reproduced or communicated by any method.”

(8) Digital Rights Management (DRM)

As far as **Digital Rights Management (DRM)** is concerned three new Sections — 2(xa), 65A and 65B — were introduced.

(a) Protection of technological measures

Section 65A of the DRM has been introduced with the intent to protect any of the rights conferred by the copyright statute if one bypasses the provision of rights with the intention of infringing upon rights conferred by the Act. It makes the act of bypassing of an effective technological protection measure a criminal offense. However, exceptions to these is permissible in one of the many circumstances, such as bypassing the provisions for conducting any lawful investigation or taking measures necessary in the interest of national security.

(b) Rights Management Information (RMI)

Section 2(xa) defines RMI to mean “the title or other information identifying a work or performance, the name of the author or performer, the name and address of the owner of rights, terms and conditions regarding the use of the rights, and any number or code that represents this information (although it does not include any device or procedure intended to identify the user).” In corollary to this, Section 65B not only criminalises certain acts relating to RMI but also make provisions for rights owners to avail of certain civil remedies in case of any violation that arises. Thus, it prohibits acts that involve the unauthorised removal or alteration of RMI on copies of works, or the unauthorised and ‘knowing’ distribution, importation, broadcast or communication to the public of such copies of works.

(9) Meaning of copyright

(a) Electronic and other storage

Copyright — in the case of artistic works, cinematograph films and sound recordings — includes the right to store works in any medium by electronic or other means. This amendment effected to Section 14 appears to be merely clarificatory in nature.

(b) 3D-2D conversion of art

Under this provision, copyright in artistic works includes the right to convert works from three dimensions into two dimensions and vice versa as was the case earlier. However, the new provision of Section 52(1)(w) introduces a restriction in that it restrains “the making of a three-dimensional object from a two-dimensional artistic work, such as a technical drawing, for the purposes of industrial application of any purely functional part of a useful device” without the permission of the copyright owner.

(c) Film stills

Section 14(d)(i)(A) explicitly states the reproduction of stills from a cinematograph film is one of the exclusive rights of the copyright owner of the film. This amendment too appears to be merely clarificatory in nature. Sub-section 1 now provides relinquishment of copyright either by giving notice to the registrar of copy right or by way of public notice.

(10) Term of copyright in photographs

Now, copyright in photographs effectively subsists till sixty years after the death of the photographer as opposed to the earlier term of enjoying a sixty-year post-publication. Thus, under this amendment Photographs are now treated at par with artistic works.

(11) Future technologies

Section 18 has been amended keeping the future course of protection in mind. It prevents the assignee to exploit the copyright assigned to it via unspecified ‘future technologies’ Thus, it disallows any sort of exploitation of a work that did not exist or was not in commercial use when the assignment was signed.

(12) Disputes with respect to assignment of copyright

The scope of Section 19A, which deals with the resolution of disputes with respect to the grant of rights that arises from the unilateral insufficient exercise of the rights, granted was curbed. In opposition to “assignments and licenses” as provided earlier, the amended provisions now limits it to assignments.

The provision also stipulates that disputes under the Section are now generally to be settled within six months after the receipt of a complaint by the Copyright Board. In addition, on any issues 'regarding implementation of the terms and conditions of assignment including any consideration to be paid for the enjoyment of the rights assigned' the Board may pass interim orders.

(13) Relinquishment of copyright

Section 21 has been amended to allow for the relinquishment of copyright not only by way of notice to the Registrar of Copyrights but also by way of public notice.

(14) Signatures on licenses

Now, under the provisions of Section 30 the only requirement for licenses is that it has to be in writing. Thus, it has done away with the earlier requirement that a license be signed by the licensor.

(15) 'Expansion' of existing compulsory licenses

The scope of compulsory licenses has been expanded as opposed to the earlier provisions of unpublished Indian Works, now, Sections 31 and 31A applies to 'any work' instead of only to Indian works, and to 'unpublished or published works'. In addition to this, under Section 31 the Copyright Board may now grant compulsory licence to any qualified person and not just to the complainant.

(16) Provisions for the benefit of persons with disabilities

(a) Exception to copyright infringement

The new Section 52(1)(zb) facilitates access to copyrighted works by persons with disabilities on the ground that the reproduction of accessible formats is on a non-profit basis and not with the intent to recover only the cost of production. In addition, the organization must also ensure that the available copies are used only by persons with disabilities and ensure that reasonable steps are taken to prevent the entry of the available copies into ordinary channels of business.

(b) Compulsory licence

In case of commercial basis, any person working for the benefit of persons with disability may apply to the Copyright Board for a compulsory licence to publish a work, in an accessible format, intended for the benefit of persons with disability on the condition that the exception to copyright infringement does not apply.

(17) Statutory licences

The new Section 31C facilitates the making of cover versions five years after the first sound recording of the concerned work is made, and generally with royalty payable for a minimum of 50,000 copies during each year in which copies are made. It could be considered to be a substitute for the old Section 52(1)(j) which the 2012 amendments deleted from the copyright statute.

The new Section 31D enables ‘any broadcasting organisation desirous of communicating to the public by way of a broadcast or by way of performance of a literary or musical work and sound recording which has already been published’ to do so by paying royalty to the copyright owner. The rates of royalty under both these statutory licences are to be fixed by the Copyright Board, and the Sections contain detailed procedures to be followed by those wishing to avail of these statutory licences.

(18) Copyright societies

The new Section 33A has made it possible for both the authors as well as the owners to be members of copyright societies. And it has also made attempts to ensure that the interests of both authors and owners are protected, and that copyright societies are not mismanaged. It also requires each copyright society to publish its Tariff Scheme.

(19) Miscellaneous exceptions to copyright infringement

(a) Fair dealing

Except in the case of a computer programme, Section 52(1)(a) now allows for fair dealing with respect to any work. Thus, other than computer programmes as was the case earlier, fair dealing is not restricted to literary, dramatic, musical or artistic works. The amendment has also ‘expanded’ the purposes for which fair dealing is permissible

although from a practical point of view the expansion may not actually bring in any substantive change.

(b) Defences to copyright infringement available to intermediaries

In case of secondary copyright infringement, safe harbours have been introduced to protect intermediaries. In addition, to enable rights owners to have the infringing content taken down, a notice-and-take-down procedure has been incorporated into the statute which will be applicable for a minimum period of twenty one days.

(c) Broadened exceptions to copyright infringement

The exceptions to copyright infringement dealing with the reproduction of works for judicial, legislative and educational use, which was restricted only to literary, dramatic, musical and artistic works earlier is now generally applicable to any work.

The exceptions made to copyright infringement for the benefit of academia have been broadened. For example, Section 52(1)(g) of the ‘old’ copyright statute that dealt with the publication of compilations for educational institutions has been replaced by the new Section 52(1)(h) which apart from educational institutions now allows it for ‘instructional use.’

(d) Archival storage and reproduction by libraries

The new Section 52(1)(n) allows “the storing of a work in any medium by electronic means by a noncommercial public library, for preservation if the library already possesses a non-digital copy of the work.” However, there has been a restriction in the scope of Section 52(1)(o) as opposed to the case earlier which was applicable to any public library, , now, the amendment makes allowance only for “non-commercial public libraries” to make, not more than three copies, of books unavailable for sale in India for their own use.

(20) Importation of infringing copies

Section 53 has been completely restructured. Following the procedure laid down in the Section, it now allows owners of any works or performance embedded in works, to make request in writing to the Commissioner of Customs or any other authorised officer for

that matter, to proclaim infringing copies as prohibited goods, for a period of not more than one year under certain circumstances.

(21) Authors' Moral Rights

The now amended Section 57 provides that the right to integrity subsist even after the expiry of copyright in the relevant work, and the right to exercise paternity has been extended not just to the author but, now, also his legal representatives. This presumably means that legal representatives may if the author of a work is not credited as such initiate legal proceedings.

The Amendment Act was aimed to be an access enabling, technology friendly dynamic enactment. However four years down the lane it remains a legislation that is yet to be fully implemented. Many of the provisions are simply inoperable due to a non-existent Copyright Board, while some of the provisions become ineffective, as they are not being followed in the true spirit by different categories of stakeholders. Furthermore, some provisions are already under judicial scrutiny while some are considered too vague to warrant any implementation without clarification from legislation or judiciary. Judicial interpretations and pronouncements in the near future are likely to clear the mist around many provisions brought in the statute book through 2012 Amendment Act.

Chapter 3

Examining the Definitional Clauses of Indian Copyright Act, 1957

3.1 Introduction

The idea behind copyright law is to protect the author of the work from the possible fraudulent reproduction of the work without his permission¹. An author being a creator of a work, by using his talents, intellectual skills and knowledge must be in a position to enjoy the benefits of such creation. In such cases, third parties, who have not played any part in the creation of the work, should not be given the benefits by its unlawful reproduction². The basic principle of the copyright law is that the author is the first owner of copyright³, but the “owner of copyright” is the person who has plenary control over the work. As, in *Mohinder Pal v State of Himachal Pradesh*⁴ case, High Court defined the term “ownership” as “a plenary control over an object”. It indicates that an owner has three kinds of powers. These powers are known as possession, enjoyment and ownership⁵.

In the context of copyright, ownership is based on “authorship”, “owner of the copyright” and “joint authorship”. The Copyright Act, 1957 provides a detailed scheme of law in determining “authorship”, “owner of copyright” as well as assignment and relinquishment of ownership of copyright. The Act also provides a bundle of rights, the scope of which has expanded overtime. As, in *Supper Cassettes Industries Ltd v My space Inc*⁶, the Delhi HC held that copyright is a bundle of right which is meant to encourage creativity.

¹Jitendra Kumar Das, “*Law of Copyright*”, (Delhi: PHI Learning Private Limited Delhi, 2015), p.186

²*Tekla Corporation v SurvoGhosh*, 2014 AIR (Del) 121:2014(59)PTC 323, *S Mahalingam v Vasam Publication Pvt Ltd*, 3013-1-LW 776, *Visakha Chemical v Mala Ram*, 2006, (32) PTC 441 (del).

³*NitinSethi v. Frontier Biscuit Factory Pvt. Ltd.*, 2007(34)PTC 78 (Del)

⁴AIR 1995 HP 15:1994(2) Shim I.C. 335

⁵Jitendra Kumar Das, “*Law of Copyright*”, (Delhi: PHI Learning Private Limited Delhi, 2015), p.186

⁶MIPR 2011 (2) 303:2011(48) PTC 49 (Del)

The traditional concept of the copyright has undergone a drastic change. Earlier, the law relating to copyright was meant to encourage the original literary, books and also to help the underprivileged authors. However, due to the advent of new technologies, its scope has extended and expanded manifolds. Copyright has now become part of the business of the big organization specifically in publication industry where the major chunk of money is reaped out of royalties arising out of the licensing and assignment of copyright in the respective works. It is increasingly becoming complex and now laws have to be formulated and adapted every now and then due to the emergence of the virtual world of the Internet.

In the following pages, an attempt will be made to determine the different phases of copyright law that is related to the definition of literary work, work of author, ownership of copyright and rights of copyright owner with special reference to literary works only. But before we go into deeper discussion as to the details of the meaning and concepts involve, it is important to lay down the provisions provided in the Indian Copyright Act, 1957, that brings out the sense of the terms as to what amounts as authorship, ownership of copyright and the copyright owner.

3.2 Statutory Meaning of the Terms

To begin with Section 2(a) of the Indian Copyright Act, 1957 defines adaptation as:

- (i) in relation to a dramatic work, the conversion of the work into a non-dramatic work;
 - (ii) in relation to a literary work or an artistic work, the conversion of the work into a dramatic work by way of performance in public or otherwise;
 - (iii) in relation to a literary or dramatic work, any abridgement of the work or any version of the work in which the story or action is conveyed wholly or mainly by means of pictures, in a form suitable for reproduction in a book, or in a newspaper, magazine or similar periodical;
 - (iv) in relation to a musical work, any arrangement or transcription of the work;
- and

(v) in relation to any work, any use of such work involving its re-arrangement or alteration;

According to Section 2(d) of the Indian Copyright Act, 1957:- Author means -

(i) in relation to a literary or dramatic work, the author of the work;

(ii) in relation to a musical work, the composer;

(iii) in relation to an artistic work other than a photograph, the artist;

(iv) in relation to a photograph, the person taking the photograph;

(v) in relation to a cinematograph film or sound recording, the producer; and

(vi) in relation to any literary dramatic musical or artistic work which is computer-generated, the person who causes the work to be created;

Section 2(ff) of the Copyright Act, 1957:-Communication to the Public means making any work available for being seen or heard or otherwise enjoyed by the public directly or by any means of display or diffusion other than by issuing copies of such work regardless of whether any member of the public actually sees, hears or otherwise enjoys the work so made available. For the purposes of clarification of this clause, communication through satellite or cable or any other means of simultaneous communication to more than one household or place of residence including residential rooms, of any hotel or hostel shall be deemed to be communication to the public;

Section 2 (ffc) of the Copyright Act, 1957:-computer programme 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.

Section 2(m) of the Copyright Act, 1957:-infringing copy means,-

(i) in relation to a literary, dramatic, musical or artistic work, a reproduction thereof otherwise than in the form of a cinematographic film;

- (ii) in relation to a cinematographic film, a copy of the film made on any medium by any means;
- (iii) in relation to a sound recording, any other recording embodying the same sound recording, made by any means;
- (iv) in relation to a programme or performance in which such a broadcast reproduction right or a performer's right subsists under the provisions of this Act, the sound recording or a cinematographic film of such programme or performance, if such reproduction, copy or sound recording is made or imported in contravention of the provisions of this Act;

Section 2(o) of the Copyright Act, 1957:-Literary works-includes computer programs, tables and compilations, including computer databases.

Section 2(y) of the Copyright Act, 1957:-work- means any of the following works, namely:—

- (i) a literary, dramatic, musical or artistic work;
- (ii) a cinematograph film;
- (iii) a sound recording;

Section 2(z) of the Copyright Act, 1957 (z):- work of joint authorship- means a work produced by the collaboration of two or more authors in which the contribution of one author is not distinct from the contribution of the other author or authors.

Section 3 of the Copyright Act, 1957:- Meaning of publication-

For the purposes of this Act, “publication” means making a work available to the public by issue of copies or by communicating the work to the public.

Section 5 of the Copyright Act, 1957:- When work deemed to be first published in India.

- For the purposes of this Act, a work published in India shall be deemed to be first published in India, notwithstanding that it has been published simultaneously in some other country, unless such other country provides a shorter term of copyright for such

work; and a work shall be deemed to be published simultaneously in India and in another country if the time between the publication in India and the publication in such other country does not exceed thirty days or such other period as the Central Government may, in relation to any specified country, determine.

Section 6 of the Copyright Act, 1957:- Certain disputes to be decided by Copyright Board-If any question arises,-

(a) whether a work has been published or as to the date on which a work was published for the purposes of Chapter V, or

(b) whether the term of copyright for any work is shorter in any other country than that provided in respect of that work under this Act, it shall be referred to the

Copyright Board constituted under section whose decision thereon shall be final:

Provided that if in the opinion of the Copyright Board, the issue of copies or communication to the public referred to in section 3 was of an insignificant nature it shall not be deemed to be publication for the purposes of that section.

Section 13 of the Copyright Act 1957:-Works in which copyright subsists:-

(1) Subject to the provisions of this section and the other provisions of this Act, copyright shall subsist throughout India in the following classes of works, that is to say,-

(a) original literary, dramatic, musical and artistic works;

(b) cinematograph films; and

(c) sound recording.

(2) Copyright shall not subsist in any work specified in sub-section (1), other than a work to which the provisions of section 40 or section 41 apply, unless,-

(i) in the case of a published work, the work is first published in India, or where the work is first published outside India, the author is at the date of such

publication, or in a case where the author was dead at that date, was at the time of his death, a citizen of India;

(ii) in the case of an unpublished work other than work of architecture, the author is at the date of the making of the work a citizen of India or domiciled in India; and

(iii) in the case of a work of architecture, the work is located in India.

Section 17 of the Copyright Act, 1957:-First owner of copyright.-Subject to the provisions of this Act, the author of a work shall be the first owner of the copyright therein.

Provided that-(a) in the case of a literary, dramatic or artistic work made by the author in the course of his employment by the proprietor of a newspaper, magazine or similar periodical under a contract of service or apprenticeship, for the purpose of publication in a newspaper, magazine or similar periodical, the said proprietor shall, in the absence of any agreement to the contrary, be the first owner of the copyright in the work in so far as the copyright relates to the publication of the work in any newspaper, magazine or similar periodical, or to the reproduction of the work for the purpose of its being so published, but in all other respects the author shall be the first owner of the copyright in the work;

(b) subject to the provisions of clause (a), 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, in the absence of any agreement to the contrary, be the first owner of the copyright therein;

(c) in the case of a work made in the course of the author's employment under a contract of service or apprenticeship, to which clause (a) or clause (b) does not apply, the employer shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein;

(cc) in the case of any address or speech delivered in public, the person who has delivered such address or speech or if such person has delivered such address or speech

on behalf of any other person, such other person shall be the first owner of the copyright therein notwithstanding that the person who delivers such address or speech, or, as the case may be, the person on whose behalf such address or speech is delivered, is employed by any other person who arranges such address or speech or on whose behalf or premises such address or speech is delivered;

(d) in the case of a Government work, Government shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein;

[(dd) in the case of a work made or first published by or under the direction or control of any public undertaking, such public undertaking shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein.

Section 18 of the Copyright Act, 1957:- Assignment of copyright.

(1) 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.

(2) Where the assignee of a copyright becomes entitled to any right comprised in the copyright, the assignee as respects the rights so assigned, and the assignor as respects the rights not assigned, shall be treated for the purposes of this Act as the owner of copyright and the provisions of this Act shall have effect accordingly.

(3) In this section, the expression "assignee" as respects the assignment of the copyright in any future work includes the legal representatives of the assignee, if the assignee dies before the work comes into existence.

Section 19 of the Copyright Act:-Mode of assignment.-

(1) 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.

(2) 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.

(3)The assignment of copyright in any work shall also specify the amount of royalty payable, if any, to the author or his legal heirs during the currency of the assignment and the assignment shall be subject to revision, extension or termination on terms mutually agreed upon by the parties.

(4)Where the assignee does not exercise the rights assigned to him under any of the other subsections of this section within a period of one year from the date of assignment, the assignment in respect of such rights shall be deemed to have lapsed after the expiry of the said period unless otherwise specified in the assignment.

(5)If the period of assignment is not stated, it shall be deemed to be five years from the date of assignment.

(6)If the territorial extent of assignment of the rights is not specified, it shall be presumed to extend within India.

(7)Nothing in sub-section (2) or sub-section (3) or sub-section (4) or sub-section (5) or sub-section (6) shall be applicable to assignments made before the coming into force of the Copyright(Amendment) Act, 1994.

Section 19A of the Copyright Act, 1957:-Disputes with respect to assignment of copyright.-

(1) If an assignee fails to make sufficient exercise of the rights assigned to him, and such failure is not attributable to any act or omission of the assignor, then, the Copyright Board may, on receipt of a complaint from the assignor and after holding such inquiry as it may deem necessary, revoke such assignment.

(2) If any dispute arises with respect to the assignment of any copyright the Copyright Board may, on receipt of a complaint from the aggrieved party and after holding such inquiry as it considers necessary, pass such order as it may deem fit including an order for the recovery of any royalty payable:

Provided that the Copyright Board shall not pass any order under this sub-section to revoke the assignment unless it is satisfied that the terms of assignment are harsh to the assignor in case the assignor is also the author:

Provided further that no order of revocation of assignment under this sub-section, be made within a period of five years from the date of such assignment.

Section 51 of the Copyright Act, 1957:-infringement of Copyright. -Copyright in a work shall be deemed to be infringed-

(a) when any person, without a licence granted by the owner of the copyright or the Registrar of Copyrights under this Act or in contravention of the conditions of a licence so granted or of any condition imposed by a competent authority under this Act-

(i) does anything, the exclusive right to do which is by this Act conferred upon the owner of the copyright, or

(ii) permits for profit any place to be used for the communication of the work to the public where such communication constitutes an infringement of the copyright in the work, unless he was not aware and had no reasonable ground for believing that such communication to the public would be an infringement of copyright; or

(b) when any person-

(i) makes for sale or hire, or sells or lets for hire, or by way of trade displays or offers for sale or hire, or

(ii) distributes either for the purpose of trade or to such an extent as to affect prejudicially the owner of the copyright, or

(iii) by way of trade exhibits in public, or

(iv) imports into India, any infringing copies of the work

Provided that nothing in sub-clause (iv) shall apply to the import of one copy of any work for the private and domestic use of the importer. For the purposes of this section, the reproduction of a literary, dramatic, musical or artistic work in the form of a cinematograph film shall be deemed to be an “infringing copy”.

3.3 Scope and Ambit of Definition of Indian Copyright Act, 1957

As discussed above that both the Berne Convention, 1886, and the Copyright Act, 1957 provided a wide but abstract definition of “literary work”. This wide definition of literary work encouraged the court to include mundane compilation of information. Therefore, the Indian Courts have already ruled that the inclusive definition of literary work in the Copyright Act, 1957 enlarges its scope to include all works expressed in writing whether they have any literary merit or not. For copyright to subsist in a literary work, it must be more than *de minimis*. Single word will not attract copyright protection.

For example in *Exxon Corporation v. Exxon Insurance Consultants International Ltd.*⁷, the plaintiff was a multinational oil company. In this case, it decided to choose a new corporate name. The plaintiff contended that the word “Exxon”, being first used by it, was original. It was literary because it was expressed in letters and that it was a work, being the result of considerable research and effort. Therefore, the plaintiff argued that the word “Exxon” was an “original literary work”. However, it was held that the word “Exxon” does not qualify as a literary work. Since “Exxon” is both original, being an invented word, and conveys information about the source of the goods to which it applies, it is arguable that the “Exxon” decision was actually taken on public interest grounds. Thus, we can see from the above case that there has been a long-standing judicial reluctance to endow single words with copyright protection largely because simple words or phrases as the basic building blocks of language should be available for public use. Also, if words have commercial value, such as “Exxon” itself does, they may be protected as trademarks or by an action in passing-off, and dual protection would be undesirable.

In other instances, for example, the High Court of Delhi held that only slogans like *YehDil Mange More* being trivial does not constitute a subject matter of protection as “original literary work”.⁸ However, in other instances like the *Enercon Systems Pvt. Ltd. v Registrar of Copyright*⁹ and *Kamdhenu Ispat Ltd v. Registrar of Copyright*¹⁰ the Copyright Board misread the judgment and ordered that slogans were copyrightable. But again, the High Court of Delhi in *Godfrey Phillips India Ltd v Dharampal Satyapal Ltd*¹¹ held that the slogan “Shauq Badi Cheez Hai” being combination of common words would not fall the scope of “Artistic or literary work” under the Copyright Act, 1957. The slogan “Shauq Badi Cheez Hai” does not appear to be an outcome of great skill, inasmuch as, it uses the short stereo type combination of words. Thus, this judgment serves as a reverting back to the earlier cases where it affirms the earlier decision of not

⁷ (1981) 3 All ER 241

⁸ *Pepsi Co. Inc. v. Hindustan Coca Cola*, 94(2001) DLT 30

⁹ 2008 (37) PTC 599 (CB)

¹⁰ 2010 (44) PTC 345 (CB)

¹¹ (2012) 191 DLT 109:2012 (51) PTC 251 (Del)

granting copyright to simple combination of common words as they are not copyrightable.

In fact, both the slogans, that is “Shauq Badi Cheez Hai” and “swad Badi Cheez Hai” are commonly spoken in Hindi language in day-to-day life. Therefore, the slogans are not copyrightable. Further in *Macmillan v. Cooper* case¹² it was held that copyright could exist in notes to North’s translation of Plutarch’s life of Alexander. In this case, the Privy Council also said that there was not a sufficient investment of knowledge, judgment, labour or literary skill to entitle copyright in the text. At the same time Privy Council also refused to characterize both the appellants and respondents work as “abridgments”. Copyright of certain passages or reduction of bulk would not, by itself, constitute abridgment. For, a true abridgment is a literary work in its own right. To constitute an abridgment, it was held that there should be “a statement designed to be complete and accurate of thoughts, opinions and ideas” of the author in the “much more compressed language of the abridger”. Furthermore, the court said that—

- (i) to constitute a true and equitable abridgment, the entire work must be preserved in its precise import and exact meaning, and then act of abridgment is an exertion of the individuality employed in moulding and transferring a large work into a small compass and therefore rendering it less expensive and more convenient both to the time and use of the reader.
- (ii) Independent labour must be apparent and the restriction of the size of the work by copying some of its parts and omitting others confers no title to the authorship, and the result will not be an abridgment.
- (iii) To abridge in the legal sense of the word is to preserve the substance, the essence of the work in language suited to such a purpose, language substantially different from that of the original.
- (iv) to make such an abridgment requires the exercise of mind, labour skill and judgment brought into play and the result is not mere copying.

¹² AIR 1924 PC 75

(v) Therefore, the literary taste and skill needed to compile properly and effectively is important. A simple process of arranging and selecting is not important enough. One may have borrowed much of the material from others, but if they are combined in a different manner it would qualify as original for in these efforts there is manifestation of skills. Thus, one has copyright of them.

Analogously, it was held in *Macmillan v Suresh Chandra Deb*¹³ case that the copyright existed in selection of songs and poem in Palgrave's Golden Treasury. Copyright in selection may exist when there is evidence that the author has done "extensive reading, careful study and comparison" and has exercised "taste and judgment in selection". This is a more certain test than the other enumerated cases, namely, that two men may make same selection but that it "must be by resorting to the original author". As compilation, Indian courts have said that a compilation which may be derived from "a common source falls within the ambit of literary work". Only similarity between two compilations would not automatically constitute infringement. Head notes in law reports have posed problems in India as elsewhere. However, in this context, Indian courts have said them to be copyrightable, even though in many cases the substance of the head notes does no more verbatim reproduce certain passages from the texts of judicial decision.¹⁴ However, in *Eastern Book Company v. B.D. Modak*¹⁵ case, the Supreme Court held that judicial pronouncements of the apex court being in public domain, its reproduction or publication would not infringe copyright.

Finally, the determining standards of *Macmillan v. Cooper*¹⁶ and *Macmillan v Suresh Chandra Deb*¹⁷ continue to guide the assessment of how far copyright can exist in works of this nature which manifest the vanishing point of originality. The question is whether a translation of a literary work is "literary work" or not? The word "translation" has not been defined in the Copyright Act, 1957. According to Black's Law Dictionary

¹³ ILR (1890)17 Cal. 951

¹⁴ *V Govindam v. E.M. Gopalkrishna Kone*, AIR 1955 Mad. 391

¹⁵ AIR 2008 SC 809: (2008) 1 SCC 1

¹⁶ AIR 1924 PC 75

¹⁷ ILR (1980)17 Cl. 951

the term “translation” means “the reproduction in one language of a book, document or speech in another language.”

Oxford Dictionary define the term “translate” as meaning to interpret, explain, also “to express one thing in term of another” and “translation” means the action or process of turning from one language into another; also the product of this, a version in a different language, the expression or rendering of something in another medium or form, transformation, alteration or change. In contrast, the language of the Act might suggest a laudable policy of promoting wider diffusion of Indian works in one language into other Indian languages, a consideration that might have appeared distinctive to India as compared with the United Kingdom. There might also have been the desire to promote the growth of publication industry in numerous Indian languages. Therefore, court said that a translation of literary work is itself a literary work, if it is original and the author has expended sufficient labour and skill on it then he is entitled to copyright protection.¹⁸

Further, court said that if copyright subsists in the original work, then reproduction or production of the translation without the consent or licence of the owner of the copyright in the original will constitute infringement. Therefore, in *Barbara Taylor Brodford v. Sahara Media Entertainment Ltd*¹⁹ case, the court held that translation of a work into another language can be an infringement. However, there will be no copyright in historical fact. A book on history is designed to convey information to the readers. There can be no copyright in the information. But, if the manner of its presentation is unique to its author then it is an “original literary” work. As, in *Ravencraft v. Herbert*²⁰ case, the issue was related to whether historical fact is copyrightable. In this case court held that a historical work is not to be judged by precisely the same standard as that of a work of fiction. Further, in this case, court said that historical work would have another purpose as well, to add to knowledge possessed by the reader and in the process to increase the sum total of human experience and understanding. An intention must be attributed to the author of a historical work that the information thereby imparted may be used by the reader, because knowledge would become sterile if it could not be applied.

¹⁸ *Blackwood v Parasuraman*, AIR 1958 Mad 410

¹⁹ (2004) ILR 1 Cal 15:2004 (28) PTC 474

²⁰ 1980 RPC 193

Therefore, it is reasonable to suppose that the law of copyright will prohibit the wider use to be made of a historical work. However, the knowledge build upon an historical work can be extracted. Such an extraction of knowledge from historical work can claim copyrighting in itself.

In another instance, *Agarwala Publishing House v. Board of High Secondary and Intermediate Education*²¹ case, the issue was whether question papers do constitute “original literary” work. With reference to this, a Gazette notification that the copyright in the question papers prepared for the examinations was vested in the Board of High Secondary and Intermediate Education and without the permission of the Board, no one can publish the question papers was also challenged. In this case, the petitioner, who was a publisher, argued that copyright could not be claimed in question papers as it was not an “original literary” work. The High Court of Allahabad said that “the literary works referred to in section 13 of the Copyright Act are not confined to works of literature in the commonly understood sense, but must be taken to include all works expressed in writing, whether they have any literary merit or not. This becomes clear from the definition in section 2(o) of the Act, which states that literary work includes tables and compilations. And the word original used in section 13 does not imply any originality in ideas but merely means that the work in question should not be copied from some other work but should originate from the author, being the product of his labour and skill. Thus, keeping this view in hand, the High Court of Rajasthan in *Fateh Singh Mehta v. O.P. Singhal*²² case held that “literary work” includes “dissertation and research thesis” submitted by a student.

Moreover, several courts in India have held that copyright can subsist in law books and reports, gazettes, grammar books, almanacs, almanacs and encyclopedias, guide books and compilations²³, dictionaries²⁴, examination papers²⁵ ready-reckons of prices of commodities at given rate of mathematical calculations²⁶, catalogue²⁷, letters²⁸, and

²¹ AIR 1967 ALL 91

²² AIR 1990 Raj. 8:1989 WLN (UC) 522

²³ *V. Govindaam v. E.M. GopalkrishnaKone*, AIR 1955 Mad. 391

²⁴ *Deepak v. The Forward Stationary Mart* (1981) PTC 186.

²⁵ *Jagdish Prasad Gupta v. Parmeshwas Prasad Singh*, AIR 1966 Pat. 33: 1966 Cri. LJ 54

²⁶ *ShyamLalPaharia v. Gaya Prasad Gupta*, AIR 1971 ALL 192

works of religious preacher or compilation of discourse or teaching.²⁹ Therefore, all original work irrespective of its literary merit can be protected as a literary work under the Copyright Act 1957.

3.4 Definition of Literary Work

The term “literary work” comes under the subject matter of copyright and it lay down that such work should be an original literary work. However, the Copyright Act, 1957 does not define “literary work” except that in section 2(o) it states that “it includes computer program, tables and compilations including computer literary database”. The Copyright Act defines “computer” and “computer programme” under section 2(ffb) and 2(ffc). However, it does not define “computer database”, although the Information Technology Act, 2000 defines the term “computer database”. However, the Berne Convention does provides but a collective definition of the term “literary and artistic work” as-

it shall include every production in the literary, scientific and artistic domain, whatever may be the mode or form its expression, such as books, pamphlets, and other writing lectures, addresses, sermons and other works of the same nature; and entertainments in dump show; musical composition with or without works; cinematographic works to which are assimilated works expressed by a process analogous to cinematography; works of drawing, painting, architecture, sculpture, engraving and lithography; photographic works to which are assimilated works expressed by a process analogous to photography; works of applied art; illustrations, amp, plans, sketches and three- dimensional works relative to geography, topography, architecture or science.³⁰

According to US Copyright Act, “literary work” is defined as-

²⁷*Lamba Brothers Pvt. Ltd. v. Lamba Brothers*, AIR 1993 Delhi 347: 1994 (28) DRJ 168

²⁸ *Walter v. Lane* (1900) AC 539

²⁹ *Satsang v. Kiran Chandra*, AIR 1972 Cal 533: (1974) ILR 1 Cal 498

³⁰ Article 2 of the Berne Convention for the Protection of Literary and Artistic Works, 1886

literary work are works, other than audiovisual works, expressed in words, numbers, or other verbal or numerical symbols or indicia, regardless of the nature of the material objects, such as books, periodicals, manuscripts, phonorecords, film, tapes, disks, or cards, in which they are embodied.³¹

According to the dictionary³² the meaning of the word “literary” is, “well versed in or connected with literature”. Therefore, a literary work should give some element of either information and instruction or pleasure in the form of literary enjoyment.³³ However to qualify as literary work, there is certainly no need for the work to have any intrinsic literary merit. For illustration, examination papers, tables, compilations and computer programs are literary works. Furthermore, Peterson, J. said that any work that is expressed in print or writing irrespective of the question whether the quality or style is of high literary work.³⁴ Indian court have also accepted this view in *RupendraKashyap v Jiwan Publishing House*³⁵, and held that the literary merit or quality is not a pre-requisite for a work to be literary work under section of 2(o) of the Copyright Act, 1957.

Literary works are of two kinds such as first (a) primary or prior works. These are literary works not based on any existing subject matter. Therefore, it would be called as primary or prior works and second (b) secondary or derivative works. These are literary works based on existing subject matter. Since such works are based on existing subject matter therefore they are known as derivative works or secondary works.³⁶ Both works have to be original according to section 14 of the Copyright Act, 1957.

³¹<http://www.copyright.gov/title17/92chap1.html#101> accessed on 21/04/2016

³² Bernard S.Cayne, “*The New Lexicon Webster’s Dictionary of the English Language*”, (Lexicon Publication, 1957)

³³Jitendra KumarDas, “*Law of Copyright*”, (Delhi: PHI Learning Private Limited Delhi, 2015), p.129

³⁴ *University of London Press Ltd v. University Tutorial Press Ltd*, (1916) 2 Ch 601 at 608

³⁵ 1996 (38) DRJ 81: 1996 PTC 349 (Del)

³⁶*Eastern Book Company v. B.D. Modak*, AIR 2008 SC 809: (2008) 1 SCC 1.

3.5 Compilation of Literary Work

Prior to the Copyright Amendment 1994, courts in several cases settled the scope and ambit of copyright protection in case of a compilation of literary work. The question whether a plaintiff is entitled to copyright depends on whether it is an “original literary” work.³⁷ As in *Ladbroke (Football) v. William Hill (Football) Ltd*³⁸ case, it was held that the words “literary work” includes a compilation. In *University of London Press Ltd. v. University Tutorial Press Ltd*³⁹ case further it was said that these words are used to describe any work which can be expressed in print or writing irrespective of whether it has any excellence of quality or style of writing. The word original does not demand original or inventive thought, however, only that the work should not be copied but should originate from the author.

Now question arises, whether a work in the nature of a compilation is original? In this regard, it has to be remembered that many compilations may have nothing original in their parts, yet the sum total of the compilation may be original. In such cases, the courts have looked to see whether the compilation of the not-original material called for work or skill or expense. If it did, it is entitled to be considered original and to be protected against those who wish to steal the fruits of the work or skill or expense by copying it without taking the trouble of compiling it themselves. Hence, the protection given by such copyright is in no sense a monopoly, for it is open to a rival to produce the same result if he chooses to evolve it by his own labour.⁴⁰

Therefore, in *H. Black Lock and Co. Ltd. v. C. Arthur Pearson Ltd*⁴¹ case it has been held that catalogues, directories are held to be original and to acquire copyright if the work that goes into their making has been enough. Further, it was said that those works are to have no copyright, where the work of the compilation was not “substantial” but “negligible”.⁴² The arrangement of the material is one of the factors to be considered.

³⁷Pillai, K.N. Chandrasekharan, “Copyrightability of Supreme Court Judgment” *Journal of the Indian Law Institute* Vol.50, (2008), pp. 94-97

³⁸ 1964 WL 19516(HL): [1964] 1 All E.R. 465

³⁹[1916] 2 Ch. 601, 608.

⁴⁰ *Kelly v. Morris* (1886) L.R. 1 Eq. 697, 701

⁴¹ [1915] 2Ch. 376: 31 T.L.R. 526

⁴² *G.A. Cramp and Sons Ltd. v. Frank Smythson Ltd* , [1944] A.C. 329

The court further said that there was no evidence that any of these tables was composed specially for the respondent's diary. There was no feature in them which could be pointed out as novel or specially meritorious or ingenious from the point of view of the judgment of skill of the compiler. It was not suggested that there was any element of originality or skill in the order in which the tables were arranged.

Therefore, in each case, it is a question of degree whether the labour or skill or ingenuity or expense involved in the compilation is enough to warrant a claim to originality in a compilation. As in *Macmillan and Co. v. K. and J. Cooper*⁴³ case, court said that an abridgement of an author's work which in fact was not an abridgment but a collection of detached passages from the author's work joined together, was held not to be an abridgement of the original work of the author but only a selection of scripts taken from the author's work printed in the form of a narrative.

The Judicial Committee Observed that it is the produce of the labour, skill and capital of one man which must not be appropriated by another, not the elements, the raw, material if one may use the expression, upon which the labour and skill and capital of the first have been expended. To secure copyright for this product it is necessary that the labour, skill and capital expended should be sufficient to impart to the product some quality or character which the raw material did not possess, and which differentiates the product from the raw material.

In *G.A. Cramp and Sons Ltd v. Frank Smythson Ltd*⁴⁴ case it was held that in order to construe infringement of a man's copyright, there must be sufficient infringement of the work. In this case, plaintiff alleged that the copyright in his work had been infringed by the second defendant in his publication entitled "Law book Company's Commentaries of Law and Practice of Partnership and Private Companies in India". The court further observed that "several persons may originate similar work in the same general form without anyone infringing the law in regard to copyright. The infringement comes in only when it can be shown that someone has, instead of utilizing the available sources to originate his works, appropriated the labour of another by resorting to a slavish

⁴³ AIR 1924 PC 75

⁴⁴ [1944] A.C. 329

copy of mere colourable imitation thereof. The “animus furandi”, that is an intention to take from another for purposes of saving labour, is one of the important ingredients to be found against a defendant before he can, in a suit under the copyright Act, 1957 be demnified.

In another case, that of *Mohini Mohan Singh v. Sitanath Basak*⁴⁵ case, the plaintiff claimed that the defendant had infringed his copyright of a book titled as “Adarshalipi-o-Saral-Barna-Parichaya” which was published in 1902. In this case, it was observed that the question whether a colourable imitation one had made of the work of another must necessarily be a question of fact. A mere similarity is not enough as it may be due to chance that both works have taken from a common source. Therefore, court held that the defendants have copied from the plaintiff’ book.

On the issue of compilation work, courts have examined various cases and have developed several principles enunciated in these cases. These cases are *Waterlow Directors Ltd. v. Reed Information Services Ltd*⁴⁶, *William Hill (Football) Ltd v. Ladbroke (Football)*⁴⁷, *Khemraj Shrikrishandas v. Garg and Co.*⁴⁸, *Shyam Lal Paharia v. Gaya Prasad*⁴⁹. The principles developed by the courts are (i) A compilation which may be derived from a common source falls within the ambit of literary wok; (ii) a work of compilation of nature similar to that of another will not by itself constitute an infringement of the copyright of another person’s work written on the same pattern; (iii) the question whether an impugned work is a colourable imitation of another person’s work is always a question of fact and has to be determined from the circumstances in each case; (vi) the determining factor in finding whether another person’s copyright has been infringed is to see whether the impugned work is a slavish imitation and copy of another person’s work or it bears the impress of the author’s own labour and exertions.

From the statements of the authorities and the trend of the judicial opinion, it is clear that a compilation of previous works developed by any one by devoting time,

⁴⁵ AIR 1954 ALL 570

⁴⁶ 1992 FSR 409

⁴⁷ 1980 RPC 539

⁴⁸ AIR 1975 Delhi 130:ILR 1975 Del 251

⁴⁹ AIR 1971 All 182

money, labour and skill although the sources may be commonly situated, amounts to a “literary work” of the author who has a copyright. Therefore, a compilation derived from a common source falls within ambit of literary work. A work of compilation of a nature similar to that of another will not by itself constitute an infringement of the copyright of another person’s work written on the same pattern.

3.6 Provisions for Derivative Literary Work

As it has been discussed literary work are of two kinds. Primary or prior work and Secondary or derivative work. In addition to this, as can be seen from the *Eastern Indian Motion Pictures Association v. Indian Performing Rights Society Ltd.*⁵⁰ Case, Calcutta High Court held that the derivative work comes under “literary work” and derivative works are those works which are based on existing subject matter. Now a question can be posed as whether a new copyright is created in a derivative work? In this context, the courts have clearly provided judgments that copyright do subsist in such work. The creation of new right depends upon several factors and they could be judged on the basis of skill, capital and labour expended upon it to qualify for copyright protection in the derivative literary work created from the pre-existing material and involve the exercise of independent skill, labour and capital in its creation by the author then would subsist under copyright protection. If it is not the case, copyright would not subsist.⁵¹

The Copyright Act, 1957 does not define the term “derivative work”. Whereas, section 2(y) define the term “work” as inclusive of a literary work, dramatic, musical or artistic work, a cinematograph film, and sound recording. Furthermore, section 2(o) of the Act, define that literary work would be applicable to computer programs, table and compilations including computer database. Now, it is not clear from section 2(y) and Section 2(o) of the Act as to what exactly amounts to derivative work.

⁵⁰ AIR 1974 Cal 257

⁵¹RehanaGobin, “*Borrowing Privileges; How Does (or Should) Copyright Law Define a Derivative Work*”, available at http://cyber.law.harvard.edu/archived_content/events/SignalNoiseBBFINAL.pdf accessed on 22/04/2016

In this context *Supreme Court in Eastern Book Co. v B.D. Modak*⁵² case held that the copy-edited judgment as a derivative work and examined the standard of originality required for the derivative work to be considered for copyright protection. In this case, the appellants were the publishers of a law report by the name “Supreme Court Cases” (SCC) and the respondent was the “Grand Jurix”. The Appellants claimed that respondent had infringed the copyright of their in copy-edited judgment published which were published by them.

According to appellants, their report consists of several inputs to make the judgments user-friendly by correcting the mistakes, adding across references, footnotes, proper paragraph numbering, standardized formatting of the text, verification of the reference etc. These constitute considerable skill, labour and expertise including substantial capital expenditure on infrastructure, staff, equipment, etc. this is sufficient to treat the reported judgment as “original literary work” for copyright protection. Further, it was alleged that the defendants literally copied the copy-edited judgment of the appellant infringing their copyright in the copy-edited judgment. The respondent however argued that there is no copyright protection for the copy-edited judgments since the input is substantial to constitute an “original” literary work. The lower court denied injunction on the ground that the inputs of the appellant is trivial in nature and inadequate to constitute originality to claim copyright protection in the copy-edited judgment.⁵³

Further, continuing with the debate of originality, Supreme Court referred to section 52(1) q of the Copyright Act, 1957 and said that-

The judicial pronouncements of the Apex Court would be in the public domain and its reproduction or publication would not infringe the copyright. That being the position, the copy-edited judgments would not satisfy the copyright merely by establishing amount of skill, labour, and capital put in the inputs of the copy-edited judgments and the original or innovative thoughts for the creativity are completely excluded. Accordingly, original or innovative thought is necessary to establish

⁵² AIR 2008 SC 809: 2008 (1) SCC 1

⁵³ *Eastern Book Co. Navin J. Desai*, 2001 PTC 57 (Del)

copyright in the author's work. To secure a copyright for the judgments delivered by the court, it is necessary that the labour, skill and capital invested should be enough to communicate or impart to the judgment printed in SCC some quality or character which the original judgment does not possess and which differentiates the original judgment from the printed one.

Therefore, the Supreme Court treated the reported judgment of the "SCC" as derivative works. The general principles laid down by the court that seem to be correct that the application of the same to the facts has created confusion. The reason is failure of the court to find out the correct subject matter of protection and the application of the test of originality laid down by it to the subject matter in its totality. Though the court stated in the beginning, without any analysis, that the reported judgments is a "derivative work", it is evident from the observations that the court on many occasions treated it as a "compilation" to determine the standard of originality. It is important to note that though the court quoted from the House of Lord judgment in *Ladbroke (Football) v. William Hill (Football)*⁵⁴ regarding the importance of applying the test of originality to the whole of the work, it is disappointing to note that the same was not applied to the facts of this case. It is equally disappointing to note that the court did not make any sincere effort to determine what constitute a derivative work and whether the reported judgment fell under this category.

In the context of reporting a judgment, the observation of the court is pertinent. It is an admitted position that the report in the Supreme Court Cases (SCC) of the judgments of the Supreme Court is a derivative work in the public domain. It is to be noted that there is no express provision in the Copyright Act, 1957 on the definition of derivative work. In this context, it is worth looking into the Berne Convention of the Protection of Literary and Artistic Work and the existing law in US to find out whether the above classification could be the basis for analysis for treating reported judgments as derivative work of original judgments of the court. As, Article 2(3) of the Berne Convention, 1886 defines a "derivative work" as "translations, adaptations, arrangements

⁵⁴ 91964) 1 WLR 273 (HL)

of music and other alteration of a literary or artistic work shall be protected as original works without prejudice to the copyright in the original work”. From the definition given of the “derivative” in the Berne Convention, it is clear that the obligation is to protect translations, adaptations or other alterations as original work without prejudice to the copyright in the original work.

Moreover, Article 14 of the Berne Convention, 1886 read as;

(1) Authors of literary or artistic works shall have the exclusive right of authorizing:

(i) the cinematographic adaptation and reproduction of these works, and the distribution of the works thus adapted or reproduced;

(ii) the public performance and communication to the public by wire of the works thus adapted or reproduced.

(2) The adaptation into any other artistic form of a cinematographic production derived from literary or artistic works shall, without prejudice to the authorization of the author of the cinematographic production, remain subject to the authorization of the authors of the original works.

(3) The provisions of Article 13 (1) shall not apply⁵⁵. And Article 14*bis* of the Berne Convention, 1886 read as:

(1) Without prejudice to the copyright in any work which may have been adapted or reproduced, a cinematographic work shall be protected as an original work. The owner of copyright in a cinematographic work shall enjoy the same rights as the author of an original work, including the rights referred to in the preceding Article.

⁵⁵Article13(1) of the Berne Convention states that each country of the union may impose for its self reservation and conditions on the exclusive rights granted to the author of a musical work and to the author of any words, the recording of which together with the musical work has already been authorized by the latter, to authorize the sound recording of the musical work, together with such words, if any; but all such reservations and conditions shall apply only in the countries which have imposed them and shall not in any circumstances be prejudicial to the rights of these authors to obtain equitable remuneration which in the absence of agreement, shall be fixed by competent authority.

(2) (a) Ownership of copyright in a cinematographic work shall be a matter for legislation in the country where protection is claimed.

(b) However, in the countries of the Union which, by legislation include among the owners of copyright in a cinematographic work, authors who have brought contributions to the making of the work, such authors, if they have undertaken to bring such contributions, may not, in the absence of any contrary or special stipulation, object to the reproduction, distribution, public performance, communication to the public by wire, broadcasting or any other communication to the public, or to the subtitling or dubbing of texts, of the work.

(c) The question whether or not the form of the undertaking referred to the above should, for the application of the preceding subparagraph (b), be in a written agreement or a written act of the same effect shall be a matter for the legislation of the country where the maker of the cinematographic work has his headquarters or habitual residence. However, it shall be a matter for the legislation of the country of the Union where protection is claimed to provide that the said undertaking shall be in a written agreement or a written act of the same effect. The countries whose legislation so provides shall notify the Director General by means of a written declaration, which will be immediately communicated by him to all the other countries of the Union.

(d) By “contrary or special stipulation” is meant any restrictive condition which is relevant to the aforesaid undertaking.

(3) Unless the national legislation provides to the contrary, the provisions of paragraph (2) (b) above shall not be applicable to authors of scenarios, dialogues and musical works created for the making of the cinematographic work, nor to the principal director thereof. However, those countries of the Union whose legislation does not contain rules

providing for the application of the said paragraph (2) (b) to such director shall notify the Director General by means of a written declaration, which will be immediately communicated by him to all the other countries of the Union.

Therefore, from the above discussion, it is clear that Article 14 and 14bis of the convention also recognizes adaptation of a literary or artistic work into cinematograph film as original work. This is indicated in the definition of derivative work in the copyright law of US. Where section 101 defines derivative work as follows; A work based upon one or more pre-existing works, such as a translation, fictionalization, motion picture version, condensation, or any other in which a work may be recast, transformed or adapted. A work consisting of editorial versions, annotation, elaboration, or other modifications, which, as a whole, represent an original work of authorship, is a derivative work.⁵⁶

These provisions make it clear that a derivative work is based on a “pre-existing work” and not based on an “existing subject matter” as stated by the Supreme Court. It may be noted that the Supreme Court made it clear that there is no copyright protection for the subject matter as such and it is the manner of expression of the subject matter that attracts protection.⁵⁷ Analogously, the existing work must get transformed to be treated as a whole, to form a derivative work.

In this regard, if we analyze the Indian Copyright Act, 1957, we would see the same reflected in section 14 and the related definitions in section 2. Section 14 recognizes the right to make translation, cinematograph film and adaptation of the literary work. It is also made clear that the translated or adapted work will enjoy independent copyright. In case of literary work, it is made clear that this includes conversion into dramatic work by way of performance, abridgment of the work or use of the work involving its re-arrangement or alteration. This is in accordance with the provisions of the Berne Convention. It is clear that to treat a work as a derivative work there must be substantial change in the character of the derivative work based on an existing work.

⁵⁶<http://www.copyright.gov/title17/92chap1.html#101> accessed on 05/05/ 2016

⁵⁷ *R.G. Anand v. Delux Film*, AIR 1978 SC 1613

The transformation, as whole, must be considered to treat it as a derivative works. It is evident that the Supreme Court failed to examine these provisions before it made the broad classification and treated the reported judgment as derivative work. The judgment as reported by the SCC in no way could be treated as a derivative work, since, it is not an adaptation of the original judgments of the court as understood our law. There is no re-arrangement or alteration of the original judgments as envisaged in our Act to make the reported judgment original adapted work or derivative work. It is the failure of the court to examine the content of the derivative work as envisaged in the Berne Convention and incorporated in our law that led to the conclusion that the reported judgments are derivative works.

This also resulted in the court's judgment that wrongly applying the standard of originality and concluding that some changes made in the judgment deserve protection while the other changes do not. The approach is wrong since it is a derivative work the transformation as a whole must be considered to determine whether it is original or not to give independent protection. It is quite unfortunate that the judgment of the Supreme Court resulted in wrong interpretation of the law and it is expected that the court will use the next opportunity to rectify this though one is not sure when this is going to happen given the condition in India,

Guidebooks or textbooks are derivative work by their very nature. Therefore, it will be permissible to publish a guidebook if it qualifies the proper description of a guide book and becomes a derivative work of the author who has produced such guidebook. A derivative work qualifies to become original when such work is a result of skill, labour, capital and a minimum degree of creativity.⁵⁸

3.7 Computer Database

Computer databases are considered as literary work under section 2 (o) of the Copyright Act, 1957. Therefore, in the case *Burlington Home Shopping Pvt. Ltd. v. Rajnish Chibber*⁵⁹, it was held by the court that computer database is protectable as literary work

⁵⁸ *Syndicate of the Press of the University of Cambridge v. Chancellor Masters and Scholars of the University of Oxford*, 185(2011) DLT 346

⁵⁹ (1996) PTR 40 (Del); 61(1995) DLT 6

even when they only involve “Sweat of the Brow” and not creativity and selection skills. In contrast, in *Fiest Publication, Inc. v. Rural Telegraph Co.*⁶⁰ case, US Supreme Court excluded the protection of white pages of a telephone directory on the ground that copyright law only protects works involving creativity, judgment or skill but not labour. However, to qualify for protection as a “literary work”, a program should be original. The Indian courts in several cases have attributed the same meaning to “originality” as under British Law.⁶¹

The term “database” included definition of “literary work” in the Copyright Act by the copyright amendment, 1999. However, the Copyright Act, 1957 does not define database. Prior to the amendment High Court of Delhi had discussed about “database”.⁶² Further, in another *G.A. Cramps and Sons Ltd. v. Frank Smythson Ltd.*⁶³ case, the question posed was whether a data base consisting of compilation mailing address of customers can be the subject matter of a copyright and whether the defendant can be said to have committed infringement of the plaintiff’s copyright. After examining sections 2(o) section 2(y), section 14 and section 17 of the copyright Act, the court held that if the defendant was permitted to make use of plaintiff’s database it was sure to cause an injury to the plaintiff, which would be incapable of being estimated in term of money. The balance of convenience was also on the side of the plaintiff. The court focused on the question whether there was infringement by the defendant or not. It did not deal with the basic question of the requirement of originality for the purposes of extending copyright protection to compilation as literary work.

Subsequently, the Information Technology Act, 2000 was enacted in which section 43 explains the database –

as a representation of information, knowledge, facts, concepts or instructions in text, image, and audio, video that are being prepared or have been prepared in a formalized manner and have been produced by a

⁶⁰ 499 US 340(1991)

⁶¹ *R.G. Anand v. Delux Film*, AIR 1978 SC 1613: (1979) 4 SCC 118.

⁶² *Burlington Home Shopping Pvt. Ltd v. RajnishChibber*, (1996) PTR 40(Del)

⁶³ (1944) AC 329

computer, computer system or computer network and are intended for use in a computer, computer system or computer.⁶⁴

3.8 Exposition of the term Work of the Copyright Act, 1957

To make the copyright law more specific, Section 2(y) of the Act defines the term “work”. Now question arises what is the way of determining an act as a “work” or not? It is a well recognized principle that in determining a “work” for copyright protection there must be some amount of skill, labour and judgment that has been invested for its creation.⁶⁵

Copyright protection subsists in “works” of author fixed in any tangible medium of expression from which they can be perceived, reproduced or otherwise communicated, either directly or with the aid of a machine or device⁶⁶. Therefore, for subsistence of copyright, it must qualify as a “work”. In the case of *Radio Today Broadcasting Ltd v Indian Performing Right Society Ltd*⁶⁷, the Calcutta HC observed that copyright shall subsist in certain classes of works, namely, “original literary, dramatic, musical, and artistic works” and “cinematograph films and sound recording”. A “song” therefore comprises a bundle of works, namely “words or lyrics”, “music or musical compositions”. Whenever a singer performs these aforementioned works and performance is recorded, a sound recording is created. Therefore, lyrics are “literary works”, within the meaning of section 2(o) of the Copyright Act, 1957.

The *G.A. Cramp and Sons Ltd. V Frank Smythson Ltd*⁶⁸ case raised the question whether factual information in table containing information, such as sunrise and sunset constitute “work” for copyright protection? In this case, the Court ruled that the sun does in fact rise, and the moon sets, at the time that has been calculated, and the utmost that a table can do on such a subject is to state the result accurately. Therefore, there is no room

⁶⁴ G. Hughes, “*Copyright and Database, Essay in Computer Law*”, (Australia: Longman Cheshire, Melbourne, 1990), pp. 68-69

⁶⁵ *R.G. Anand v. Delex Films*, AIR 1978 Sc 1613: (1978)4 SCC 118, *Star India Private Ltd v. Leo Burnett(India) Pvt. Ltd.* 2003(2) Bom CR 655:2003(27)

⁶⁶ Jitendra Kumar Das, “*Law of Copyright*”, (Delhi: PHI Learning Private Limited Delhi, 2015), p.187

⁶⁷ 2009(39) PTC 431 (Cal)

⁶⁸(1944) AC 329.

for judgment. However, the creation of a new table or compilation containing exclusively factual information may require a significant amount of work and effort in deriving that information such as scientific observation and measurement. It appears unduly harsh to deny protection against another wishing to copy in information to save himself the trouble and expense of deriving the same information independently, specifically if his object to produce a competing work.⁶⁹ Of course, there may be copyright in the manner in which the information is presented such as in the design and layout of the table itself or in annotations, but that does not protect the information.

It is an often asked question that whether the application of sheer effort alone is enough to provide copyright upon the resulting work. To this effect the US Supreme Court said that “no”⁷⁰, in denying copyright protection to purely factual compilations, lying to rest the “sweat of the brow” doctrine. According to the “sweat of the brow” doctrine, copyright was a reward for the hard work that went into compiling facts. In this case, Court held that the white pages in a telephone directory were not protected by copyright because that section of the directory was the result of effort only and did not need the application of skill and judgment. It was basically a question of arranging names in alphabetical order and including address and telephone numbers. In contrast, “yellow pages” in telephone directories could be copyright material because of the skill and judgment invested in selecting the classification system and facts that other copyright materials such as advertisements were also included.

From the above discussion it can be safely concluded that it would be ridiculous to afford copyright protection to works that are trivial in the extreme or so small as to be entirely insignificant. However, a line has to be drawn separating works that are the proper subject matter of copyright from those that are not. The courts will often, though not always, use the principle *de minimis no curatlex*, that is, that the works which is insufficiently significant to be afforded copyright protection.⁷¹ Where maxim “*de minimis*” means (a) the law does not concern itself with trifles; (b) the law does not

⁶⁹Jitendra Kumar Das, “*Law of Copyright*”, (Delhi: PHI Learning Private Limited Delhi, 2015), p.189

⁷⁰*Fiest Publication Inc. v Rular Telephone Service Co. Inc.*, 499 US 340(1991)

⁷¹Jitendra Kumar Das, “*Law of Copyright*”, (Delhi: PHI Learning Private Limited Delhi, 2015), p.189

regard trifles; and (c) the law cares not for small things⁷². Therefore, applying “*de minimis*” as an adjective and giving it the meaning: trifling, unimportant or insufficient. Thus, the court held that trifling, unimportant or insufficient violation would be treated as minor legal violations. Hence, it would either be non actionable or would be good defence to an action for violation of a legal rights.⁷³

3.9 Exposition of the term “Publication” of the Copyright Act, 1957

The term “publication” is defined under section 3 of the Copyright Act, 1957. Like the meaning of work, the publication of work is another contentious issue as the term “publication” has different meaning in different branches of law. For example, in the context of patent, the court said in *J.K. Ltd. V. Central Board of Direct Taxes*⁷⁴ case, that “publication” means the communication of information, about the invention, to any member of the public who is free in law and equity to use it as he pleases. In this context of defamation, “publication” means communication of the defamatory matter to any person other than defamed.⁷⁵ Therefore, meaning of the term “publication” under the copyright law amounts to making available to the public in terms of issuing of copies or by communicating the work to the public.

From the above discussion it is clear that there are two ways of publishing of a work such as one involves the issue of copies of the work⁷⁶ and the other involves communicating the work to the public. So far as the first manner of publication is concerned, to “issue of copies of the work” to the public means, it follows that a work cannot be orally published, and there can be no publication of the work wherever there exists a single example only.⁷⁷ The writer of a literary work may permit his manuscript to be viewed or read by any number of persons without thereby publishing the work. Therefore, the issue of copies for publication is publication of such copies.

⁷² Ibid p. 190

⁷³ *India TV Independet News Service Pvt. Ltd. V. Yashraj Films Pvt. Ltd.*, MIPR 3013(1) 104:3013 (53)PTC 586(Del)

⁷⁴ (1979) ILR Delhi 407: (1979) 118 ITR 312(Del).

⁷⁵ *Sukhdeo v. Emperor*, AIR 1933 All 210: (1933) ILR 55 All 252

⁷⁶ *Associated Publishers v. K. Bashyam*, 1960-73-LW541:(1962) 1 MIL 258

⁷⁷ Jitendra KumarDas, “*Law of Copyright*”, (Delhi: PHI Learning Private Limited Delhi, 2015), p.190

In India, when the right is given to foreign book company under an exclusive license what matters is the issue of copies in India for the purposes of infringement. Whether they have already been published lawfully in America is of little consequence. In *Penguin Books Ltd., England v. Indian Book Distributors*⁷⁸ case, the court ruled that the importation, sale and public distribution of American editions constitute infringement of copyright of exclusive licensees.

Section 6 of the Act, has authorized the Copyright Board to decide if there has been sufficient quantities of the work issued to the public or not. Further, it also provides that if any question whether the copies of works are issued to the public in a manner sufficient to satisfy the reasonable requirement of the public or whether the records are issued to the public in sufficient quantities, it shall be decided finally by the Copyright Board constituted under the section 11 of the Copyright Act.⁷⁹

The Second way of publishing a work is by communicating the work to the public. As section 2(ff) of the Copyright Act defined “communication of the public” means making any work available for being seen or heard or otherwise enjoyed by the public directly or by any means of display or diffusion other than by issuing copies of such works regardless of whether any member of the public actually sees, heard or otherwise enjoys the work so made available. For the purposes of this clause, communication though satellite or cable or any other means of simultaneous communication to more than one household or place of residence including residential rooms of any hotel or hostel shall be deemed to be communication to the public.⁸⁰ As Bombay High Court said that perusal of the definition “communication to the public” under section 2(ff) shows that making any work available so that work is seen or heard by

⁷⁸AIR 1985 Delhi 29:26(1984) DLT 316

⁷⁹ Section 11 of the Copyright Act, 1957:-Copyright Board. - (1) As soon as may be after the commencement of this Act, the Central Government shall constitute a Board to be called the Copyright Board which shall consist of a Chairman and not less than two or more than [fourteen] other members.

(2) The Chairman and other members of the Copyright Board shall hold office for such period and on such terms and conditions as may be prescribed.

(3) The Chairman of the Copyright Board shall be a person who is, or has been, a Judge of a High Court or is qualified for appointment as a Judge of a High Court.

(4) The Registrar of Copyrights shall be the Secretary of the Copyright Board and shall perform such functions as may be prescribed.

⁸⁰Jitendra Kumar, Das, “*Law of Copyright*”, (Delhi: PHI Learning Private Limited Delhi, 2015), p.191

the public by means of display or diffusion amounts to communication to the public.⁸¹ In other words, broadcasting of work is communication to the public. However, the phrase “communication to the public” includes other means of communication than broadcasting.

In *Super Cassettes Industries Ltd. V. Board of Film Certification*⁸² case the Delhi High Court has explained the concept of “communication to the public” progressively and also said that the publishing of a video film in respect of any work would take place when such work is made available to the public for being seen, heard or otherwise enjoyed by means of display or diffusion “regardless of whether any member of the public actually sees, hears or otherwise enjoys the work so made available”. Besides, exhibition through satellite TV or cable or simultaneous communication to more than one user including residential room of any hotel or hostel shall be deemed “to be communication to the public”. This is a marked change from the understanding of what could tantamount to “exhibition to the public”. It is no longer confined to a place where the public is admitted, like in a cinema hall but it would include residential rooms of any hotel or hostel. Resultantly, a whole new dimension has been added to the legislative understanding of “public exhibition”. The first publication of a work is another important criterion for determining the subsistence of copyright. Therefore, copyright subsists in any work only if the work is first published in India or where it is first published outside India the author was a citizen of Indian at the time of publication. Section 5 of the Copyright Act, 1957 makes provisions for cases when a work is deemed to be first published in India.⁸³

⁸¹*Phonographic Performance Ltd. V. Music Broadcast Pvt. Ltd*, 2004(3) ALLMR 196:2004(29) PTC 282 (Bom).

⁸² MIPR 2010(3)342:2011(46) PTC 1(Del).

⁸³Section 5 of the Copyright Act, 1957 - For the purposes of this Act, a work published in India shall be deemed to be first published in India, notwithstanding that it has been published simultaneously in some other country, unless such other country provides a shorter term of copyright for such work; and a work shall be deemed to be published simultaneously in India and in another country if the time between the publication in India and the publication in such other country does not exceed thirty days or such other period as the Central Government may, in relation to any specified country, determine.

3.10 Exposition of the term “Author” of the Copyright Act, 1957

As mentioned in the above discussion, the term “author” is defined under section 2(d) of the Copyright Act, 1957. A work of an “author” is protected under section 2(d) of the Copyright Act, 1957 subject to fulfillment of condition laid down in the Act. It is also a matter of fact that time and again the scope and ambit of the copyright protection has been expanding. Hence, the meaning of the word “author” has also expanded.⁸⁴ Keeping in view of this phenomenon, the High Court Madras held that the definition of copyright was enlarged to include the exclusive right to communicate works by radio-diffusion, and separate copyright was recognized in a cinematograph film apart from its various components, namely, story, music, etc. Section 2(d) of the Act defines an author, in relation to a cinematograph film, as the owner of the film at the time of its compilation.

As the Delhi High Court held that section 13 of the Copyright Act, 1957 provides a clue as to how a copyright is acquired.⁸⁵ *Inter alia*, it indicates that copyright subsist throughout India in the case of literary, dramatic, musical and artistic works. Therefore, emphasis is on the originality. Thus, copyright can vest in that artistic work which is original. Section 17 of the Act discusses that the author of the work shall be the first owner of the copyright therein and there is a relation between the definition of the author under section 2(d) and first owner under section 17 of the Copyright Act, 1957. Therefore, Delhi High Court said that the definition of word “author” and section 17 of the Act lay emphasis on the fact that copyright vests in that person who is the original creator of the work.⁸⁶

In some cases, it was not possible or difficult as to determine who the original creator of the work was. Therefore, in such cases obviously the person who got registered earlier or who is established to be the earlier user can be presumed to be the author or original creator of the artistic work. For example, in *Jagdish Prasad Gupta v. Parmeshwar Prasad Singh*⁸⁷ case, the High Court of Patna held that person who sets the question paper shall be author of work and is the first owner of copyright as per provision

⁸⁴Jitendra Kumar Das, “*Law of Copyright*”, (Delhi: PHI Learning Private Limited Delhi, 2015), p.192

⁸⁵*Visakha Chemicals v. Mala Ram* 2006 (32) PTC 441(del)

⁸⁶*Glaxo Orthopedic v. SamratPharma* AIR 1984(Delhi) 265:1984 RLR 291

⁸⁷ AIR 1966 Pat 33: 1966 Cri LJ 54.

of law. In this case, the Court observed that the term “Author” has been defined in section 2(d) of the Act and this term means the author of the work in relation to a literary or dramatic work. According to the definition given in dictionary the meaning of the term “author” means originator or writer of a book of treaties. Therefore, it is obvious that the person who sets the question papers were author of this work and according to section 17 of the Act, those authors were the first owner of the copyright therein.

3.11 Exposition of the term “Joint Author” of the Copyright Act, 1957

Then, the subsequent question that arises and can be taken up here is whether and how a work of a joint authorship is a “work” under the purpose of copyright protection. The term “work of joint author” has been defined under section 2(z) of the Copyright Act, 1957. It says that a work produced by a collaboration of two or more authors in which the contribution of one author is not distinct from the contribution of the other author or authors. Therefore, if there is intellectual contribution of a literary work then those persons have to be regarded as joint author.⁸⁸ According to Navdeep Kour the works of joint authors are protected under the copyright Act, 1957.⁸⁹ However, the High Court of Allahabad ruled that one joint author cannot reproduce the work himself, or grant licence to others to reproduce it, without the permission of other author or authors, but may by himself take proceeding for infringement against another third party.⁹⁰

Again, question arises that whether a partnership qualifies under the term joint authorship. The case of *Ramesh Sippy v. Shaan Ranjeet Uttam Singh*⁹¹ came sets the precedence on the issue of partnership. In this case, it was argued that a partnership firm cannot constitute the ownership of copyright and therefore does not come under the provision of the term “joint author.” However, the respondent strongly argued that in this case that under section 17 of the Copyright Act, 1957, the author of a work shall be the first owner of the copyright except as provided in clause (a), (b), (c), (cc), (d), (dd) and

⁸⁸Jitendra KumarDas, “*Law of Copyright*”, (Delhi: PHI Learning Private Limited Delhi, 2015), p.194

⁸⁹NavdeepKourSanan, “Right of Author: Possible Extensions Under Copyright Law in India”, *International Journal of Innovation and Applied Studies*, Vol. 2, No. 2, (2013), pp. 104-112

⁹⁰*NavSahityaPrakash v. Anand Kumar* AIR 1981 All 200

⁹¹ 2013(3)ABR1228:MIPR 2013(2)125

(e) of section 17 of the Act. Therefore, the argument that the partnership firm does not come under the copyright category is not a valid argument.

Relying on section 2(z) of the Act, it can be further submitted that in case of partnership firm, the partners who were the owners of the cinematograph film at the time of completion of the film were the joint authors of the cinematograph film and thus the first owners of the copyright. Thus, the film will be the property or asset of the firm, and all persons who were partners at the time when the film was completed would have joint or common interest in the film so completed. Therefore, the partnership belongs to all partners constituting the firm. However, in this case, High Court of Bombay rejected the submission of plaintiff that a partnership firm could not be owner of copyright and said that joint authorship was acknowledged in section 2(z) of the Act, wherein “work of joint authorship” was defined to mean a work produced by collaboration of two or more authors in which contribution of one author was not distinct from contribution of other author or authors.

The concept that a partnership firm can own intellectual property rights was not alien to laws relating to intellectual property. Thus, accordingly, if a partnership firm had been using trademark, unless there was evidence to contrary, it had to be *prima facie* presumed that it was the property of firm. Furthermore, section 13(2) of the Copyright Act, 1957, did not set out any pre requisite for authorship. It only laid down certain conditions for subsistence of copyright and hence there are no other conditions.

Again, the issue of joint authorship was raised in *Najma Heptulla v. Orient Longman Ltd.*⁹² Case. In this case, the plaintiff, Maulana Azad, during his lifetime wrote the book *India Wins Freedom*. It is clear that Prof. Humayun Kabir, father of the defendant No.6 was associated with the writing of the said book. According to the defendant No. 6, the said book was composed and written by her father and he is the author thereof. The nearest relatives of Maulana Azad signed two documents which were identical, purportedly giving their consent to the arrangement which has been arrived at

⁹² AIR 1989 Del 63: 1989(16) DRJ 5.

for the publication of the book, excluding 30 pages which were lying in sealed cover with Orient Longman Ltd.

On September 2, 1958, an agreement was entered into between Prof. Humayun Kabir and Orient Longman for the publication of the aforesaid book excluding the 30 pages. In the said agreement, Prof. Kabir was stated to be the composer of the aforesaid book and it was mentioned that Maulana Azad had during his lifetime, dedicated and given certain notes to Prof. Kabir and out of that material, Prof. Kabir had composed the book which was approved by late Maulana Azad. In this case, the Delhi High Court observed that where there was an active and close intellectual collaboration and co-operation between the narrator and the writer resulted in the book, there was a pre-concerted joint design between the two in the writing of the book.

In this case, the material for the book was supplied by the narrator with a clear understanding that the writer will describe those thoughts and conversation and write the same in English language. In fact, the writer had categorically stated in the preface of the book that his function was only to record the narrator's findings and it would have been highly improper to let his views colour the narrative. The preface itself shows that Maulana Azad, along with Prof. Kabir read every word of the manuscript and made alterations, additions, omissions and corrections. It is Maulana Azad who has decided as to which 30 pages of the book were not to be published. It is he who has decided as to which of his views should contained in the book. Furthermore, the Court observed that Prof. Kabir was not the sole author as 50% of the royalty of the book has been paid to the representatives of Maulana Azad. Thereafter, the Court held that Maulan Azad and Prof. Kabir were the joint author of the said book.

There arises another question as to whether work of joint authorship has any distinction from collective work. To begin with, wherever a work produced by collaboration of two or more authors in which the contribution of one author is distinct from the contribution of the author or authors, it constitutes a collective work. Therefore, a collective work is to be distinguished from a work of joint authorship which is a work produced by the collaboration of two or more authors in which the contribution of one

author is not distinct from the contribution of the other author or authors. Thus, the Privy Council held in the *Macmillan v. Suresh C. Chander Deb*⁹³ case that a work, containing particular selections and a special arrangement on particular line, from the works of an author whose work were open to all was entitled to protection, as such the work involved the expenditure of skill, labour, judgment and learning by the compiler. Therefore, apart from the fact whether the collective work is entirely original or is only a compilation, being a collection of works of several authors, specially selected and arranged on special lines such work will always have a copyright of its own. However, the owner of such work must himself not infringe upon the copyright of any other owner, whose works or part of whose works are included in such a collective work. That is to say that the various works or parts whereof have been reproduced must be either such as have no copyright attached to them or the copyright of them must be secured by the owner.

3.12 Ownership of Copyright

As we know, copyright law provides a right of property over human creativity recognizing “ownership of copyright”. Ownership is a right which avails against every one which is subject to the law conferring the right to put thing to user of indefinite nature.⁹⁴ Holland defines ownership as “a plenary control over an object”.⁹⁵ The definition of Holland was accepted in *Mohinder Pal v. State of Himachal Pradesh*.⁹⁶ Similarly accepting the definition of *Salmond in Nishikanta Roy v. Monmohan Sen Gupta*⁹⁷ case, the High Court of Calcutta observed that ownership in its most comprehensive signification, denote the relation between a person and the right that is vested in him that which a man owns in this sense as is in all cases a right. As a corollary to the above, it can be said that the ownership extends to all classes of rights irrespective of the question whether such right is proprietary or personal on *inrem* or *in personam*

⁹³ AIR 1924 PC 75.

⁹⁴ T.C James, “Copyright Law of India and the Academic Community”, *Journal of Intellectual Property Rights*, Vol.9 (2004), pp. 207-225.

⁹⁵ N.V. Paranjape, “*Studies in jurisprudence and Legal Theory*”, (Allahabad: Central Law agency, 2013), p. 411

⁹⁶ AIR 1995 HP 15: 1994(2) Shim LC 337.

⁹⁷ AIR 1973 Cal 529: (1974) ILR 1 Cal 46.

or *propria* or *in re aliena*⁹⁸. Therefore it can be said that the Copyright Act, 1957 provides a detail scheme of law for determining the “owner of copyright”.

3.13 First Owner of Copyright

As it has been discussed earlier, section 17 of the Copyright Act states that the author is the first owner of the copyright. This has been accepted by the court in *Microsoft Corporation v. Rajeev Trehan*⁹⁹ case. Further, in *Microsoft Corporation v. Indus Valley Partners (India) Pvt. Ltd.*¹⁰⁰ case, the court held that plaintiff was the owner of copyright of the software programs developed and marketed by it. These software programs were “computer programs” that fall within the definition of 2(ffc) of the Copyright Act and comes under the definition of “literary work” which is defined under section 2(o) of the Copyright Act.

The owner of the copyright in the literary works is entitled to all exclusive rights within the provisions of section 17 of the Act, following from such ownership enumerated under section 14 of the Act. However, this rule of first ownership is subject to a number of limitations. Therefore, according to section 17(C) of the Act, if the author of the works is an employee of another or government or public undertaking or an international organization then the employer is deemed to be the first owner of copyright. The fundamental principle of copyright law is that an author is the creator of the work and “owner of copyright” is the person who has plenary control over the work.¹⁰¹ Therefore, in copyright law there is a distinction between “owner of copyright” and “first owner of copyright”. The author is the first owner of copyright while the ownership of physical embodiment of the work is different from the ownership of copyright in the work. For example, Mr. M. F. Hussain made a painting of his daughter in which she is crying at the bank of river. He presented it to Mr. Suresh Ambani, an industrialist of Mumbai. In this transaction, Mr. Hussain handed over merely the physical ownership of the painting but not the copyright in the painting. Though physical ownership has been transferred in this transaction, yet Mr. Ambani cannot make copies of the painting with

⁹⁸Jitendra KumarDas, “*Law of Copyright*”, (Delhi: PHI Learning Private Limited Delhi, 2015), p.197

⁹⁹ 2014(213) DLT 238

¹⁰⁰ 2014(2) MIPR 373: 2014(143) DRJ 191

¹⁰¹Jitendra Kumar Das, “*Law of Copyright*”, (Delhi: PHI Learning Private Limited Delhi, 2015), p.200

the intent of any commercial interest. As soon as Mr. Ambani makes copies of the painting for commercial purpose, it will be an infringement of copyright of the painting of Mr. Hussain.¹⁰²

In *Nitin Sethi v. Frontier Biscuit Factory Pvt. Ltd.*¹⁰³ Case, High Court of Delhi held that there is a distinction between author and owner. Therefore, though author may be the first owner of copyright according to section 17 of the Act, the proviso explains the position in respect of different situations and assignment of copyright that is permissible under section 18 of the Copyright Act, 1957. The mode of assignment is provided under section 19 of the Act. In case of any dispute about the assignment of copyright, section 19A comes into play and the matter then becomes a case to be considered by the Copyright Board.

3.14 First Owner of Copyright of Literary, Dramatic, Artistic Work

As provided if an author of literary, dramatic or artistic work is in contract of service or apprenticeship with a newspaper, magazine or periodical then the proprietor or employer is the first owner of the copyright in so far as the copyright relates to publication of works in any newspaper, magazine or similar periodical.¹⁰⁴ However, this exception will not apply if the employee enters into an agreement with the employer whereby it is stated that the employee author will remain the first owner of copyright in respect of works created by him during the course of employment.

As it has been discussed above, copyright is a bundle of rights. These rights can be split and broken down and explained in different ways. One of the important and special aspects envisaged under proviso (a) to section 17 of the Act is that it recognizes that there is a split copyright if the work is made by a journalist in the course of the employment under the contract of service. By split copyright we mean that so far as the copyright relates to the publication of a work in a newspaper, the proprietor of the

¹⁰² Ibid

¹⁰³ 2007 (34) PTC 78(Del)

¹⁰⁴ Proviso (a) of section 17 of the Copyright Act, 1957

newspaper is the first owner of the copyright in the work, in all other respects the author is the first owner of the copyright in the work.¹⁰⁵

The concept of split copyright may be explained better through the following example Mr. Gulzaar Nirmal is the author of an English novel “Tailorbird Warbler”. Therefore, Mr. Nirmal is the first owner of the novel. In his capacity as the copyright owner of the novel he can then transfer different rights concerning first owner of the novel. Thus, Mr. Nirmal can assign the rights of adaptation to Mr. Prakash Jha, dramatists, the right to make film on the novel to Mr. Subhash Bhat, a producer of film, the right to issue copies of the book by publishing to Mr. Anurag Deep, a publisher, and right to translation to Mr. Balakrishnan for translation in Telgu and to Mr. Sukhbinder to translate in Punjabi. Thus, Mr. Nirmal is splitting his copyright to develop it in different ways.¹⁰⁶

The *Indian Express Newspapers (Bom) Pvt. Ltd. V. Jagmohan*¹⁰⁷ case stands as an example in this case, as it was related to an infringement of copyright in the newspaper stories. What happened in this case was that an investigative journalist working for the Indian Express newspaper publishers took upon himself the difficult task of exposing the widespread prevalence of trafficking in women in the state of Madhya Pradesh and callous indifference of the state government towards the evil. To prove his point, he made himself a participant in the flesh trade by actually buying a woman by the name Kamla from a village in Madhya Pradesh. He then on the basis of investigative journalism exposed the flesh trade in Madhya Pradesh by writing his article in the newspaper, giving a vivid account of how he went about the business of purchasing Kamla. Following this, needless to say that its publication caused a furor.

Other sensational events followed and eventually Kamla mysteriously vanished from the women’s home where she was kept never to be traced again. These formed the stories for three subsequent follow up reports in the same newspaper. These stories led to the making of a “cinematograph film” on the basis of a script written by well known

¹⁰⁵Jitendra KumarDas, “*Law of Copyright*”, (Delhi: PHI Learning Private Limited Delhi, 2015), p.197

¹⁰⁶ Ibid p.197

¹⁰⁷ AIR 1985 Bom 229

playwright, Vijay Tendulkar. However, the journalist as well as proprietor of the newspaper was portrayed in a defamatory manner. The film was named “Kamla”. The movie was virtually a cinematographic transformation of the journalist’s stories in the newspaper.

The journalist and proprietor of the newspaper filed a suit against the playwright and the film producer complaining that the film was an infringement of their copyright in the newspaper stories and the departures made in the film only made it worse by depicting them in a defamatory manner. They claimed permanent injunction and filed for damages and took out notice of motions to restrain the defendants from exhibiting the film and for an order for delivery of the infringing copies for destruction. Bombay High Court held that “cinematograph film” was based on common source and the treatment given in the movie to the subject was materially different.

In another case, that of the *Indian Heritage Society v. MeherMalhotra*¹⁰⁸ case, the court held that the present case is a clear threat to the right of the plaintiff under the Copyright Act, 1957. In this case, the issue pertains to an annual day event organised by the plaintiffs on 18th Feb, 2011. It is stated that the defendant No. 2 was assisting plaintiff No. 2 towards publication of the book comprising of the subject matter of the present suit. The book was to consist of photographs depicting different Asanas of Iyenger Yoga and their improvisations with the use of props, etc. meant to tackle different health issues. Justifying its decision, the court said that according to the section 17(b) of the Copyright Act, 1957 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, in the absence of any agreement to the contrary, be the first owner of the copyright therein. Therefore, it is apprehended that defendant No. 2 would misuse the photographs. Defendant No. 2, has failed and neglected to handover the necessary photographs to plaintiff No. 2 and has wrongly been and illegally demanding that in view of handing over of these compilations, she be allowed to join the teacher’s training programme and stay at the Yoga Centre with a remuneration of at least rupees one lakh for her to obtain a work permit. The proviso(c) of Section 17 of the said Act

¹⁰⁸2014(57) PTC 438:2013 (3) MIPR 245.

deals with the provision that the employer is the owner of copyright in case of work made by an author in the course of his employment under a contract of service or apprenticeship. However, the employer is not entitled to copyright in every work created by an employee except “those created in the course of employment” depending on the nature of the employment. For example, in the case of *Byrne v. Statist Co*¹⁰⁹, the court held that the employee was the owner of copyright in case of the translation work from Portuguese to English, which he made for the employer in his own time for a separate fee, since translation were not part of what he was normally employed to do.

In *community for creative non-violence v. Reid*¹¹⁰, the U.S. Supreme Court stated that the term employee for the purpose of determining authorship of the works should be interpreted according to general common law agency principles. Whenever a work prepared by an employee within the scope of his or her employment comes under the common law of agency principles and the work was done in the scope of employment, the employer (not the employee) is the copyright owner/author. The court identified certain factors that characterize an employer- an employee relationship: (i) control by the employer over the work, (ii) control by the employer over the employee, and (iii) status of employee.¹¹¹

In another instance, *V.T. Thomas and Other v. Malayala Manorama Co. Ltd*¹¹² case it was held that employer is the proprietor of copyright of the work produced by the employee in the course of employment. In this case, the issue was between the publishing house, Malayala Manorama Co. Ltd. and a reputed cartoonist, Toms. The term “author” occurring in section 17(c) is defined under section 2(d) of the said Act. That term has to be understood in relation to a “work”. Two different entities are visualized in the sub-section, the “author” and the “employer”. It is impossible to imagine that in relation to any artistic work, the same person would simultaneously be the author and the employer. Therefore, it is unassumable that as regards the cartoons and caricatures produced by Toms, Manorama is the author. Toms is the person who clothes

¹⁰⁹(1914) KB 622.

¹¹⁰ 490 U.S. 730(1989)

¹¹¹ *Community for Creative Non Violence v. Reid*, 490 U.S. 730 (1989)

¹¹²AIR 1989 Ker. 49

the idea in form. He is not a mere shorthand writer transcribing an author's stenographed words. Toms is the person, who impregnates an idea and one who actually executes a design. It is Tom's hands which fixed the picture upon the paper. Therefore, Toms is the author.

The artistic work of author created as an employee, and while in the course of his employment and pass on to the employer in contingencies postulated, *inter alia* in section 17(c). This process comes to an end in certain situations. The termination of the employment is one such situation which has been the case in the present case. It would then follow that as regard the future productions of Toms, there is no inhibition arising out of the statutory sanction under section 17(c). He is free to draw. He is independent to take his brush and draw the lines and create the figures. He can give life to his characters as he wishes and he can present them in such media as he prefers.

Furthermore, in *Vogueserv International Pvt. Ltd. v. Rajesh Gosain*¹¹³ case, the High Court of Delhi with the help of section 17(c) of the Copyright Act, 1957 said that if a work is made in the course of the other's employment under a contract of service, apprenticeship it is the employer who is the first owner of the copyright therein in the absence of any agreement to the contrary. A reference has been made as to what can be the compilations to be included in literary works and such information would include a list of the client and their addresses. For example-

Mr. Amartya Sen teaches "Welfare Economics" at Harvard University and has written a book on the subject he teaches. In this case, Mr. Amartya Sen is the author of the book "Welfare Economics". Here, he as the author and not Harvard University, the employer, is entitled to copyright. The legal reasoning is that Mr. Sen was under the contract of understanding employed to teach "Welfare Economics" and not to write a book on the subject.¹¹⁴

¹¹³ 203 (2013) DLT 613; 2013 (55) PTC 480(Del)

¹¹⁴ Jitendra Kumar Das, "Law of Copyright", (Delhi: PHI Learning Private Limited Delhi, 2015), p.205

Thus, wherein the employer is the proprietor of newspaper, magazine, periodical or journal, the proprietor has only the publication rights in connection to the work, the other rights vest within the employee, i.e., the author of the work. However, the rights and duties of the proprietor and author are subject to any agreement to the contrary, if any.

3.15 First Owner of Copyright in case of Address or Speech Delivered in Public

In case of any address or speech delivered in public, proviso (cc) of section 17 of the Copyright Act, 1957 states that the person who delivers the speech in public is the first owner of copyright. In 1983, this provision was added to the Copyright Act, 1957.

In *Walter v. Lane*¹¹⁵ case the issue was related to the question of whether a person who makes notes of speech delivered in public, transcribes them and publishes it in the newspaper, a verbatim report of the speech, is entitled to the copyright protection. In this case, the House of Lord held that each reporter is entitled to report and each would have a copyright in his own published report. Subsequently, in *Macmillan v. K. and J. cooper*¹¹⁶ case, the High Court of Bombay stated that a person who makes notes of a speech delivered in public and publishes in a newspaper is the “author” of the report and is entitled to the copyright protection.

However, this principle of law has been altered by proviso 17(cc) which has already been discussed earlier. This proviso was inserted by the Copyright (Amendment) Act, 1983. Again, section 52(a) (iii) of the said Act states that reporting of a lecture delivered in public does not amount to infringement of copyright.

From the implication of the term “speech delivered in public” used in section 17(cc) it becomes debatable whether this proviso is not applicable to lectures delivered to a private audience. Now, question arises, whether section 14 and proviso (cc) of section 17 of the Act are free from any dichotomy in case of lectures and speeches delivered. Section 14 of the Act gives certain rights to the copyright owner which are commonly

¹¹⁵ (1900) AC 539(HL)

¹¹⁶ 1924 (26) Bom LR 292

referred as “exclusive economic rights” of copyright owner. It is a settled law that to enjoy the rights of copyright ownership, the work must be “reduced to material form”.¹¹⁷ Therefore, a lecture if not reduced to writing or printing is not a work as it has not been converted into a material form. If reduced to writing, then copyright subsists in the latter as literary work.

However, a combined reading of proviso (cc) of the section 17 and section 14 of the Copyright Act, 1957 indicates that if a lecture is delivered in public the copyright subsists in the lecture even if it is not reduced to a material form. Whenever a lecture is delivered before private audience, one has to find out whether it is an extempore or written down speech. In case it is extempore or oral and has not been converted to a material form, then copyright does not subsist but the personal delivering the lecture may be protected by performer’s rights in terms of Section 38.

Therefore, the court observed that the provisions of section 2(o), 14, 16, 17 of the Copyright Act have to be read together¹¹⁸. Section 2(o) gives the definition of “literary work” while section 14 deals with the meaning of copyright. In addition to this, section 16 provides that no person shall be entitled for copyright except as provided in this Act and section 17 provides that the author of the work shall be the first owner of the copyright. Thus, only if the defendant were the owner of the copyright then he would have the right to make it public in view of the provisions of section 14 of the Copyright Act, 1957.

3.16 Defining Contract of Service and Contract for Service

Proviso (a) of the section 17 of the Copyright Act, 1957 discusses that in case the author in the course of his employment is under a “contract of service” the proprietor shall be the first owner of copyright while proviso (c) of the Section 17 of the said Act states that in case proviso (a) and (b) does not apply, in absence of any agreement to the contrary, the employer shall be the first owner of copyright (All the above mentioned proviso has been dealt with in the first portion of the chapter)). Thus, whether proviso (a) and (c)

¹¹⁷ Das, Jitendra Kumar “Law of Copyright” (Delhi: PHI Learning Private Limited Delhi, 2015) p.207

¹¹⁸ *Diljeet Titus v. Alfred A. Adebare*, 2006 (32) PTC 609: 2006 (130) DLT 330

distinguished between “contract of service” and “contract for service” or not is a debatable issue.

According to proviso (a), “contract of Service” means not only the appointment of the workmen on a particular day or given number of days but something more than that. Once a relationship of employer and employee is established between the Corporation and the workmen then there are certain terms in the contract of employer. If it is a contract of service what then are the obligations of the employer to the workmen and vice-versa? One of the obligations to the employer, for instance, is to pay wages to the workmen for the days on which they worked.

The High Court of Karnataka tried to define a modern concept of the contract of service as:

One feature which seems to run through the instance is that, under a contract of service, a man is employed as part of the business, and his work is done as an integral part of the business; whereas, under a contract for service, his work, although done for the business, is not integrated into it but is only an accessory to it.¹¹⁹

Further, in *Akhil Raj Rajya Hand Pump Mistries v. State of Rajsthan*¹²⁰ case, the High Court of Rajasthan in explaining the distinction between “contract of service” and contract for service” observed that “it is often easy to recognize a contract of service when you see it, but difficult to say where the difference lies. A ship’s master, a chauffeur and a reporter on the staff of a newspaper are all employed under a contract of service; but a ship’s pilot, a taxi man and a newspaper contributor are employed under a contract for service”.

In another case, *Mr. Diljeet Titus v. Mr. Alfred A. Adebare*¹²¹ case, which was an issue related to the question of the nature of relationship with which the parties got together to carry on their profession as advocates. In this case, the plaintiff claimed that

¹¹⁹ *Mukunda v. Managing Director, ILR 1986 Karnataka 769: (1986) ILLJ 470 Kant.*

¹²⁰ (1994) IILLJ 631 Raj: 1994 (1) WLC 1.

¹²¹ 130 (2006) DLT 330: 2006 (32) PTC 609 (Del)

the defendant were only working for him and were paid remuneration for the same in the form of fee. Thus, he, the plaintiff was in control of the professional business but the defendant, on the other hand, claimed to have worked more in the nature of partnership with the plaintiff. Therefore, the plaintiff filed a suit alleging infringement of copyright against the defendant claiming to be the owner of the copyright.

The High Court of Delhi held that no contract whereby the parties had a profit sharing arrangement, in pursuance to the arrangement of partnership was there. The copyright existed not only in what was drafted and created but also in the list of clients and addresses, designed by the organization and the relationship between the plaintiff and the defendants was one of the contract of service. Furthermore, the court said that the test which emerges from the authorities, whether on the one hand the employee is employed as part of the business and his work is an integral part of the business, or whether his work is not integrated into the business but is only accessory to it, or the work is done by him in business on his own account.

There has been considerable dispute as to whether an author is under a contract of service or contract for service. Only if the author is under a contract of service does the transfer of ownership of copyright takes place. In this regard, one can in this situation refer to the *University of London Press Ltd v. University Tutorial Press Ltd*¹²². In this case, certain examiners, who were not the staffs of the University were appointed for setting up question papers for a matriculation examination conducted by the University of London. One of the conditions of appointment was that the copyright arising out of the question paper should belong to the University. But when the dispute regarding the ownership of copyright arose, the court held that the copyright vested with the examiners, as they were not under a contract of service of the University.

The court relied on the fact that the examiners were paid in lump sum and that they were free to prepare questions at their convenience, skill and judgment with due reference to the syllabus. Though, there were instructions issued by the University, they were found to be only in the nature of regulations framed with a view to secure accuracy

¹²² (1916) 2 Ch. 601

in the system of making. Therefore, the court held that there was no effective control exercised by the University over the examiners and so they were held to be the owners of copyright, rather than the university. The court pointed out that transfer of ownership of copyright in such cases could take place only through a written agreement. This decision, clearly make a distinction between a *contract of service* with a *contract for service* based on the nature of control exercised by the employer upon the author.

This decision has been followed by the Indian Court too earlier, as in those cases of *Aggrawala publishing House v. Board of High School and Intermediate Education UP*¹²³ and *Jagdish Prasad Gupta v. Parameshwar Prasad Singh*.¹²⁴ Furthermore, in *Gama Prasad v. Nabashah*¹²⁵ case, the High Court of Assam had applied this principle in dramatic work too. In this case the plaintiffs were office bearers of Nawgong Natya Samithy, an institution created with an objective of enriching Assamese literature and Art, by encouraging authors to write and compile dramas in Assamese language. The defendants wrote a drama named Piyoli Phookan at the instance of the Samithy. The Samithy printed and published the drama at its own expense. Later on when the defendants converted the drama into a film, the plaintiff sued for infringement. The court perusing the evidence could not find anything that underlined that the author were in the course of employment or under a contract of service of the Samithy while writing the drama. It was held that the Samithy was not the owner of the copyright in the drama.

3.17 Copyright that Subsist in Supreme Court and High Courts Judgments

A crucial Question that arises is whether copyright subsists in Supreme Court and High Courts judgments. In this context, section 17 of the Copyright Act, discusses that unless otherwise stated, the first owner of any government work is the government itself. And Section 2(k) of the said Act, states that “government work” means a work which is made or published by or under the direction or control of “(i) the Government or any department of the Governance; (ii) any Legislature in India; (iii) any Court, Tribunal or other judicial authority in India”. As it is held by the Supreme Court in *Eastern Book*

¹²³ AIR 1967 All 91

¹²⁴ AIR 1967 Pat. 33: 1966 Cri LJ 54

¹²⁵ AIR 1967 Ass. 91

*Company v. B.D. Modak*¹²⁶ case that the judgments delivered by the Supreme Court and High Courts would be a government work. Moreover, section 52(q) (iv)¹²⁷ of the Act, discusses that reproduction or publication of any judgment or order of a court, tribunal or other judicial authority unless otherwise prohibited by the court is permissible and exempts the same from the realm of infringement. These copyright provisions clearly indicate that a judgment of the court is a matter that falls within the public domain. Therefore, it is not subject to copyright regulations and can be used by anyone.

3.18 Doctrine of Merger

The merger of ideas and expression are permissible in cases where there are only a few ways of expressing an idea, so that protecting the expression fully would, as a practical matter, prevent anyone but the author from using the idea. The High Court of Delhi in the *Mattel Inc. v. Jayant Aggarwalla*¹²⁸ case, applied the doctrine of merger to deny copyright protection of games. In this case, the plaintiff claimed copyright over the usage of the word board game marketed as “SCRABBLES”. It was alleged that the defendant produced a web-based game similar to that of “SCRABBLES” using red, pink, blue and light blue titles, of identical pattern of arrangement of coloured titles and use a star pattern on the central quire. The defendant denied the allegations and argued that based on the doctrine of merger that there was no copyright violation in the alleged elements in the game since they were ideas of playing game, expressed in the work and could not be separated.

In this matter, the court further observed that the application of the doctrine of merger would mean that the colour scheme on such a board can be expressed only in a limited number of ways; if the plaintiff’s arrangement were to be avoided, it is not known whether the idea of such a word game could be played at all. Similarly, as far as copyright of rules of a game are concerned the reasoning in *Allen and Atari* case apply squarely in this case. This doctrine of merger is applicable with respect to games as (according to those decisions) “they consist of abstract rules and play ideas”. By way of

¹²⁶ AIR 2008 SC 809:(2008) 1 SCC 1

¹²⁷ Section 52 of the Copyright Act, 1957.

¹²⁸ 2008 (153) DLT 548

illustration, the arrangements of colours, values on the board, the collection of line, value for individual alphabetical titles, etc., have no intrinsic meaning, but for the rules. If these rules which form the only method of expressing the underlying idea are to be subject to copyright, the idea in the game would be given monopoly, a result not intended by the law makers who only wanted expression of idea to be protected.¹²⁹

The Court refused injunction to the plaintiff. The clarity of this observation deserves appreciation since the court is corrected in maintaining the balance between laws dealing with different forms of intellectual property. It is evident that the attempt of the plaintiff is to get protection through the copyright law for an item that falls under the patent or design law. It has become a normal practice, as seen from many reported cases from various high courts, for plaintiffs who failed to take protection under design or patent to claim copyright protection. Therefore, it is laudable that this judgment has relied on fundamental principles of copyright law to arrest this unhealthy trend to extend monopoly.

Again, in the case of *the Institute for Inner Studies v. Charlotte Anderson*¹³⁰, the court held that originality in copyright sense would mean the hard work, labour and skill extended truly by author in relation to creativity and not in relation to innovation done in respect of deriving some principle or method. If one has to find out what can be idea and what can be an expression of an idea, it can be said that the way the author has described the art is not an idea but the expression of an idea. Therefore, the manner of performing the art should also be given protection due to the uniqueness involved in the expression of art or principle of science mentioned in a book where the idea merely forms the plot of the book, a book on scientific principle/art. So if the manner indicated in a book for performing the art is unique to the author then it deserves protection. Further the court observed that the idea of expression problem has been evolved firstly by the courts in US and recently has also been recognized by the courts in UK. In case of India, we are still in the process of accepting the said proposition, as the courts are still in the process of facing the factual situations, wherein the dividing line between idea and expression is

¹²⁹ *Mattel, Inc. v. Mr. Jayant Agaralla*, MIPR 2008 (3) 298; 2008 (38) PTC 416 (Del)

¹³⁰ 2014 (1) MIPR 129; 2014 (57) PTC 228.

blurred. Though, there are cases in India that shed some light on the subject by quoting the international cases relating to idea of expression but still we are yet to clearly spell out the problem relating to idea and expression in clear terms as is laid down in the said judgment¹³¹ in US and in UK.

3.19 Doctrine of Sweat and Brow

A large number of the cases were decided by the courts before 1994th amendment of the Copyright. Section 2(o) of the Copyright, has recognized that computer programs, tables and compilations including computer databases are entitled to copyright protection. However, that does not end the debate. The law mandates that the work claiming protection ought to be original. Copyright law does not also provide the author of a literary work protection as far as ideas and facts per se are concerned.¹³² It is the creative expression of an idea or fact that gets rewarded by law, through copyright monopoly for a specified period. However, the law does not protect every expression but provides such recognition and protection to expressions that are “original”.

This standard is incorporated by section 13 of the Copyright Act, in respect of every class of the work. In order for a work to qualify as a literary work in which copyright can subsist it must be original. However, it has to be noted that the standard for judging “originality” has undergone a radical change from the time a work was deemed original if it was the product of the “Sweat of the Brow” as was enunciated in *University of London Press Ltd. v. University Tutorial Press Ltd*¹³³ case. In this case, the Chancery Court said that “Assigning that they are “literary work”, the question then is whether they are original. The word “original” does not in this connection mean that the work must be the expression of original or inventive thought. Copyright Acts are not connected with the originality of ideas, but with the expression of thought, and in the case of “literary work”, with the expression of thought in print or writing.

¹³¹ *Fiest Publication Inc. v. Rurla Telephone Services Company*, 1991 499 US 340; *Kleeneze Ltd. v. D.R.G. (UK) Ltd.*, 1984 FSR 399

¹³² *Baker v. Seldon*, [1879] 101 US 99

¹³³ [1916] 2 Ch 60 1

The originality which is required relates to the expression of the thought. But the Act does not require that the expression must be in an original or novel form, but that the work must not be copied from another work or that it should not originate from another. In this case it was not suggested that any of the papers were copied. Professor Lodge and Mr. Jackson proved that they had thought out those notes for the purposes of the questions which they set. The papers which they prepared originated from themselves, and were original within the meaning of the Act.

The underlining notion of the “Sweat of the Brow” doctrine was that copyright was a reward for the hard work that went into compiling facts. The classic formulation of the doctrine was as follows

the right of copyright a book upon which one has expended labour in its preparation does not depend upon whether material which he has collected consisted or not of matters which are *publicijuris*, or whether such materials show literary skill or originality, either in thought or in language, or anything more than industrious collection. The man who goes through the streets of a town and puts down the names of each of the inhabitants, with their occupations and their street number, acquires material of which he is the author.¹³⁴

The High Court of Delhi in *Burlington Home Shopping Pvt. Ltd. v. Rajnish Chibber*¹³⁵ case addressed this issue on the protection of database. In this case the plaintiff was running a business of mail order service. Here, one of the major investments for the success of the business is the compilation of the list of the customers. The plaintiff has developed a list of customer’s database over a period of three years prior to the institution of the suit by investing a considerable amount of money and time and kept it as a trade secret. The defendant, a previous employee of the plaintiff, but not connected with the work of the compilation of the customer’s database, started a mail order service business.

¹³⁴ Jitendra Kumar Das, “*Law of Copyright*”, (Delhi: PHI Learning Pvt. Ltd, 2015), p. 152

¹³⁵ 1996 PTR 40(1995) 15 PTC 274

According to plaintiff, the defendant managed to get a copy of the plaintiff's customer's database and was using it for establishing relationship with the plaintiff's customers. Thus, the Plaintiff argued that this amounted to infringement of copyright in the database and violation of the trade secret. Therefore, he applied for a permanent injunction restraining the defendant from infringing upon the copyright and confidentiality of the database. However, the defendant denied the allegations and argued that the plaintiff had no copyright on the database, on the ground that the address of customers included in the database were collection of the facts from common sources. According to the defendant, he developed his own database and the utilization of it did not amount to any infringement of the copyright of the plaintiff. The court then examined the question as to whether a compilation of address in computer database from the common sources is a literary work for the purpose of copyright protection.

In this case, after deliberating on the various section such as section 2(o), 2(y), 14 and 17(c) of the Copyright Act, 1957 and case laws from India and abroad, the court concluded that "it is clear that a compilation of address developed by any one by devoting time, money, labour and skill, though the sources may be commonly situated amounts to a "literary work" wherein the author has a copyright.

It seems from section 2(o) of the said Act computer database is particularly included as a compilation to treat it as a literary work. However, it is only "original" literary work that is protected under section 13 of the said act. In case of compilations, the originality is not on the materials but on the manner of organization of the material since in some cases the materials as such can enjoy separate copyright protection. The court observed that it is the well established law of copyright that facts are not copyrightable and is to be left open in the public domain as common source for free use by the public for creation of new works since they are considered to be the basic building blocks. Therefore, in case of compilation of facts the question is whether there is any originality in the manner of organization of the facts for copyright protection. So the important question in this case was not whether the database was a compilation but whether the one created by the plaintiff would qualify the test of "originality" for the purpose of copyright protection. Instead of examining this question, it appears that the

court has followed the “Sweat of the Brow” doctrine for the purpose of extending copyright protection for compilation of facts.

Therefore, in this case the court relied on the time, money and the labour of the plaintiff in collection the information, which by itself is uncopyrightable, for the purpose of extending copyright protection. Even though the court used the word “skill”, it seems it has not inquired about the amount of skill used by the plaintiff in the manner of organization for the compilation. Therefore, in this case the court focused on the slavish imitation by the defendant to make out a clear case of infringement. The court has not discussed the basic question of the requirement of originality for the purpose of extending copyright protection to a compilation as a literary work. This appears to be the trend followed by the Indian courts even in earlier cases.

The “Sweat of the Brow” doctrine had numerous flaws, the most glaring being that it extended copyright protection in a compilation beyond selection and arrangement, the compiler’s original contributions, to the facts themselves. Under the doctrine, the only defence to infringement was independent creation. This implies that a subsequent compiler was “not entitled to take one word of information previously published”, but rather had to “independently work out the matter of himself, so as to arrive at the same result from the same common sources of information”.

Furthermore, in the *Eastern Book Co. v. B.D. Modak*¹³⁶ case, the Supreme Court relied on US¹³⁷ and Canadian¹³⁸ judgment and said that-

The Sweat of the Brow approach to originality is too low a standard which shifts the balance of copyright protection too far in favour of the owner’s rights, and fails to allow copyright to protect the public’s interest in maximizing the production and dissemination of intellectual works. In contrast, the creativity standard of originality is too high. A creative standard implies that something must be novel or non-obvious – concepts more properly associated with patent law than copyright law. By

¹³⁶ AIR 2008 SC 809:2008 (1)SCC 1

¹³⁷ *Fiest Publication Inc. Rural Telephone Service Co. Inc.*, 18 USPQ 2d.1275

¹³⁸ *CCH Canadian Ltd. v. Law Society of Upper Canada*, 2004 (1) SCR 339(Canada)

way of contrast, a standard requiring the exercise of skill and judgment in the production of a work avoids these difficulties and provides a workable and appropriate standard for copyright protection that is consistent with the policy of the objectives of the Copyright Act.

Finally, following the discussion made above it can be observed that in spite of certain drawbacks an examination of this definitional clauses have shown that the provision of the Indian Copyright act have if not completely to a greater extent fulfill what it has set out to achieve. This can be said to be true in both senses, the traditional as well as the modern sense, so issues such as on-line copyright though not laid out in clear and explicit terms are also protected. However, with the changing dynamics of the system within the law itself, resulting from the rapid growth and transformation brought about by the constantly evolving technological advancement there is a need to rethink the provisions and implementation of the said laws. There is a need for the law to keep pace and reflect these changes else there is a danger of us being caught unaware with obsolete laws that is unable to address the issue of the day. This can be achieved by introducing purposive *interpretatio*' technique that is perceptive and reflective of the demands of the situation. The existing laws can be supplemented with newer ones that is in tune with contemporary issues and problems. In this direction, there is a felt need to not just rest contented with the provisions provided in terms of fair dealing but now time has come for us to rethinking of these existing laws even in terms of incorporating the spirit of the fair use, with its capacity to handle and address emerging issues.

Chapter 4

Copyright Infringement and the Principles of Fair Dealing

4.1 Introduction

Copyright is a form of intellectual property. It as we have discussed in the earlier chapters are those legally assignable rights, created by the law of a country that grants the creator of an original work the exclusive rights, to print, publish, perform, film, or record literary, artistic, or musical material. The use thereof of those works protected by copyright law without permission, such as those certain exclusive rights granted to the copyright holder, with regard to the right to reproduction, distribution, display or performance of the protected work, or making derivative works results in an infringement. Consequently, Copyright holders have the right to invoke legal and technological measures to prevent and penalize copyright infringement. However, it has to be noted that this protection over the various forms of creative work is not over the protection of the originality of the underlying ideas themselves *per se* but to protect the original expression of the ideas thereof. Moreover, these exclusive rights granted for the use and distributions are not absolute and are restricted by certain limitations and exceptions to copyright law.

The *raison d'etre* behind this is well captured in the word of the that “A key part of the social bargain at the heart of copyright law, in which as a society we concede certain limited individual property rights to ensure the benefits of creativity to a living culture ,”¹ Thus, the notion of Fair dealing as permissible exception is introduced. So while it puts a limitation and exception to the exclusive right granted by copyright law to the author of a creative work, it on the other hand serves as a user’s right in copyright law permitting use of copyright protected work without permission or payment of copyright royalties. It for the purpose of research, private study, education, satire, parody, criticism,

¹Patricia Aufderheide and Peter Jaszi, “*Reclaiming Fair Use: How to Put Balance Back in Copyright,*” (Chicago and London: University of Chicago Press, 2011), p.163.

review or news reporting, allows the user to make use of other people's copyright protected material provided what you do with the work is 'fair'. Thus, if your purpose is criticism, review or news reporting, you must also mention the source and author of the work for it to be fair dealing.

It is found in many of the common law jurisdictions of the Commonwealth of Nations. For instance, in U.K., although not actually defined as a fair dealing, incidental inclusion of a copyrighted work in an artistic work, sound recording, film, broadcast or cable programme doesn't infringe copyright. Under the *Copyright, Designs and Patents Act 1988*, fair dealing is limited to non-commercial purposes such as research and private study. Thus, use of materials for criticism, review, quotation, and news reporting as well as parody, caricature and pastiche and illustration for teaching is allowed. The Canadian concept of fair dealing is similar to that in the UK and Australia. However, in U.S. the doctrine of fair use and not fair dealing is in practice. It is a legal doctrine only in the United States that permits the limited use of copyrighted material without acquiring permission from the rights holders that might otherwise be considered infringement. Fair use is thus defined as one of "the traditional safety valves" intended to balance the interests of copyright holders with the public interest in the wider distribution and use of creative works.

In case of India, which has adopted the principle of fair dealing, the term fair dealing has not been defined anywhere in the Copyright Act 1957. However, the concept of "fair dealing" has been discussed in different judgments, including the decision of the Supreme Court of India. A fair dealing with any work (except computer programs) is allowed in India for the purposes of

1. private or personal use, including research,
2. criticism or review,
3. reporting of current events and current affairs, including the reporting of a lecture delivered in public.

Fair dealing provides a list of enumerated possibilities that is meant to provide protection against the possibility of indictment for infringement of

an exclusive copyright right law. And as we shall see that unlike the related United States doctrine of fair use, the limitation of fair dealing is that we cannot apply it to any act which does not fall within one of these categories. Thus, the focus of this chapter will be on what constitutes permissible exceptions as is the case with fair dealing and why there is a need for it. At the same time, acknowledging the truth that there is a very thin blurry line between what is constituted as protected and what would, on the other hand, be permissible it would be beneficial for us to, in the beginning, address the complexity of the issue by starting with a good understanding of what would amounts to infringement, in this case. This would be follow suit by a study of the principles on which the concept of fair dealing is based and can be justified allowing for us to critique the merits and demerits of its implementations.

4.2 Copyright Infringement and defenses of copyright liability

Section 51 of the Copyright Act, 1957 lays down that a person is deemed to have infringed copyright only if he/she acts: (i) in contravention of a licence granted by the copyright owner or the Registrar of Copyrights; (ii) without a licence granted by the copyright owner or the Registrar of Copyrights provided such use was also not allowed under Section 52 of the Act. It is a criminal offence to knowingly infringe a copyright. Also, civil proceedings can be initiated against an infringer. Infringing copies of works and plates used to produce them that are deemed to belong to the copyright owner. The English Court in *L.B. (Plastics) v. Swish Products*,² case said that in order to succeed in a copyright action a plaintiff must prove that the defendant has directly or indirectly made an unlawful use of the plaintiff's copyright. It is not necessary to show that the defendant has copied from the plaintiff's work. The beginning of the necessary proof normally lies in the establishment of similarity combined with proof access to the plaintiff's production. A similarity or even an identical production, if it were conceivable, between two works due to coincidence does not constitute an infringement by second of the first.³

²(1979) RPC 551.

³Halsbury's Law of England, Vol. 9, Para, 91, (4th edition, 1974), p.585

However, in another case *R.C.A. Corporation v. Custom Cleared Sales*⁴ the court held that innocence is not a defence in an action for infringement.

In India, in *Cherian P. Joseph v. Prabhakaran*⁵ case, the court said that a person cannot be held liable for infringement of copyright in a work if he has taken only the essential idea of the work, even if it is highly original, provided he gives expression to that idea in his own way. In another case *Fateh Singh Mehta v. O.P. Singhal*⁶, court held that copying a work is deemed to be infringement when any person, without a licence granted by the owner of the copyright does anything, which is within the exclusive right of the owner of the copyright as conferred upon by the Act. In a literary work, where a person has copyright, any other person who produces the work or any substantial part thereof in any material form, commits an infringement of copyright. Further, on the question of infringement of copyright, the High Court of Bombay in *Lallubhai v. Laxmi Shankar*⁷ case held that piracy in an alleged infringing work may be detected by making a careful examination of it to see whether any of the deviations and mistakes, which licence allows, in the original has been reproduced into the alleged infringing copy.

The Supreme Court held in *R.G. Anand v. Delux Film*⁸ case that it is not necessary that the alleged infringement should be an exact or verbatim copy of the original but its resemblance with the original in a large measure is sufficient to indicate that it is a copy. Moreover, in another instance, the Delhi High court observed in *Penguin Books v. India Book Distributors*⁹ case that if any person without the licence of the copyright owner, imports into India for the purpose of selling or distributing for the purposes of trade, a literary work the copyright is infringed if the work was lawfully published by the owner of the copyright or the exclusive licensee in the country from which it has been imported. It is clear from the definition of the section 2(m) of the said Act needs to be read with section 51 and 53(1) of the Act. Section 51 of the Act discusses about infringement of copyright and all other rights created by the Act.

⁴[1978] FSR 576.

⁵AIR 1967 Ker 234.

⁶AIR 1990 Raj 8.

⁷AIR 1945 Bom.51: 1946 Bom. LR 697

⁸AIR 1978 SC 1613

⁹AIR 1985 Del. 29.

Section 51 of the Copyright Act, 1957 says that a work shall be deemed to be infringed –

(a) when any person, without a licence granted by the owner of the copyright or the Registrar of Copyrights under this Act or in contravention of the conditions of a licence so granted or of any condition imposed by a competent authority under this Act-

(i) does anything, the exclusive right to do which is by this Act conferred upon the owner of the copyright, or

(ii) permits for profit any place to be used for the communication of the work to the public where such communication constitutes an infringement of the copyright in the work, unless he was not aware and had no reasonable ground for believing that such communication to the public would be infringement of copyright; or

(b) when any person-

(i) makes for sale or hire, or sells or lets for hire, or by way of trade displays or offers for sale or hire, or

(ii) distributes either for the purpose of trade or to such an extent as to affect prejudicially the owner of the copyright, or

(iii) by way of trade exhibits in public, or

(iv) imports into India, any infringing copies of the work

Provided that nothing in sub-clause (iv) shall apply to the import of one copy of any work for the private and domestic use of the importer.

Explanation.-For the purposes of this section, the reproduction of a literary, dramatic, musical or artistic work in the form of a cinematograph film shall be deemed to be an “infringing copy”.

Moreover, the explanation to section 51 of the said Act provides that the reproduction of dramatic, literary or musical works in the form of cinematograph film shall be deemed to be an “infringing copy”. For instance in *Wiley Eastern Ltd v. Indian Institute of Management*¹⁰ case the court said that section 51 of the Copyright Act, 1957 discusses of what is infringement of copyright.

¹⁰61(1996) DLT 281 (DB).

In another *Thankappan v. Vidyarambham Press*¹¹ case, the court said that publishing of a work of an author in another person's name without the consent of the author constitutes infringement of copyright.

Any dealing in infringing copies too amounts to an infringement of copyright. A reproduction of a literary, dramatic, musical or artistic work in the form of a cinematograph film is also deemed to be an infringement of copyright. In next *Romesh v. Ali Mohammad*¹² case court said that if an author allows his book to be published by a University as part of its syllabus, the book goes into the public domain and no copyright remains with the author.

Section 63, 65 and 67 of the Copyright Act, 1957 provides both civil and criminal liabilities for copyright infringement. In case of civil liability, the Act provides that knowledge of infringement on the part of the defendant forms the basis of liability. Therefore, infringement is the foundation of copyright liability. Now question arises what the test for determining copyright infringement is. In case of criminal liabilities, section 63 to section 70 of the Act deal with it. It provides that if any person knowingly infringes the copyright in a work or any other right conferred by the act or knowingly abates to such infringement that amounts to criminal liability. However, construction of a building or other structural work, in case of mapping or architectural work, which infringes or which, if completed would infringe the copyright in some other work does not amount to infringement under the said act.

The Copyright Act, 1957 does not define infringement. However, Section 2(m)¹³ of the said Act defines "infringing copy". Section 2(m) of the Act, provides some

¹¹ 1968 Ker LJ 440

¹² AIR 1965 J and K 101

¹³ Section 2(m) of the Copyright Act, 1957 says that "infringing copy" means,-

(i) in relation to a literary, dramatic, musical or artistic work, a reproduction thereof otherwise than in the form of a cinematographic film;

(ii) in relation to a cinematographic film, a copy of the film made on any medium by any means;

(iii) in relation to a sound recording, any other recording embodying the same sound recording, made by any means;

(iv) in relation to a programme or performance in which such a broadcast reproduction right or a performer's right subsists under the provisions of this Act, the sound recording or a cinematographic film of such programme or performance, if such reproduction, copy or sound recording is made or imported in contravention of the provisions of this Act;

standards and criteria for the determination that an infringement has occurred. For instance, in *B.O. Morris Ltd v. F. Gilam*¹⁴ case, the court said that copying may be infringed by reproducing the work, directly from the copyright work or from memory, or from an intervening copying whether protected or unprotected. It is immaterial whether the infringing article is derived directly or indirectly from the original one. Further the court said that for establishing infringement of copyright, there must be conscious or unconscious copying by the alleged infringer.¹⁵ In another *Performing Rights Society v. Unban District Council*¹⁶ case Privy Council held that innocence is not a defence in an action for copyright infringement.

Finally, from various cases courts have come to conclude that in order to determine infringement of copyright following factors are need to be considered; (i) direct copying-(ii) casual connection, (iii) subconscious copying, (iv) indirect copying, (v) substantial taking, (vi) unaltered copying, (vii) extent of defendant's alteration, (viii) extent of plaintiff's effort, (xi) manner in which defendant has taken advantage of plaintiff's work, (x) extent of interference with plaintiff's exploitation by defendant's acts, (xi) reproduction by the original author.¹⁷

The courts have said that there will be infringement if the extracts comprise a "substantial part" of the work. Although Section 14 of the said Act used the term "substantial part" but the phrase is not defined in the Act. In *Catnic Components Ltd. v. Hill and Smith Ltd*¹⁸ case the court said that substantial relates not only to the quantity of the work but also its quality. In this case the court ruled that whenever a person photocopying one page from a report running into a hundred pages has not taken a "substantial part" of the report. However, if he copies one page of recommendation and suggestions of the report then it would certainly comprise a "substantial part" of the work. Sometimes the courts have also applied "totality of impression test" in determining copyright infringement. In another *Civic Chandaran v. AmminiAmma*¹⁹ case the court held

¹⁴ [1936] 1 All ER 409

¹⁵ *Gamme v. Relaxateze Upholstery*, [1976] RPC 377.

¹⁶ AIR 1930 PC 314.

¹⁷ Jitendra KumarDas, "Law of Copyright", (Delhi: PHI Learning Private Limited Delhi, 2015), p.362

¹⁸ (1982) RPC 183

¹⁹ 1996 PTC 670 (Ker)

that the “totality of impression test” is satisfied when the reader, spectator or the viewer after having read or seen both works is clearly of the opinion and gets an unmistakable impression that the subsequent work appears to be a reproduction of the original.

4.3 An Analysis of Fair Dealing of the Copyright Act, 1957

Fair dealing is a limitation and exception to the exclusive rights granted by copyright law to the author or creator of a creative or new work. It permits reproduction or use of copyrighted work in a manner, which for the exception carved out would have amounted to violation of copyright. It has thus been kept out of the mischief of copyright law²⁰. The defense of ‘fair dealing’ initially originated and is derived as a doctrine of equity that allows the use of certain copyrightable works, which would otherwise have been prohibited and would have amounted to violation of copyright. The basic idea behind this doctrine is to prevent the inactivity of the growth of creativity, for whose progress, the law has been designed. Indian and UK copyright laws regarding fair dealing are often characterized as very limited and restrictive as they work in accordance with a thorough list of actions, which comes under the scope of fair dealing. The US law of ‘fair use’ provides a wide and open territory for the fair users of a copyright work. While on one hand Indian and the UK laws of fair dealing work strictly within the framework of the enlisted actions which constitute fair dealing, the American law of fair use is open for interpretation and works with the help of certain guideline factors which help in determining the extent of ‘fairness’ involved in the work.

It is to be noted that the US doctrine of ‘fair use’ is considered as the fairest of all as it is the most closely designed law with the Trade Related Aspects of Intellectual Property Rights (TRIPS). The laws relating to fair dealing have been incorporated in Section 52 of the Copyrights Act, 1957. As the Indian Copyright Act does not define the term ‘fair dealing’, the courts have often referred to the classical English case, *Hubbard vs Vosper*²¹ on the subject of fair dealing. The words of Lord Alfred Denning in this case lay down a very descriptive outline of fair dealing: It is impossible to define what is fair dealing. It must be a question of degree. You must first consider the number and extent of

²⁰*SK Dutta v. Law Book CO. &Ors.* AIR 1954 ALL 750

²¹ [1972]2Q.B.84.

the quotations and extracts.... then you must consider the use made of them....Next, you must consider the proportions...other considerations may come into mind also. But, after all is said and done, it is a matter of impression.²²

Incontestably, 'fair dealing' is a compulsory doctrine, not only in the Copyright laws but also in strengthening the protection given to the citizens under Article 19 of the Constitution of India. But the Indian law related to fair dealing is very limited as compared to the US fair dealing laws, which are more elaborate and have a more flexible approach. Perhaps the Indian legislators wanted more certainty in the provisions, which could be the reason behind the conservative approach for fair dealing law. This is reflected in Section 52 of The Indian Copyright Act (hereafter ICA). Though the courts have adapted the US approach from time to time in its decisions, it can be argued that the overall defense of fair dealing available in India is yet to be examined, enlarged and defined. Under Section 52 of ICA, Fair Dealing is defined as:

Certain acts not amounting to infringement of:

(1) The following acts shall not constitute an infringement of copyright, namely:

(a) A fair dealing with a literary, dramatic, musical or artistic work for the purposes of:

(i) Research or private study.

(ii) Criticism or review, whether of that work or of any other work.

(b) A fair dealing with a literary, dramatic, musical or artistic work for the purpose of reporting current events:

(i) In a newspaper, magazine or similar periodical, or

(ii) By radio-diffusion or in a cinematograph film or by means of photographs.

(c) The reproduction of a literary, dramatic, musical or artistic work for the purpose of a judicial proceeding or for the purpose of a report of a judicial proceeding.

²² *Hubbard vs Vosper*, [1972] 2 Q.B. 84

(d) The reproduction or publication of a literary, dramatic, musical or artistic work in any work prepared by the Secretariat of a Legislature or, wherein the Legislature consists of two Houses, by the Secretariat of either House of the Legislature, exclusively for the use of the members of that Legislature.

(e) The reproduction of any literary, dramatic or musical work in a certified copy made or supplied in accordance with any law for the time being in force.

(f) The reading or recitation in public of any reasonable extract from a published literary or dramatic work.

(g) The publication in a collection, mainly composed of non-copyright matter, bona fide intended for the use of educational institutions, and so described in the title and in any advertisement issued by or on behalf of the publisher, of short passages from published literary or dramatic works, not themselves published for the use of educational institutions in which copyright subsists:

Provided that not more than two such passages from works by the same author are published by the same publisher during any period of five years.

Explanation: In case of a work of joint authorship, references in this clause to passages from works shall include references to passages from works by any one or more of the authors of those passages or by any one or more of those authors in collaboration with any other person.

(h) the reproduction of a literary, dramatic, musical or artistic work:

(I) By a teacher or a pupil in the course of instruction; or

(II) As part of the questions to be answered in an examination; or

(III) In answers to such questions;

(i) the performance in the course of the activities of an educational institution, of a literary, dramatic or musical work by the staff and students of the institution, or of a cinematograph film or a record, if the audience is limited to such staff and students, the parents and guardians of the students and persons directly connected with the activities of the institution;

(j) the making of records in respect of any literary dramatic or musical work, if :-

(i) records recording that work have previously been made by, or with the license or consent of, the owner of the copyright in the work; and

(ii) the person making the records has given the prescribed notice of his intention to make the records, and has paid in the prescribed manner to the owner of the copyright in the work, royalties in respect of all such records to be made by him, at the rate fixed by the Copyright Board in this behalf :

Provided that in making the records such persons shall not make any alternations in, or omission from, the work, unless records recording the work subject to similar alterations and omissions have been previously made by, or with the licence or consent of, the owner of the copyright or unless such alterations and omissions are reasonably necessary for the adaptation of the work to the records in question;

(k) the causing of a recording embodied in a record to be heard in public by utilising the record, ---

(i) at any premises where persons reside, as part of the amenities provided exclusively or mainly for residents therein, or

(ii) as part of the activities of a club, society or other organisation which is not established or conducted for profit;

(l) the performance of a literary, dramatic or musical work by an amateur club or society, if the performance is given to a non-paying audience, or for the benefit of a religious institution;

(m) the reproduction in a newspaper, magazine or other periodical of an article on current economic, political, social or religious topics, unless the author of such article has expressly reserved to himself the right of such reproduction;

(n) the publication in a newspaper, magazine or other periodical of a report of a lecture delivered in public;

(o) the making of not more than three copies of a book (including a pamphlet, sheet of music, map, chart or plan) by or under the direction of the person in charge of a public library for the use of the library if such books is not available for sale in India;

(p) the reproduction, for the purpose of research or private study or with a view to publication, of an unpublished literary, dramatic or musical work kept in a library, museum or other institution to which the public has access :

Provided that

(a) where the identity of the author of any such work or, in the case of a work of joint authorship, of any of the authors is known to the library, museum or other institution, as the case may be, the provisions of this clause shall apply only if such reproduction is made at a time more than fifty years from the date of the death of the author or,

(b) in the case of a work of joint authorship, from the death of the author whose identity is known or, if the identity of more authors than one is known from the death of such of those authors who dies last ;

(q) the reproduction or publication of ---

(i) any matter which has been published in any Official Gazette except an Act of a Legislature;

(ii) any Act of a Legislature subject to the condition that such an Act is reproduced or published together with any commentary thereon or any other original matter;

(iii) the report of any committee, commission, council, board or other like body appointed by the Government if such report has been laid on the Table of the Legislature, unless the reproduction or publication of such report is prohibited by the Government ;

(iv) any judgment or order of a court, tribunal or other judicial authority, unless the reproduction or publication of such judgment or order is prohibited by the court, the tribunal or other judicial authority, as the case may be;

(r) the production or publication of a translation in any Indian language of an Act of a Legislature and of any rules or orders made there under ---

(i) if no translation of such Act or rules or orders in that language has previously been produced or published by the Government; or

(ii) where a translation of such Act or rules or orders in that language has been produced or published by the Government, if the translation is not available for sale to the public :

Provided that such translation contains a statement at a prominent place to the effect that the translation has not been authorised or accepted as authentic by the Government;

(s) the making or publishing of a painting, drawing, engraving or photograph of an architectural work of art;

(t) the making or publishing of a painting, drawing, engraving or photograph of a sculpture, or other artistic work falling under sub-clause (iii) of clause (c) of section 2, if such work is permanently situated in a public place or any premises to which the public has access;

(u) the inclusion in a cinematograph film of ---

(i) any artistic work permanently situated in a public place or any premises to which the public has access ; or

(ii) any other artistic work, if such inclusion is only by way of background or is otherwise incidental to the principal matters presented in the film.

(v) the use by the author of an artistic work, where the author of such work is not the owner of the copyright therein, of any mould, cast, sketch, plan, model or study made by him for the purpose of the work.:

Provided that he does not thereby repeat or imitate the main design of the work;

(w) the making of an object of any description in three dimensions of 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 ;

(x) the reconstruction of a building or structure in accordance with the architectural drawings or plans by reference to which the building or structure was originally constructed :

Provided that the original construction was made with the consent or licence of the owner of the copyright in such drawings and plans;

(y) in relation to literary, dramatic, or musical work recorded or reproduced in any cinematograph film, the exhibition of such film after the expiration of the term of copyright therein :

Provided that the provisions of sub-clause (ii) of clause (a), sub-clause (i) of clause (b) and clauses (d) , (f), (g), (m) and (p) shall not apply with respect to any act unless that act is accompanied by an acknowledgement --

(i) identifying the work by its title or other description; and

(ii) unless the work is anonymous or the author of the work has previously agreed or required that no acknowledgement of his name should be made, also identifying the author.

(2) The provisions of sub-section (1) shall apply to the doing of any act in relation to the translation of a literary, dramatic or musical work or the adaptation of a literary, dramatic, musical or artistic work as they apply in relation to the work itself. A critical inquiry into section 52 of the Copyright Act 1957, gives rise to many questions as to the meaning of fair dealing and whether this meaning fulfills the said objective of the act or not.

Understanding the principles and philosophy of fair dealing includes holding important discussions such as understanding the meaning of fair dealing. It also includes understanding the differences between European and Indian concept of fair dealing and American concept of fair dealing. This would help us in understanding better the nuances of Fair dealing as provided by the Indian copyright Act. Section 52 of the Indian Copyright, 1957 though provides an exclusive list of matters that fall under fair dealing yet it has to be noted that the said section 52 of the act, does not define fair dealing. This Act simply discusses what kind of works come under the term fair dealing.

Under the provisions of the act, areas covered under fair dealing include literary, dramatic, musical or artistic work (not being a computer programme).

- (a) for the purpose of research or private study,
- (b) for criticism or review,
- (c) for news reporting current events,
- (d) in connection with judicial proceeding,
- (e) for performances by an amateur club or society if the performance is given to a non-paying audience, and
- (f) for the making of sound recordings of literary, dramatic or musical works under certain conditions

However, there are many cases, which deal with issues of fair dealing. The term fair depends upon facts and circumstances. However, one of the criticisms that can be held against the existing provision of fair dealing in the Indian copyright act is that due to the provisions of an exhaustive list, any other issues that are of utmost concern yet falling outside of the statutory list is considered as an infringement of the copyright Act. Thus, this has made fair dealing seem like any other conventional law, which in fact runs contrary to the spirit of permissible exceptions that was in the first place instituted and explains for its rigid nature.

Fair dealing provides certain ways through which copyrighted work can be reproduced and would not amount as an infringement of copyright. It is used as an affirmative defense and is applied once we are able to establish that the work in question is in fact substantially similar to the original work. It thus provides an extraordinary flexible ground where one can apply it based on the merit of individual cases. In addition, this doctrine emanated and originated as a doctrine of equity, which permits the limited use of certain copyrighted works. Thus, putting it simply, the main reason behind the fair dealing is to prevent the stagnation of the growth of creativity for whose progress the law has and should be designed.

Fair dealing doctrine has become very important after the Rameshwari photocopy case²³, the *Chancellor Masters and Scholars of the University of Oxford vs. Narendra*²⁴ and *University of Delhi vs. Photocopy*²⁵ cases. Due to these photocopy cases, every student has become familiar with the issue of fair dealing of copyright in India. The case has emerged as one of the most-egregious abuses of copyright law. Leading publishers, Cambridge University Press (CUP) Oxford University Press (OUP) and Taylor and Francis filed a lawsuit against Delhi University and Rameshwari Photocopy Service, the licensed photocopier for creating and distributing course packs to the students of the University. In this suit they challenged the illegal duplication of copyrighted materials for commercial purposes by the photocopy shop. From the very beginning, the plaintiff claim was that this case does not fall under the purview of 'fair dealing,' the exceptions provided under Section 52 of the Indian Copyright Act. However, in counter to the claim it can be argued that the concerned issue was related to intellectual material which is protected by copyright law and was very essential for academic purposes. It was photocopied since the students could not purchase the course books at very expensive prices. It is important to understand the background in which the Rameshwari Press was working. There are two aspects of it:

- a) First aspect is that shop was involved in a commercial activity and therefore the application of Section 52 in this case cannot be attracted.
- b) The second aspect is the context in which shop was operating.

Delhi University opened a tender to select a photocopier for its academic material distribution purpose. Therefore, Rameshwari Press was acting as an agent of the University. In light of the same, its involvement in producing the course packs was not intended towards a commercial purpose but rather driven towards meeting the university's purpose. In this case, Rameshwari photocopy had a license from the University, being the exclusive 'agent' for creating and distributing course packs. It is very pertinent to note that use of the copyrighted work for the purpose of an educational

²³CS (OS) 2439/2012, IAs No.14632/2012 (u/O 39 R-1and2), 14635/2012 (for exemption), 14636/2012 [u/S 80(2)] and 430/2012 (of D-2 u/O 39 R-4)

²⁴CS (OS) 2439/2012

²⁵CS(OS) 2439/2012, IAs No. 14632/2012(u/O39 R-1 and 2)

institution is an exception to copyright infringement.²⁶ The end purpose of these course packs is the education of the students. This purpose falls squarely within the ambit of 'permissible purposes' as incorporated in Section 52 of the Indian Copyright Act. On this issue, India and Canada have a similar copyright system, thus Canadian Supreme Court has in similar situation held that distribution of extracts for educational purpose fall under the ambit of 'permissible purpose'.²⁷

Meanwhile the publishers contented that Authors are not philanthropists and publishing houses are not charities. Thus, while no legal jurisdiction has overlooked the commercial aspect of this whole exercise. Additionally, it is important to remember the fundamental philosophy of the Indian Copyright Act, TRIPS Agreement and analogous enactments. The philosophy of the enactments says that reproducing parts of a copyrightable work in certain situations without making payments to the copyright holder is permissible on grounds of equity or as laid down by legislature. This is the most important purpose of the concept of Fair Use or Fair Dealing of the copyright law.

The above case brings into focus the question of instances wherein these course packs are sold by the Press to students not belonging to Delhi University. In this situation, one can take a view and propose that this does not come under the ambit of fair dealing as the Publishers argued. Based on equity, the other view would be that even a non Delhi University student cannot possibly afford all the individual books at such steep price. Furthermore, another view that has been advanced recently is that the objective that a whole book seeks to achieve and the objective which a course pack, made after choosing different portion of different books, seeks to achieve are entirely dissimilar. In above cases, the existence of cheap course packs does not affect the sales of books at all since buyers interested in the objectives that can be fulfilled by the book will purchase books only.

Another important case, which needs to be discussed out here is that of *India TV Independent News Services Pvt. Ltd. v. Yashraj Films Private Limited and Super*

²⁶ Section 52 (1)(i) of the Indian Copyright Act, 1957

²⁷ *Alberta (Education) v. Canadian Copyright Licensing Agency*, [2012] 2 SCR 345

*Cassettes Ltd.*²⁸ In this case, the TV Channel broadcasted an exclusive segment focused on singers and when as these singers were singing their songs live on TV, certain clips of movies to which those songs belonged were shown. Infringement of copyright was claimed by the publishers at Oxford, Cambridge, etc. and the Delhi High Court released a judgment restraining the Channel from distributing, broadcasting or otherwise publishing or in any other way exploiting any cinematograph film, sound recordings or part thereof that is owned by the producers. This is where an important issue was raised whether it would it be unethical, even cruel, to restrain a singer from singing his song in front of an audience merely because the legal rights subsisting over it are possessed by someone else? The deficiency of Section 52 of the Indian Copyright Act in this regard thus becomes a handicap, which ultimately acts to the detriment of tenets of justice and equity. The division bench of Delhi High Court also somewhat realized this when an appeal was made to the judgment and ended up setting aside the earlier order and removing the restrictions.

A. Meaning of Private and Personal use in the Indian Context

Section 52 of the Copyright Act 1957 talks about “fair dealing” as legitimate defense, when dealing is for the purpose of private and personal use including research. As section 52.also states that fair dealing applies to literary, artistic, dramatic, and musical works. In addition, it does not include broadcasting, film, sound recording and others. This reflects upon the rigidity of copyright act as it specifies the area of fair dealing in restricting its reach. Therefore to counter this, Indian Courts have opened the various aspect of fair dealing. Further, the courts have said that there cannot be definite or exhaustive list of uses of fair dealing. Courts have observed that facts and circumstances involved in each case would be the deciding factor of the purview of fair dealing also. Now Indian Courts have started paying attention to the same.

In *Indian Independent News Services Pvt. Ltd (TV) Vs Yashraj Films Private Ltd* case²⁹, the issue was over whether broadcasting a TV show would come under the ambit

²⁸ FAO (OS) 584/2011

²⁹ FAO (OS) 583/2011

of fair dealing or not. Over this issue, Delhi High Court observed that until it is not added in the act, broadcasting would not be considered as fair dealing. In this case, the TV Channel broadcasted an exclusive segment focused on singers & (and) when these singers were singing their songs live on TV, certain clips of the movies to which those songs belonged were shown. Infringement of copyright was claimed by the publishers at Oxford, Cambridge, etc. and the Delhi High Court released a judgment restraining the Channel from distributing, broadcasting or otherwise publishing or in any other way exploiting any cinematograph film, sound recordings or part thereof that is owned by the producers. This is where an interesting point stems up. Would it not be unethical, even cruel, to restrain a singer from singing his song in front of an audience merely because the legal rights subsisting over it are possessed by someone else? The deficiency of Section 52 of the Indian Copyright Act in this regard thus becomes a handicap which ultimately acts to the detriment of tenets of justice & equity. The division bench of Delhi High Court also somewhat realized this when an appeal was made to the judgment and ended up setting aside the earlier order and removing the restrictions.

Later, legislative council has realized the impact of the judgment and it came up with the copyright amendment bill 2012, which was recognized by parliament as well. Thus the copyright amendment 2012, section 52(I) (a) of the copyright Act, 1957 referred as “a fair dealing with any work, not being computer program, for the purpose of private and personal use, including research” was added to the Indian copyright act . This takes us to further questions about what would constitute the specifications of private, personal and research works for which copyright works can be used legitimately without consent of the copyright holder. Since the Act does not define the meaning of these terms, therefore the courts have to take the help of the dictionary to elucidate the meaning of fair dealing. On this note, the court clarified in the case of *Blackwood and Sons Vs Parasuram*³⁰ that private study did not involve publication and if the work was published, it could not take protection under the clause relating to private study. This judgment was based on the judgment quoted from Copinger and Skone James that “Private Study only covers the case of a student copying out a book for his own use, but not the circulation of

³⁰ AIR 1959 Md. 410

copies among other students”³¹. Similarly, in the context of research, the court rejected the argument that a guidebook, which is a summary of a copyrighted works within substantial reproductions from the same in the form of extracts, is a research works since research is “an investigation directed to the discovery of some fact by careful study of subject; investigation, inquiry into things.”³² In the case of *Syndicate Press of University of Cambridge Vs Kasturi Lal and Sons*,³³ the Delhi High Court said that law should encourage enterprise, research and scholarship but such encouragement cannot come at the cost of the right of an individual to protect against the misappropriation of what is essentially a product of his intellect and ingenuity. The law encourages innovation and improvement but not plagiarism. Copyright is a form of protection and not a barrier against research and scholarship. Lifting portions of the original work and presenting it as one’s own creation can in no way be described as any form of bona fide enterprise or activity. Research and scholarship are easily distinguishable from imitation and plagiarism.

As private study covers the students’ copying the book for their own use, and not for the circulation of copies among other students in *Blackwood case*³⁴. Similarly in the case of *Syndicate of Press University of Cambridge Vs Kasturi Lal*,³⁵ the Court held that there was an infringement, not falling because Section 52(1) (h) allows reproduction for the purpose of answering questions in an examination and not questions and answers as a whole. As Peterson J. said that “It could not be contended that the mere republication of a copyright work was a ‘fair dealing’ because it was intended for purposes of private study; not if an author produced a book of questions for the use of students, could another person with impunity republish the book with answers to the questions. Neither case would come under the description of ‘fair dealing’.”³⁶

³¹ T.C. James, “Copyright Law of India and the Academic Community,” *Journal of Intellectual Property Rights*, Vol. 9, (May, 2004), p. 219

³² *Ibid*

³³ (2006) 32 PTC 487 (Del)

³⁴ *Blackwood and Sons v Parasuram* AIR 1959 Md. 410.

³⁵ (2006) 32 PTC 487 (Del)

³⁶ *University of London Press Ltd. v. University Tutorial Press Ltd* [1916] 2 Ch 601

B. Reporting Current Events and Section 52

Section 52(1) (b) of the Copyright Act, 1957 discusses matter that concerns the reporting of current events in print or broadcast media that is also considered as an exception, and comes under Fair dealing. The reason behind this is that a person has a right to know (right to freedom of speech and expression).³⁷ However, exception of fair dealing was not granted by the court when a newspaper published extracts of a confidential diary minute of a political meeting.³⁸ Further, the court rejected the petition by saying that the defendant has used this news for commercial interest. In addition, the court also said that the event must be those items that are related to current ones and not historical events nor must it be for editorials either.

The Berne convention has certain relevant provisions for reporting of current events. Article 2(8) of the Berne convention excludes production for “News of the day or to miscellaneous facts having the character of mere items of press information.”It is also included in the limited class of exceptions provided for under article 10 of the convention.

C. Validity of Section 52 of Copyright Act 1957

Section 52(1) of the copyright Act 1957 provides the defence for criticism or review of the copyright infringer. The basic reason behind this provision is to protect a reviewer who wants to put forth his opinion or views or comments on a particular copyrighted work by using extracts from that work. *Hubbard vs. Vosper*³⁹ was the first case regarding this principle, which has already been discussed and was followed by *Associated Newspapers Group v. News Group Newspapers Ltd.* case⁴⁰, where it was stated that it is not fair for a rival in the trade to take copyright material and use it for its own benefit. Therefore, copying is made the relevant question. If anyone use the copyrighted material then the use should be made only for criticism or review not for other incidental purposes and for dealing, the dealing to be fair in criticism or review. Moreover, it is acceptable to

³⁷ *Reliance Petrochemicals v. Indian Express Newspapers*, (1988) 4 SCC 592

³⁸ *Ashdown v. Telegraph Group Ltd.* (2001) EWCA civ 1142

³⁹ [1972] 2 Q.B. 84

⁴⁰ *Associated Newspapers Group v. News Group Newspapers Ltd*, R.P.C. (1986) 103 (19): p. 515-520

quote from other comparable works for exemplifying the criticism. Furthermore, on the issue of fair dealing and criticism, the *Syndicate of Press of University of Cambridge v. Kasturi Lal and Sons* case⁴¹ was a landmark judgment and has also set the precedent. In this case, the Delhi High Court observed that “A review, criticism or guide acknowledges the original authors of the work that they deal with. A review may summarise the original work and present it for perusal to a third person so that such person may get an idea about the work. A criticism may discuss the merits and demerits of the work. A guide may seek to enable students of the original work to better understand it from the point of view of examinations. Verbatim lifting of the text to the extent of copying the complete set of exercise and the key to such exercise can in no manner be termed as a review, criticism or a guide to the original work.”

In addition, the court also stated that it does not constitute copyright infringement for the purposes of criticism if the dealing is substantially copied. Review or criticism may relate not only to the literary, but also to the doctrine, philosophy, ideas or events described through the author.⁴² It is not required for the parts of the work selected for the criticism or review to be representative of the work as an entire. Therefore, in *Time Warner Entertainment Ltd Vs Channel 4 Television Corporation Plc.* case⁴³ it was held that the criticism of a single aspect of a work is capable of constituting fair dealing. Moreover, in *Campbell v. Acuff-Rose Music* case⁴⁴ parodies are also accepted as falling within the purview of criticism. Additionally, the court held that when there is a question to decide upon a valid parody then it must be established that the particular copied work must acknowledge the original author. It must be established that only that much work is to be copied as would be necessary to remind the reader, listener or viewer of the original work.⁴⁵

In the context of parody, there is not a single case where parody is considered as fair dealing and has not arisen. However in United States of America this clearly comes

⁴¹ 2006 (32) PTC 487 Del

⁴² *Civic Chandran v. Ammini Amma*, 1996 (1) KLT 608 (Ker HC)

⁴³ [1994] E.M.L.R. 1

⁴⁴ 114 S. Ct.(SC) 1164

⁴⁵ *Woody Allen v. National Video*, (1985) 610 F Supp. 1612

under the fair use doctrine on the one hand and in countries like United Kingdom such issue are yet to be decided.

4.4 An Analysis of ‘fair use’ doctrine

Before we go further into discussing the provisions of Indian Copyright Act, it would be very helpful to discuss and compare at this stage the doctrine of fair use that is prevalent in U.S. Section 107 of the U.S. Copyright Law talks about ‘fair use’ which limits the exclusive rights of the copyright holder. Section 107 of the U.S. Copyright Law says that the fair use of a copyrighted work, including such use by reproduction in copies or phone records or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. To determine what constitutes fair deal, the following points are worth noticing:

1. The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
2. The nature of the copyrighted work;
3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
4. The effect of the use upon the potential market for or value of the copyrighted work.

The fact that a work is unpublished shall not itself bar a finding of fair use if such a finding is made upon consideration of all the above factors.

Contrary to one of the more persistent myths about copyright law, fair use cannot be reduced to a certain quantity of words or number of lines, because it is a flexible multi-factor analysis, which can be subjective and tends to vary from case to case and court to court. However some editors, organizations and publishers have accepted ‘guidelines’ that limit fair use to line counts, specific word counts or percentages of text. In addition, sometimes fair use does not apply to certain kinds of scholarly quotation, such as epigraphs. Whereas these house rules may reflect the comfort level of the editor or

publisher. Additionally, they are not essentially consistent with the scope of fair use, which is defined under the copyright law. Generally it is understood that parody may be treated as fair-use comment or criticism in the U.S. as long as the parody targets the copyrighted work and does not only use the work as a springboard for unrelated 'satire'. Progressively, the central contemplation under the doctrine of fair use of U.S. is whether the purpose and character of the use are 'transformative' or instead only 'superseding' of the copyrighted work. While in the case *Campbell v. Acuff-Rose Music, Inc.*,⁴⁶ it is found that a transformative use indicates that "adds something new, with a further purpose or different character, altering the first with new expression, meaning, or message". While from the scholarly context, a transformative use would typically indicate that subjects a reasonable amount of discontinuously-quoted material to critical commentary and analysis, in contrast to a full page or various pages of continuous cited material that is not treated to critical commentary or substantial analysis through the quoting scholar. It is very important for the scholars' community to understand that the U.S. Copyright Act was amended in 1992. And due to this amendment, the privilege of fair use was expressly acknowledged as extending to unpublished and published material. Now, it is clear that fair use may apply to unpublished material. Moreover, in the context of unpublished works, the U.S. courts have historically been more reluctant to find fair use. The case law is still developing on this point. Lastly, at least in the U.S., the fact is that even if one has asked for permission to cite and been denied it by the copyright owner, it does not negate the fair use privilege. Persons often look for consent, not because they believe that fair use does not apply, but because they desire to avoid litigation or threats of litigation by the copyright owner.

4.5 A Comparison of Fair Use and Fair Dealing

Going through the definition of both the terms, it has been found that United States of America have used the term 'use' instead of 'dealing'. An analysis of the terms, 'use' and 'dealing', shows that there are no fundamental difference between both terms, which means both the terms have a similar meaning. However, there is one existing difference, which is in terms of the nature of rigidity in both the terms. 'Fair dealing' doctrine has

⁴⁶510 U.S. 569, 579 (1994)

rigidity in the context of Indian copyright law, while on the other hand 'Fair use' doctrine is not rigid in the United States of America. The reason behind this lies in the fact that while the Indian copyright Law has an exhaustive list for the doctrine of "fair dealing" whereas in United States of America the doctrine discusses about fair and *bonafide* use of a copyright work. In case of the latter its door is always open for any new exception.

A. Indian and European Concept of Fair Dealing

Laws regarding copyright were first enacted by the British government in the Statute of Anne Act 1709, however the law does not have a single provision regarding fair dealing. *Gyles v. Wilcox*⁴⁷ was recognized as the first case, where doctrine of fair abridgment developed. Later, this doctrine was developed into what we know as doctrine of fair dealing or fair use. In *Gyles v. Wilcox* (1740) 26 ER 489 case, it was held that abridgment has two categories which are true abridgment and coloured shortening. Moreover, in this case, the decision did not define the exact parameters that would qualify the work as valid abridgment. This was the beginning of the development of the concept of fair dealing. The doctrine of abridgement, which was developed in *Gyles v. Wilcox* was followed a number of times throughout the eighteenth century. Furthermore, in the early nineteenth century it was extended and developed into a doctrine of 'fair user'. Lord Ellenborough observed in the case of *Cary v. Kearsley*⁴⁸ that "a man may fairly adopt part of the work of another, he may so make use of another's labours for the promotion of science, and the benefit of the public, but having done so, the question will be, Was the matter so taken used fairly with that view, and without what I may term *animus furandi*?⁴⁹" Furthermore, Lord Eldon recognized the principle of "fair quotation" in *Wilkins v. Aikin case*⁵⁰ notwithstanding subject to the caveat that "a man cannot under the pretence of quotation, publish either the whole or part of another's work". Likewise, in the use of extracts to "serve as the foundation for" a critical review was not considered to be a transgression against the legislation.⁵¹ After thirty years,

⁴⁷(1740) 26 ER 489

⁴⁸ (1804) 4 Esp. 168

⁴⁹ http://copy.law.cam.ac.uk/cam/tools/request/showRecord?id=commentary_uk_1741 accessed on 09/12/2014

⁵⁰(1810) 17 Ves. Jun. 422

⁵¹*Whittingham v. Wooler* (1817) 2 Swanst. 428

regarding a series of poems in an edited collection Shadwell VC commented that, if a critical note had been appended to a series of poems in an edited collection by way of illustration or to show whence the author had borrowed an idea or what idea he had communicated to others, such use of another's work would be "fair criticism".⁵²

In 19th century, the concept of copyright had gone through various changes. In 19th century, parliament expanded the notion of copyright because, now writing for monetary purpose became a respectable occupation. Economic harm to the author as well as the publisher could not be dismissed as breezily as it had been in the 18th century especially when the author depended upon royalties from sales.⁵³

By the last quarter of the 19th century, Vaver said that the days of the free-roaming abridger were clearly numbered with the passage of the *Copyright Act* 1911. In the act, the "right to abridge a work" which had developed throughout the nineteenth century, was brought within the copyright owner's control. Furthermore, the various examples of 'fair user' were recast as a much less flexible series of specific uses that might otherwise be considered to be 'fair dealing'.⁵⁴ Finally, British government had accepted the doctrine of "fair dealing" in sections 29 and 30 of the Copyright, Designs and Patents Act, 1988.

Most of the existing laws in India are considered as the legacy of the British colonial India, as India has been ruled by Britain for almost 200 years. Therefore, it is hard to differentiate between Indian notion of "fair dealing" and European notion of "fair dealing." For example, when we see E.M. Foster's case⁵⁵ that was related to a novel named "A Passage to India." Later on Mr A.N Parasurm had published a guidebook named "A Passage to India" for the students of the novel. In this case, the question was whether reproduction of the guidebook was considered as infringement of copyright of the original work. The court observed that there was no such infringement by substantial

⁵²*Campbell v. Scott* (1842) 6 Jur. 186

⁵³ http://copy.law.cam.ac.uk/cam/tools/request/showRecord?id=commentary_uk_1741 accessed on 09/12/2014

⁵⁴D.Vaver, "Abridgments and Abstracts: Copyright Implications", *European Intellectual Property Review*, Vol. 17, (1995) pp. 225-235

⁵⁵*E M Foster vs. A N Parasuram*, AIR 1964 Mad. 331

reproduction of the original novel. The guidebook amounted to an independent literary effort on his part.⁵⁶ However, in another case named *Secondary Board of Education vs. The Standard Book Company Calcutta Weekly Notes*⁵⁷, the Calcutta High Court held that the guidebooks were not eligible for the copyright protection under the fair dealing, which compete with the original books.

Fair dealing has been acknowledged as a legal doctrine by several countries including India and Canada. Since this doctrine explains the difference between a legitimate, *bonafide* fair use of a work from a *malafide* blatant copy of the work. Therefore, Trade Related Aspects of Intellectual Property Rights (TRIPS) under Article 13 also accept fair dealing, which legalizes it globally⁵⁸. Additionally, all members of the WTO countries are obliged to comply with the Berne Convention on copyright and the articles of TRIPS. Therefore, all member countries of WTO have adopted this doctrine in their territorial copyright legislations. However, though, members have accepted this doctrine yet it is not without its share of disagreement. This doctrine talks about a valid defense for infringement of copyright for the purpose of research and private and personal use as well.

B. Indian and British Concept of fair dealing

United Kingdom Copyright Act 1911 was the first enactment, where Fair dealing appeared. It has been a subject of much debate among the scholars. Some scholars say that the fair dealing doctrine offers no vision or principles. Furthermore, it holds too many barriers undermining its operation and its purposes are too rigid and have been interpreted restrictively.⁵⁹ Others maintain that U.K. courts “have construed the specific

⁵⁶ *Ramesh Chaudhari vs. Kh. Ali Mohamad*, AIR 1965, Jammu and Kashmir, 101

⁵⁷ Calcutta High Court (1996) 1130

⁵⁸ Article 13 of TRIPS “Members shall confine limitations or exceptions to exclusive rights to certain special cases, which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.”

⁵⁹ T.R.S. Iyengar, *The Copyright Act, 1957*, (New Delhi :Universal Law Publishing Co., 2001), p. 481

purposes liberally.”⁶⁰ The Whitford Committee had suggested that the fair use doctrine should be adopted in the United Kingdom,⁶¹ but the suggestion was rejected by the Government, together with a proposal to rename the defence “fair use” or “fair practice.”

C. Indian and Canadian Concept of fair dealing

In the *CCH Canadian Vs Law Society of Upper Canada* case, it has been argued that fair dealing exception to copyright law has become outdated. Therefore Canadian authors are coming up with a new approach towards “fair dealing” post the decision of *CCH Canadian v. Law Society of Upper Canada*⁶² case. There are two main factors responsible for this:

- a) The impact that the internet has had on Canadian culture, and
- b) The decision the Supreme Court of Canada where it stated that “in order to maintain the proper balance between the rights of the copyright owner and users’ interests, fair dealing must not be interpreted restrictively”.

The following conditions are to be kept in mind while deciding what fair dealing constitutes – character of the dealing, the nature of the work, the purpose and commercial nature of the dealing, the amount of the dealing, alternatives to the dealing, and the effect of the dealing on the work.⁶³

Later the National Consultation on Copyright Policy pronounced that the fair dealing exception required amendments.⁶⁴ However, in the form of Bill C-11, the federal government took a strict approach to the amendments.⁶⁵ Therefore, it can be seen that Canada is not yet ready to adopt the fair use doctrine or rather a liberal approach to fair dealing even after the judiciary has called for such an amendment.

⁶⁰ Bently Lionel and Sherman Brad, “*Intellectual Property Law*”, (Oxford: Oxford University Press, 2004), p. 193

⁶¹ Copyright and Designs Law: Report of the Committee to Consider the Law on Copyright and Design, 1997, (Cmnd. 6732), pp. 672-677

⁶² *Canadian v. Law Society of Upper Canada*, [2004] 1 SCR 339 [CCH]

⁶³ Giuseppina D’Agostino, “Healing Fair Dealing? A Comparative Copyright Analysis of Canada’s Fair Dealing to U.K. Fair Dealing and U.S. Fair Use”, *McGill Law Journal* Vol. 53, (2008), p. 309

⁶⁴ Michael Geist, “*Copyright Consultation Provides Blueprint for Reform*” *The Hill Times* (2 November 2009), available at <http://www.michaelgeist.ca/content/view/4543/159/> > ‘Last accessed 12/04/2015’

⁶⁵ Copyright Modernization Act, SC 2012, 1st Sess., 41st Parl., 2011, c 20 [Bill C-11]

D. Indian Fair dealing and U.S. Fair Use Doctrines

The statutory framework of Indian copyright law comes out of common law. Thus, the enactment of copyright does not define fair dealing. The publication of a compilation of speeches delivered in public or addresses does not qualify as fair dealing of such work within the meaning of this clause. Therefore, Indian law allows fair dealing as a protection for particular acts that would not be deemed as infringement for the four specified categories of copyrighted works, which are artistic works, dramatic, literary and musical works. In contrary to Indian Copyright Law, U.S. Copyright law does not specify acts which would be considered as fair use, rather it gives four factors test that must be considered to assess whether an action of exploitation through the individual comes within the ambit of fair use. The statutory provision of section 107 of the U.S. Copyright law provides that:

Notwithstanding the provisions of sections 106 and 106A of U.S. Copyright Act, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include:

- (1) the purpose and character of the use, including whether such use is of a commercial nature or is for non-profit educational purposes;
- (2) the nature of the copyrighted work;
- (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- (4) the effect of the use upon the potential market for or value of the copyrighted work.

Therefore an unpublished work shall not itself bar a finding of fair use, if such finding is made upon the consideration of all the above factors. In spite of an exhaustive list of activities that constitute exceptions to copyright, the U.S. Copyright Law gives a “test” for determining whether a specific use lies in the ambit of fair use. Irrespective of the nature of the work protected through the Copyright law, the test appears to be applicable across the board.

After the comparison of the legislative structures and the interpretations of Indian and U. S. Copyright Act, one is very much tempted to argue that the U.S. legislative structure provides judges more freedom to assess “fair use”. In addition, they possibly extend these factors to ever new areas of technology and copyright content. Whereas, the Indian legislature defined “fair dealing” in terms of an exhaustive list, which appear to be more societal and friendly to the common man. However, it seems that the U.S. copyright test may tend to ignore the commercial implications that fair dealing might have upon such use of a work.

The balancing act, at least for the Indian legislation, seems to have been found in the conjugate application of the two. Now, the Indian courts have included vide reference of the *Folsom v. Marsh*⁶⁶ test case, while adjudging, if fair dealing was in fact “fair” for the real commercial implications that the author suffers. In order to understand the merit of the referred case it would be very crucial to discuss in brief the observation made in this case. In this case, where Charles Upham was accused by the owner and editor of multi-volume collection of George Washington’s letters of infringement, Justice William story in explaining the nature of infringement and the justifiable use of original materials, observed that it does not matter whether the whole or a major portion of the work is copied but what amounts to infringement is, if and when so much of a work is taken that the original is sensibly diminished or a substantial portion of the original work is substantially appropriate to an extent, that it becomes detrimental then it constitutes piracy protanto. Continuing further he observed that-

the question of piracy, often depend upon a nice balance of the comparative use made in one of the materials of the other; the nature,

⁶⁶ 9. F. Cas. 342 (C.C.D. Mass. 1841)

extent, and value of the materials thus used; the objects of each work; and the degree to which each writer may be fairly presumed to have resorted to the same common sources of information, or to have exercised the same common diligence in the selection and arrangement of the materials.

This is treading a fine line, whereby, before the quantitative estimations of the impact of the fair dealing upon the qualitative exercise of the author's right can be analyzed, the exception enumerated in the legislation needs to be satisfied. In addition, the developing jurisprudence surrounding fair use and fair dealing brought about parity in the stance that nations take towards protecting rights of intellectual property holders. Therefore, leading to possible uniformity in the manner courts across different jurisdictions are likely to adjudicate disputes.

4.6 Justifiability of Fair Dealing or Fair Use

The logic for allowing the exception of fair dealing in copyright law is that it is for the greater public benefit rather than denial. Fair dealing is a way by which an infringer can use the copyrighted work and may bring some greater public benefit measures⁶⁷. In this context, public can use the copyrighted work "fairly" without requiring the consent or licence from the copyright holder. One has to strike a balance between two competing and equally important interests where, on the one hand, to a limited extent, it is the monopoly of authors that acts as an incentive to create and on the other hand, it must be ensure that this monopoly must not come in the way of creative ability of others. In other words, this is a right of the public which is build upon previous works.⁶⁸Reproduction of a limited section of the copyrighted work is essential for the purposes of criticism, news reporting, teaching, private study, research, review, etc. If fair dealing is not permitted then the society will become stagnant as there will be no protection for the justified dissemination of information. Thus, the question is who will protect the rights of the

⁶⁷Damstedt B.J., "Limiting Locke: A Natural Law Justification for the Fair Use Doctrine", *Yale Law Journal*, Vol. 12, (2003), p.1179

⁶⁸*Kartar Singh v. Ladha Singh*, A.I.R 1934 Lah. 777; *Eastern Book Co. v. NavinDesai*, A.I.R. 2001 Del. 185

public if only the rights of the owner are sought to be protected? Therefore, free dealing is a means to create a vibrant and innovative society.

If the question is being asked why fair dealing, it is because it has been found that there have been a number of objections to follow the fair use doctrine universally. As previously discussed and has already been pointed out, although the Canadian court established a lithe approach in the form of the CCH decision it was not prepared to approve the proposed amendments into the act. Whereas in the U.K., the Courts have digressed a tad bit while interpreting the laws and deciding the cases. Moreover, those factors have not been formally entrenched into the statutes. In India also no such approach has been attempted yet. The main recognizable problem of the fair dealing doctrine has been recognized is that it calls for a “case-by-case” approach which often leads to a huge amount of litigation as well as correspondingly an increase in the pendency of cases. Moreover, fair use is assumed to be “ill, though hardly dead yet.”⁶⁹ It has been assumed that claims of U.S. “fair use doctrine’s” superiority are often misguided, and many others have called on the United States Congress to clarify the fair use.⁷⁰ The courts have also failed to simplify fair use, despite the attempts to establish bright-line presumptions such as:

- a) Commercial uses are unfair,⁷¹
- b) The plaintiff's unpublished works should be favoured,⁷² and, more recently,
- c) Works must be transformative to constitute fair use.⁷³

While there is a scope of the fair use, it has been found that it is increasingly expensive and painful to mount litigation to clarify the scope of the use. Moreover, because of this reason some users also consider it risky. Due to such reason claimants has fear of losing the case. Therefore, the claimants may not even come to the Courts to settle their disagreements. Moreover, to establishing this theoretical point, the American

⁶⁹Gordon Wendy J. “Keynote: Fair Use: Threat or Threatened”, *Case Western Reserve. Law. Review*, Vol. 55, No. 903, (2005), p.912

⁷⁰ Michael Carroll, “Fixing Fair Use”, *N.C.L. Rev.*, Vol. 85, No. 1087, (2007), p.33

⁷¹ *Sony Corp. of America v. Universal City Studios*, 464 U.S. 417, 104 S. Ct.(SC) 774 (1984)

⁷² *Harper and Row Publishers v. Nation Enterprises*, 471 U.S. 539 at 546, 105 S. Ct. (SC) 2218 (1985)

⁷³ *Campbell v. Acuff-Rose Music*, 510 U.S. 569, 114 S. Ct.(SC) 1164 (1994)

Intellectual Property Law Association has noted that the average cost of defending a copyright case is just less than one million U.S. dollars. As fair use is very case specific, it does not leave any room for remedy, which would be common to all. Thus, it gives rise to a lot of confusion and chaos.

Conversely, argument on the other side is that Fair dealing is what we need in the present day since there are a number of cases being filed on this issue. The basis of interpretation of statutes is that the law should be interpreted strictly. We do not follow an open ended system like the U.S. Therefore, keeping in mind the nature of our legal system; fair dealing is the most appropriate method.

Fair use doctrine is an established principle in US Copyright Law, which means U.S has a legal doctrine for fair use of copyright law. In the case of fair use it has been argued in the case of *Cambridge University Press v. Becker*⁷⁴ by the U.S. courts that there won't be any requirement of a license for less than 10% reproduction of the copyrighted work. U.S. which is known as a strong economy provides such a wide leeway to its inhabitants on the basis of equity under "fair use". In the case of India, it becomes fairly simple for Indian lawmakers to amend Section 52 in order to relax the restrictions for public purposes. It would end up entailing certain activities that are not strictly non-commercial but still nevertheless justifiable on grounds of reason, equity and logic. The outcome of the amendments would be a piece of legislation which is responsive and ready to adapt to the fast transforming nature of the Indian economy while keeping in mind the creative potentials of its citizens without compromising the business potential of publishers.

This would offer us a permissible list as opposed to the exhaustive list of the Indian, Canadian and U.K. acts. The argument against a codified system such as that in the United Kingdom was that a more flexible approach permits the courts to develop the law on a case-by-case basis as new problems emerge.⁷⁵The defendant also has the burden of proof to establish that his violating acts were fairly dealing with the purposes legalized

⁷⁴ *Cambridge University Press v. Becker*, Civil Action No. 1:08-CV-1425-ODE

⁷⁵ Weinreb, "Fair's Fair: A Comment on the Fair Use Doctrine," *Harvard Law Review* Vol. 103, (1990), p. 1137.

under the Act. Since the defendant has the burden of proof, therefore it has to be within the four corners of the statutory provisions.

Basically, the primary objective of the “Fair use doctrine” of the copyright law is to facilitate and to enlarge the creative and ingenious productivity. In doing so a set of factors help in the decision making process and these factors are based on the court’s discretion rather than on any exhaustive list. On the contrary fair dealing is a right, which has some limitations. Therefore, comparatively fair use doctrine is a more flexible model. It permits the development of the exception to cater to the prerequisites of the developing technological and economic practices in the society.

Comparatively, Indian concept of fair dealing is broader than the Canadian doctrine of fair dealing from where the doctrine developed. However, the Exceptions provided by the Indian Copyright Act are becoming redundant due to the fast paced technology development. This inevitable material connection between technology and copyright cannot be ignored but has to be addressed if we are to keep pace with the rapid changes and the growing challenges. It has already been observed that even after laying down such an exhaustive list for the determination of fair dealing, it has not been perfectly interpreted by Indian Courts, which directly or indirectly shows that Courts do not give a lot of importance to the enumerated exceptions. The grey areas relating to this field though seemingly small are very significant and plays a crucial factor. Since the fair use doctrine does not have a very rigid approach, a number of principles and guidelines have developed through the course of case laws and many precedents have been set which is not the case in fair dealing.

Thus, while U.K. has developed a mature licensing system, Canada and U.S.A have seen the courts intervene in order to protect the interests of the public at large. Likewise, considering the overall socioeconomic status of India, it’s high time for India to follow suit. To this end, while the Courts can come up with guidelines in the present Rameshwari case, but the best course of action would be in taking cue from the practices prevalent in other major democracies of the world and to amend the law, by adopting a more “fair-use” based model in India.

The defence for this reason is that fair use has a broader scope and is not limited by a list of enumerated purpose. Further, it can be argued that the Canadian model of fair dealing is more flexible than the provisions of fair dealing that is prevalent in India. Part of the explanation for this rigidity in case of India is that the CCH decision has not yet been followed here.

It can be pointed out that the dispute between the publishers, University and Rameshwari Photocopy Service might not have arisen, if Indian copyright had fair use provisions instead of a fair dealing system instituted. However, it is only a mere possibility. There is a need for us in the course of interpreting the provisions of fair dealing to refer to the decisions taken by other jurisdiction, since the Indian judiciary has never dealt with the “limit of permissible copying” for educational purposes. For example, in 2012 the US court held that the University would not require a license for reproduction of less than 10% of the total page count of the book.⁷⁶ Therefore following this illustration, we should also allow copying of at least 15-20% of the total page count of the book to accommodate the needs of the Indian educational system. A permissible limit as well as permissible purpose certainly carries in some life to our fair dealing provisions. There is a need to clearly define what constitutes Fair dealing in Section 52 of the Copyright Act so as to bring more clarity and avoid the prevalent confusion.

In the conclusion, following the discussion we have carried out in the earlier portion of this chapter, put in simple terms, copying a work without the permission or licence granted by the owner of the copyright, which is the exclusive right of the owner, conferred upon by the copyright Act, amounts to infringement. However in practice, due to factors such as the rapid technological changes and the corresponding societal changes, a rigid interpretation of the act as currently provided in fair dealing would leave no or little room for fairly adjudicating the cases and for judicial creativity. Yes, it is true that the freedom of speech and expression does not permit the misappropriation of other’s work however if the law is so rigid then it does not leave any room for even taking cue from the work of the other. Thus, the crucial question is from where people can take the stand and inspiration for creating further works. These two interests have to be balanced and so

⁷⁶*Cambridge University Press v. Becker*, judgment in may 2012 by District Court of US

the justification for the inclusion of Fair dealing. Therefore, the focus as we have discussed should rather veer around the question of how to come up with a more efficient model which can help us tackle our disputes in better way. At present, within the provisions of fair dealing, because of its restrictive nature, the issue has not and cannot be subjected to much active judicial interpretation, so there is a need for an alternative approach. Gauging the need of the hour, perhaps in addition to the use of fair dealing there is a growing need to incorporate ideals of fair use doctrine if one is to keep track of the recent developments and make suitable amendments to address the arising issues effectively.

Fair use is based on utilitarian principles and fair dealing is based on the natural law theory where author takes centre stage. The view of the authors is in favour of adapting the fair dealing doctrine with certain features of the 'fair use' system. It is now up to the legislators, in the present day circumstances, to approach and analyse this issue so as to best serve our interests.

Chapter 5

Conclusion

5.1 Finding and Suggestions

The discussions taken up in the last three chapters on copyright have thrown up a vast array of information and in the process though not completely have to a large extent made clear the complexities and elucidated the provisions of copyright act. There is no doubt there are problems that still needs to be addressed. But the reasons behind these problems can be explained in terms of two broad classification the first being the nature and scope of the work here is in comparison to the complexity and vastness of the area that copyright act is too huge to be addressed in a single work. Another problem lies with the nature of the issue themselves as since the area of copyright is a dynamic issues that is in need of constant revision owing to the new challenges that is thrown up everyday they are problems that need to addressed in the light of the current development. However, the positive thing about these problems is that in the process they act as challenges that refines and redefines the tools that one is equipped with and in the process enrich the area of our study. Keeping these things in mind we at this stage proceed to summarized in short what are the interesting findings the study had thrown up, what are the challenges that lie ahead of us and suggestions as how to tackle them best.

From the study of the history of copyright, it can be said that though a formal institution of the copyright emerged with the invention of printing press yet it has to be noted that this did not come about all of a sudden. As we have been discussing all along it roots and the idea behind it can be traced as far as the ancient Greek period. As far as the rights were concerned initially, the printers were free to publish any author's work under the govern of stationers' company which had the monopoly over the publishing industry and enforcing regulations to the printers and at this point of time there was no talk of the creators or the authors rights. There was a stationers' company to regulate the printers, who by virtue of owning the means of production appropriated the authors' original works. However, with the passage of time and the growing awareness among the authors themselves that they had a claim over the products of their creation, they began to assert

themselves and their rights. Consequently the first copyright Act, namely Statute of Anne was enacted in 1710 to protect the rights of the authors.

The novelty of this Act was that for the first time it gave authors of books the sole right and liberty of printing them for a term of 21 years if it was published before the said date and the sole right of printing for 14 years if it was published after the date mentioned above. In addition, it also provided that the sole right of printing or disposing of copies should return for another term of 14 years to the authors, if they were then living. But the drawback of this Act was that it did not provide full protection to authors from their original works being manipulated by the printers as the statutory provisions which was introduced to grant them protection was limited by the limited period of time granted within its provisions. As a result authors were still claiming for the protection of their original works. However, no copyright Act was enacted till 1911.

The Copyright Act, 1911 was enacted in compliance with the recommendations of the Berne Convention of 1886 which had clearly outlined in its preamble the intent to “protect in as effective and uniform manners as far as possible, the rights of the authors in their artistic and literary works.” This Copyright Act of 1911 was implemented for European Countries and Britain. The strength of this Act was that in granting protection to the authors for the life time and fifty years improved upon the previous act and this resulted in removing the monopoly which the printers had over the author’s work. Moreover, the act also lay emphasis on the need to protect the moral and economic rights of the authors.

While this development were going on in Europe, as the study have shown India being a colony of the British was also not left untouched. Thus, in India, the history of the beginning of the formal institution of the Copyright Act was 1911 was introduced through the Copyright Act, 1911. However, even before this there was a semblance of the copyright act in the form of the Literary Copyright Act, 1842 which was enforce in India by virtue of being a dominion of the British.¹ Later, the Copyright Act, 1911 was

¹ The significance of this Act was that under it was clearly laid out that the period of copyright covered the lifetime of the author plus seven years after the death of the author. However, the total term of the copyright was not to exceed 42 years.

replaced again by the Copyright Act, 1914. This Indian Copyright Act, 1914 which was known as a short Act because it had only 14 sections had for its first schedule, the annexed portion of the whole of the Imperial Copyright Act, 1911. In the Copyright Act of 1914, we found two major changes from the Copyright Act of 1911. Firstly, it modified the scope of the term copyright under section 4, saying that the “sole right of the author who produce, reproduce, perform, or publish a translation of the work shall subsist only for a period of ten years from the date of publication of the work. Secondly, it introduced criminal sanction for copyright infringement.

We found that, after Indian independence, the Copyright Act 1914 was abolished and replaced by Copyright Act, 1957. Firstly, it is clear that continued existence of the Act, 1911 through the Act, 1914 was unbecoming of the changed constitutional status of India. Secondly, the Act, 1914 did not accord with the Brussels Act, 1948 of the Berne Convention and Universal Copyright convention, 1952. Thirdly, the evolution of new and advanced methods of communication rendered upgradation of the law necessary. In this way, the Copyright Act, 1957 was the first Indian Legislation after more than 200 years of the subjection to the Imperial Law of 1847.

Another interesting finding of the research that though the copyright Act on a whole was designed to grant protection in all over the world, yet there is no universal standard copyright model that fits all. Various conventions were organised and treaties signed to implement uniform copyright system but this objective could not fulfill. The reason behind the failure to institute a uniform copyright system lies in the difference between developing countries and developed countries, their varied needs and thus their varied interest. Developing countries have always had one or the other problem with the attempt to regulate their rights under a uniform copyright system. The reason behind this lies in the fact that there is an existing gap in terms of development be it at the level of the polity, the society and the economy and so the kind of apprehension is that such an introduction of a uniform copyright system instead of protecting their interest and rights can be detrimental to their growth and development. Therefore, though in some countries the term of copyright covers a period of the authors’ lifetime plus 60 years it is for most of the developed countries, lifetime plus 70 years.

Another finding of the copyright Act is it is always full of challenges as the nature of the rights are dynamic not constant that changes or is amended according to the demands or suitability of the environment. For example, through the technological development, the Copyright Act, 1957 was amended in 1983 and 1984 to include computer programme and database, it was also amended in 1994 to include sound recording. This was recently, amended again in 2012 to include the recent developments arising from technological advancement such as remixing the songs, 3D movies etc.

The study also reflected that though the copyright Act in its provisions has defined the various terms like, “literary Works”, “Originality”, “Ownership” etc, yet despite the best of the attempts made there are certain areas where it has failed to come up with a clear cut definition and lacks authenticity. For instance, the problem with the given definition of “literary works” is that, this definition does not include within the ambit of its definition things like the derivative works, attributive works, etc. Even the Act is not clear on the meaning of “Originality”, “Ownership” and Authorship. However, in situations where the provisions of the Copyright Act have failed to bring out clearly the meaning of the definitional clauses, the judiciary has played a pro active role. It in its exercise has complimented and completed the definitional clauses in introducing and implementing certain principles, such as, the Doctrine of Sweat and Brow which for instance take into cognizance innovative compilation of work, the Doctrine of Merger whenever ideas and the expression of it becomes inseparable and Standard of Originality that takes into cognizance the skill and the labour that has been invested towards the creation of a new work. Thus, if and when the definitional term such as “literary works” is not able to define clearly the term so as to bring out the full implication and the meaning then in such a situation the court can then use these doctrines to define and decide the case. In fact, one of the impacts of the implementation of these doctrines is that, the Copyright Act, 1957 had been able to fulfill its objectives in many ways.

In the context of fair dealing, as it has been discussed in the fourth chapter it is based on the principle of permissible exceptions to what would in normal circumstances amount to infringement of the copyright provisions. The merit of such an act lies in the fact that if the provisions of the copyright act when followed in letter and spirit restrict

the scope for creative and innovative production of other works based on the idea of the former work. This becomes a big hurdle for the development of further innovative work. Thus, the justification for Fair dealing. In the course of our study it has also been revealed that keeping in mind the rapid technological and societal changes that India is experiencing, the provisions of the fair dealing at times turn out to be rigid. This is as the study has revealed, owing to the weakness with the provisions of the fair dealing itself, which has a list of enumerated things and so when new situations arise and a corresponding issues come up, the principle of fair dealing fails as it becomes silent on these issues. Thus, one of the suggestion resulting from this work is that there is a need to adopt even the doctrine of fair use as it allows room for innovative measures whenever new situations arises.

Going through the discussion carried out in this work, one can get a summary that Intellectual Property Laws, especially in the case of India, have not fully taken their shape yet and, therefore, confining them to such strict interpretation of statues would leave less room for fairly judging the cases and for judicial creativity. While this is true that the freedom of speech and expression does not allow the misappropriation of another's work, yet it also becomes necessary to adapt or borrow from the work of the others if things are to progress further and higher. There is a need to strike a balance between these two interests, needless to say that it is always difficult to draw the line between what amounts to protection and what amounts to permissible exception. Thus, what is suggested here is not a complete replacement of the provisions of fair dealing which in extreme case might result in toppling of the cart, a whole topsy turvy law and order situation but simply enhancing a more flexible in adopting 'fair use doctrine.'

An amendment on the lines of the CCH decision of Canada could do some good where Fair dealing should be allowed for purposes beyond the statute as well. Since the American model has been found to be more effective in balancing the interest of the user and the owner a reference into the functioning of their system would also be helpful. What the need of the hour is to come with a more efficient model which can help us tackle our disputes better that is reflective of Indian specific needs. At present, this issue

has not been subjected to much judicial interpretation but sooner or later it would be and the best one can do is to be prepared for such eventualities.

However, in allowing so judicial discretion should be permissible only to the point where we can avoid any misuse of the flexibility and to accommodate technological changes. Instead of adopting the 'fair use doctrine' in its entirety, an alternative 'such as' approach or the expansion of fair dealing should be adopted. Since we are already referring to parameters laid down in different judgements to judge fair dealing, why not incorporate them into the statute and simultaneously introduce a "such as" clause in the provision.

5.2 General Critiques of Copyright

Legal protections for Copyright as we have seen have a rich history that stretches back to ancient Greece and before. And over the years as different legal systems evolved stronger methods of protecting intellectual works, there was a fineness over what was being protected given different areas of interest. Copyright, which is generally characterized as non-physical property, as we are now well aware, deals with the control of physical manifestations or expressions of ideas that result from original thought process. It protects the creator's expression or the content of his work, in employing legal rights over the physical instantiations of those ideas. Thus, over the same period several theories of justification for Copyright were offered: namely, Labour theory, personality theory, Utilitarian theory, and Social planning theory and correspondingly there are several critiques of the principles they offer in support of the Copyright act.

A. Information is Not Property

The first objection that can be had against copyright act is that the concept of property cannot be applied to abstract objects and hence to talk of owning the work at best, applies to nothing and, at worst, is incoherent. The argument forwarded here is that information is not something that can be owned or possessed and hence is not something that can be property.

In reply to this criticism we can put forth at least two objection. First, it is not essential as well as clear that the term ownership applies only to physical possession. It

can be argued that in most cases the essence of ownership consists in a power and not in the physical control or possession of the entity *per se*. Secondly, to claim objects of information does not qualify as property should not be understood as meaning that it is therefore illegitimate or illegal to grant legal right to the authors or content-creators protection to exclude others from appropriating those objects without their consent. The simple reason here is that just because an entity E does not qualify as a “property” ,a physical one does not exclude it from being given legal protection.

B. Information is Non-Rivalrous

Another strand of argument is built around the non-rivalrous nature of intellectual works and so is against the idea of the right to restrict access. In case of intellectual works the products of the work is not typically consumed by their use and is there for everyone’s consumption, so this serves as a strong reasoning against moral and legal Copyright rights.² Thus unjustified restricting of access to these works is often met by protest such as widespread pirating of intellectual works. A formal account of this argument is put forward as thus:

P1. ----If a tangible or intangible work can be used and consumed by many individuals concurrently (is non-rivalrous), then maximal access and use should be permitted.

P2.----Intellectual works falling under the domains of copyright, patent, and trade secret protection are non-rivalrous.

P3. ----It follows that there is an immediate prima facie case *against* Copyright rights, or *for* allowing maximal access to intellectual works.³

The weak point in this argument is the first premise.⁴ Consider. However, Moore in arguing against this stand holds that simply because a work is used and consumed by many individuals concurrently therefore there is a prima facie moral claim to maximal access is false. This argument applies to sensitive personal information as well to sensitive or restricted works where any moral claims for maximal access and use goes against the spirit and is in many cases counterproductive. Moreover, in case of situations

² Edwin C. Hettinger, Justifying Copyright, *Philosophy & Public Affairs*, Vol. 18 No. 2 (Winter, 1989), pp. 32-52

³ Ibid

⁴ <http://ssrn.com/abstract=727469> or <http://dx.doi.org/10.2139/ssrn.727469> accessed on 6/05/2016

where there is an unauthorized copying it creates un-consented to risks that owners must shoulder.

Himma⁵ points out that, by itself, the claim that consumption of information is non-rivalrous does not imply that we have a right of any kind to those objects. While this does certainly provides a reason for thinking against protection of Copyright as morally justified, it does not tell us anything about whether we have a right of some sort because it does not contain any information about morally relevant properties of human beings—and the justification of general rights-claims necessarily rests on attributions of value that implicitly respond to interests of beings with the appropriate level of moral standing—in our case, our status as persons.⁶

C. Information Wants to be Free

John Perry Barlow⁷ argues that information in itself constitutes a form of life with its own interests and “wants.” So in virtue of being “alive,” it is entitled to moral consideration. As he puts his point across, information objects “are life forms in every wants” of respect but a basis in the carbon atom. They self-reproduce, they interact with their surroundings and adapt to them, they mutate, and they persist.⁸ Therefore, in addition to the above observation these living objects are said to have certain kind of interest in being made available to everyone free of charge.

However, the above argument is not without its own disadvantages. Himma⁹ argues that in the first place to think of abstract objects as having it own wants or interests is something that is unreasonable and untenable. The reason behind this is that it is only the conscious beings that are capable of having desires but desire in itself cannot be themselves said to have desires. Secondly, even if it is granted that information objects have wants or interests of their own, there is no strong reasons for holding that they have

⁵ John Perry Barlow, “The Economy of Ideas: Everything You Know about Copyright is Wrong,” *wired*, Vol. 2 No. 3 (March, 1994), pp. 85-90, 126-129

⁶ <http://plato.stanford.edu/entries/intellectual-property/> accessed on 5/05/2016

⁷ John Perry Barlow, “The Economy of Ideas: Everything You Know about Copyright is Wrong,” *wired*, Vol. 2 No. 3 (March, 1994), pp. 85-90, 126-129.

⁸ *Ibid*

⁹ K.E. Himma, “Abundance, Rights, and Interests: Thinking about the Legitimacy of Intellectual Property”, (May, 2005), Available at <http://ssrn.com/abstract=727469> or <http://dx.doi.org/10.2139/ssrn.727469> accessed on 6/05/2016

the desire to be made free and available to all. Certainly, the claim that it is beneficial for information objects when they are made freely available is a claim that is in need of good argument to support its case or else such claims can be observed to be counterintuitive.

D. The Free Speech Argument against Copyright

Another objection is that there is an existing mismatch between Copyright laws and talks of freedom of thought and speech. On this lines, Hettinger¹⁰ argues that Copyright “restricts methods of acquiring ideas (as do trade secrets), it restricts the use of ideas (as do patents), and it restricts the expression of ideas (as do copyrights)—restrictions undesirable for a number of reasons”.¹¹ Furthermore, he holds that given an option over trade secrets, patents and copyrights, the most troublesome among them is trade secrets because, unlike the others they do not require disclosure.

In reply to this one can put forth three counter arguments.¹² Firstly, it can be pointed out that if at all there is advancement in the willingness to create and disseminate information then one of the reasons that explains this position is the incentives found in providing limited protection. Thus, a system of Copyright protection may cause restricted access in the short run, but in the long run the commons of thought and expression is enhanced.

Second, one cannot be always sure that free speech in all its likelihood is presumptively so substantial that it nearly always outperform other values. There are instances of free speeches such as hate speech, obscene expressions, sexual harassment, and broadcasting private medical information about others etc that we are willing to limit for various reasons. Copyright rights can also be adjudge in this light.

Moreover, considering the fact that copyright applies to only to the fixed expressions of the ideas and not to the ideas behind these expressions. Thus, as long as the expressions are not copied from the original or are substantially similar to the original

¹⁰ Edwin C. Hettinger, Justifying Copyright, *Philosophy & Public Affairs*, Vol. 18 No. 2 (Winter, 1989), pp. 32-52.

¹¹ Ibid

¹² Adam D. Moore, “A Lockean Theory of Copyright Revisited”, *San Diego Law Review*, Vol. 49, (2012), p.1069

work, it does not amount to plagiarism, and the work as such is entitled to a copyright protection.¹³

E. The Social Nature of Information Argument

According to this observation, enforcing access restrictions unduly benefits authors and inventors as information is a social product. The creation of intellectual works of all kinds is possible because of the knowledge that is provided to the individuals in and by the societies. So none can appropriate them solely as his own keep. On this view knowledge which is the building blocks of intellectual works is a shared knowledge of society and so individuals should not have exclusive and perpetual ownership of the works that they create using these social products. Granting rights to intellectual works would be comparable to allowing ownership to individuals who placed the last brick in a public works dam, constructed by the efforts of hundreds.¹⁴

Lysander Spooner counter argues that it is in the first place difficult to define the rights that society has, in terms of ideas that it did not produce or have never purchased.¹⁵ The reason being, the claim that society simply obtains a legitimate ownership to knowledge via, acquiring it through an individual effort, needs to be substantiated properly in order to be proven.¹⁶ Moreover, the claim of a “shared culture” may prove too much in the sense that though the social nature of Copyright view is sufficient for undermining Copyright rights or robust control of intellectual works yet is is not strong enough to conveniently undermine the student desert for a grade, criminal punishment, or other sorts of moral evaluation.¹⁷

¹³ <http://plato.stanford.edu/entries/intellectual-property/> accessed on 5/05/2016

¹⁴ Ian Shapiro, “Resources, Capacities, and Ownership: The Workmanship Ideal and Distributive Justice,” *Political Theory*, Vol. 19,(1991) pp. 47-72.

¹⁵ As Adam D. Moore quoted in “A Lockean Theory of Copyright Revisited”, *San Diego Law Review*, Vol. 49, (2012), p.1069

¹⁶ <http://plato.stanford.edu/entries/intellectual-property/> accessed on 5/05/2016

¹⁷ Adam D. Moore, “A Lockean Theory of Copyright Revisited”, *San Diego Law Review*, Vol. 49, (2012), p.1069

Finally, even if a defender of this view can justify societal ownership of general pools of knowledge and information, it could be argued that we have already paid for the use of this collective wisdom when we pay for education and the like.¹⁸

F. The Cost of Publishing Digital Information

The other argument is that, in a competitive market, the cost of information should properly reflect the cost of making it available to users.¹⁹ On this line of argument, though the cost of providing information in the traditional sense like books might be sufficiently high to justify charging users a price for it, yet the same logic cannot be applied to information that is available in the digital media. The cost of making information available on digital media approaches per user amounts to zero with the increase in the number of users. For example, there might be some fixed cost involved in making information available on a website, but beyond that no additional cost is required, no matter what the number of users is, more or less. Thus, it results in unfairness when the users are charged a fee for appropriating any piece of (digital) information so there should be no charges beyond the costs of its dissemination.

There are two problems with this argument. First, if one is to go by this argument supposing that the grounds of free enterprise is justifiably valid, then what amounts to a fair price exchange will in the first place be determined by the voluntary exchanges between the buyers and sellers in a competitive market. Since the right price is set by the contractual transactions of free, prudentially-rational buyers and sellers then in that case, firstly, even if the price is significantly higher than the seller's marginal cost in a competitive market and the buyers are willing to pay then that price can be presumed to be fair. Secondly, the argument overlooks the fact that the fixed costs associated with producing and distributing intellectual content can be quite high considering the fixed development costs associated with producing and distributing intellectual content. Then, going by the argument it would be fair for content producers to charge a price that is sufficiently above the marginal costs to allow them to recover these fixed costs.

¹⁸ Ibid

¹⁹ W. Coy, "On Sharing Intellectual Properties in Global Communities", International Center for Information Ethics ICIE-Symposium, ZKM Karlsruhe, 4/10/2004

5.3 Future of Copyright

Copyright as we have seen is a well-established and powerful idea and as a set of legal mechanisms for controlling the international flow of knowledge an effective tool. However, the challenges to copyright are numerous and most often complex especially with the trend of rapid growth in this technological age. Yet, on a positive note, overall there seems to be a much needed international consensus, from every corner of the world including the most Developing countries nations, in favour of a basic international copyright system that is reflective of the recognition and appreciation for works of creativity and innovation. The adherence of the United States in the 19th century and the Soviet Union in the mid-20th century (after both nations flouted copyright as they built their own national publishing industries) mean that all of the world's major publishing nations, except for the People's Republic of China, are part of the system. However, the achievement of such a status was by no means an easy task as it was only after series of negotiations and hard bargaining during the 1960s, that the industrialized nations have taken into account the complications and thereof the necessary alternative approach that is demanded of in Developing countries. Thus, a workable compromise seems to have been struck. The problems facing copyright, however, are quite formidable and can be summarised as follows:

(a) Technological: The adaptation of the concept of copyright and of the international copyright system to reprography, unauthorised use of copyrighted materials due to photocopying, and data-bases are perhaps the most difficult basic problems facing copyright now and in the coming decades.

(b) Legal: In the light of these upcoming challenges, the task of drafting and implementation of a standard codes to regulate the copyright system, so as to be reflective of the different national aspirations and at the same time fulfilling the requirements of international standard is huge and forms a considerable task.

(c) Control: A very pertinent but often ignored question that at the end plays a significant role in deciding the shape and direction of copyright act is that of the nature and extend of control. This is particularly important in the context of the growing

concerns of the Developing countries over basic questions of who controls knowledge and what these controls mean. This concerns stems from the fact that in most of the cases Copyright laws were framed keeping in mind the need of the developed countries where it originated, so in many respects, it has been observed that they work to the advantage of the “haves” over the “have-nots” in terms of knowledge. And since the institution of the laws were reflective of the interest of the industrialist countries, it fails to reflect the emerging needs of most of the Developing countries nations who are in need of alternative means and remedies, if at all there is to be an equitable distribution of rights.

(d) Size: Another formidable challenge is the ever expanding pool of Knowledge at an incredible speed. While it is true that the coming of new technologies permit the production, dissemination and bibliographic control over knowledge to expand but the question is how efficiently equipped is it to effectively address the challenge pose by this phenomenon of knowledge explosion. Given this situation, both the phenomenon of expansion of knowledge and the new means of disseminating it has create new challenges for copyright.

(e) Equity: knowing all too well the intense debates that raged over the 1960s on questions of access to knowledge in all of its forms that has to do with the emerging needs of Developing countries, where calls for a “New World Information Order” were heard there seems to be an underlying contradiction in the international copyright system. At least for the present, the North-South debates over knowledge control and access within the international copyright system and the departure of the United States and Britain from Unesco seem to have silenced the critics. For the present, regardless of the differences in political beliefs, economic structure or knowledge hierarchy, there is an undeniable consensus that anarchy in knowledge creation and distribution is to be avoided. Thus, most agree and accept that the international copyright system provides the basic structure and the best means of controlling the situation, especially in the light of massive technological change.

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Annexure



भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II—खण्ड 1

PART II—Section 1

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं. 29] नई दिल्ली, शुक्रवार, जून 8, 2012/ ज्यैष्ठ 18, 1934 (सक)
No. 29] NEW DELHI, FRIDAY, JUNE 8, 2012/ JYAISTHA 18, 1934 (SAKA)

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW AND JUSTICE (Legislative Department)

New Delhi, 8 June, 2012/Jyaistha 18, 1934 (Saka)

The following Act of Parliament received the assent of the President on the 7th June, 2012, and is hereby published for general information:—

THE COPYRIGHT (AMENDMENT) ACT, 2012 No. 27 OF 2012

An Act further to amend the Copyright Act, 1957.

[7th June, 2012]

BE it enacted by Parliament in the Sixty-third Year of the Republic of India as follows:—

1. (1) This Act may be called the Copyright (Amendment) Act, 2012.

Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

14 of 1957.

2. In section 2 of the Copyright Act, 1957 (hereinafter referred to as the principal Act),—

Amendment of section 2.

(i) in clause (f), the portion beginning with the words “on any medium” and ending with the words “produced by any means” shall be omitted;

(ii) after clause (f), the following clause shall be inserted, namely:—

‘(fa) “commercial rental” does not include the rental, lease or lending of a lawfully acquired copy of a computer programme, sound recording, visual recording or cinematograph film for non-profit purposes by a non-profit library or non-profit educational institution.’;

Explanation.—For the purposes of this clause, a “non-profit library or non-profit educational institution” means a library or educational institution which receives grants from the Government or exempted from payment of tax under the Income-tax Act, 1961.

43 of 1961.

(iii) for clause (ff), the following shall be substituted, namely:—

“(ff) “communication to the public” means making any work or performance available for being seen or heard or otherwise enjoyed by the public directly or by any means of display or diffusion other than by issuing physical copies of it, whether simultaneously or at places and times chosen individually, regardless of whether any member of the public actually sees, hears or otherwise enjoys the work or performance so made available.

Explanation.—For the purposes of this clause, communication through satellite or cable or any other means of simultaneous communication to more than one household or place of residence including residential rooms of any hotel or hostel shall be deemed to be communication to the public;”;

(iv) in clause (qq), the following proviso shall be inserted, namely:—

“Provided that in a cinematograph film a person whose performance is casual or incidental in nature and, in the normal course of the practice of the industry, is not acknowledged anywhere including in the credits of the film shall not be treated as a performer except for the purpose of clause (b) of section 38B;”;

(v) after clause (x), the following clause shall be inserted, namely:—

“(xa) “Rights Management Information” means,—

- (a) the title or other information identifying the work or performance;
- (b) the name of the author or performer;
- (c) the name and address of the owner of rights;
- (d) terms and conditions regarding the use of the rights; and
- (e) any number or code that represents the information referred to in sub-clauses (a) to (d),

but does not include any device or procedure intended to identify the user;”;

(vi) after clause (xx), the following clause shall be inserted, namely:—

“(xxa) “visual recording” means the recording in any medium, by any method including the storing of it by any electronic means, of moving images or of the representations thereof, from which they can be perceived, reproduced or communicated by any method;”;

Amendment
of section 11.

3. In section 11 of the principal Act,—

(a) in sub-section (1), for the words “not less than two nor more than fourteen other members”, the words “two other members” shall be substituted;

(b) for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) The salaries and allowances payable to and the other terms and conditions of service of the Chairman and other members of the Copyright Board shall be such as may be prescribed:

Provided that neither the salary and allowances nor the other terms and conditions of service of the Chairman or any other member shall be varied to his disadvantage after appointment.”;

(c) for sub-section (4), the following sub-section shall be substituted, namely:—

“(4) The Central Government may, after consultation with the Chairman of the Copyright Board, appoint a Secretary to the Copyright Board and such other officers and employees as may be considered necessary for the efficient discharge of the functions of the Copyright Board.”

4. In section 12 of the principal Act, in sub-section (2), for the words “members, each Bench consisting of not less than three members”, the word “members” shall be substituted. Amendment of section 12.

5. In section 14 of the principal Act,—

Amendment of section 14.

(i) in clause (c), for sub-clause (i), the following sub-clause shall be substituted, namely:—

“(i) to reproduce the work in any material form including—

- (A) the storing of it in any medium by electronic or other means; or
- (B) depiction in three-dimensions of a two-dimensional work; or
- (C) depiction in two-dimensions of a three-dimensional work;”;

(ii) in clause (d),—

(a) for sub-clause (i), the following sub-clause shall be substituted, namely:—

“(i) to make a copy of the film, including—

- (A) a photograph of any image forming part thereof; or
- (B) storing of it in any medium by electronic or other means;”;

(b) for sub-clause (ii), the following sub-clause shall be substituted, namely:—

“(ii) to sell or give on commercial rental or offer for sale or for such rental, any copy of the film;”;

(iii) in clause (e),—

(a) in sub-clause (i), after the words “embodying it”, the words “including storing of it in any medium by electronic or other means” shall be inserted;

(b) for sub-clause (ii), the following sub-clause shall be substituted, namely:—

“(ii) to sell or give on commercial rental or offer for sale or for such rental, any copy of the sound recording;”.

2 of 1911.
16 of 2000.

6. In section 15 of the principal Act, for the words and figures, “Designs Act, 1911”, wherever they occur, the words and figures “Designs Act, 2000” shall be substituted. Amendment of section 15.

7. In section 17 of the principal Act, in clause (e), the following proviso shall be inserted at the end, namely:— Amendment of section 17.

Provided that in case of any work incorporated in a cinematograph work, nothing contained in clauses (b) and (c) shall affect the right of the author in the work referred to in clause (a) of sub-section (1) of section 13;”.

8. In section 18 of the principal Act, in sub-section (1), after the proviso, the following provisos shall be inserted, namely:— Amendment of section 18.

“Provided further that no such 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:

Provided also that the author of the literary or musical work included in a cinematograph film shall not assign or waive the right to receive royalties to be shared on an equal basis with the assignee of copyright for the utilisation of such work in any form other than for the communication to the public of the work along with the cinematograph film in a cinema hall, except to the legal heirs of the authors or to a copyright society for collection and distribution and any agreement to contrary shall be void:

Provided also that the author of the literary or musical work included in the sound recording but not forming part of any cinematograph film shall not assign or waive the right to receive royalties to be shared on an equal basis with the assignee of copyright for any utilisation of such work except to the legal heirs of the authors or to a collecting society for collection and distribution and any assignment to the contrary shall be void.”

Amendment
of section 19.

9. In section 19 of the principal Act,—

(i) in sub-section (3), for the words “royalty payable, if any”, the words “royalty and any other consideration payable” shall be substituted;

(ii) after sub-section (7), the following sub-sections shall be inserted, namely:—

“(8) The assignment of copyright in any work contrary to the terms and conditions of the rights already assigned to a copyright society in which the author of the work is a member shall be void.

(9) No assignment of copyright in any work to make a cinematograph film shall affect the right of the author of the work to claim an equal share of royalties and consideration payable in case of utilisation of the work in any form other than for the communication to the public of the work, along with the cinematograph film in a cinema hall.

(10) No assignment of the copyright in any work to make a sound recording which does not form part of any cinematograph film shall affect the right of the author of the work to claim an equal share of royalties and consideration payable for any utilisation of such work in any form.”

Amendment
of section
19A.

10. In section 19A of the principal Act,—

(i) in sub-section (2), in the second proviso, for the words “Provided further that”, the following shall be substituted, namely:—

“Provided further that, pending the disposal of an application for revocation of assignment under this sub-section, the Copyright Board may pass such order, as it deems fit regarding implementation of the terms and conditions of assignment including any consideration to be paid for the enjoyment of the rights assigned:—

Provided also that”;

(ii) after sub-section (2), the following sub-section shall be inserted, namely:—

“(3) Every complaint received under sub-section (2) shall be dealt with by the Copyright Board as far as possible and efforts shall be made to pass the final order in the matter within a period of six months from the date of receipt of the complaint and any delay in compliance of the same, the Copyright Board shall record the reasons thereof.”

Amendment
of section 21.

11. In section 21 of the principal Act,—

(i) in sub-section (1), for the words “the Registrar of Copyrights”, the words “the Registrar of Copyrights or by way of public notice” shall be substituted;

(ii) after sub-section (2), the following sub-section shall be inserted, namely:—

“(2A) The Registrar of Copyrights shall, within fourteen days from the publication of the notice in the Official Gazette, post the notice on the official website of the Copyright Office so as to remain in the public domain for a period of not less than three years.”

12. In section 22 of the principal Act, the brackets and words "(other than a photograph)" shall be omitted. Amendment of section 22.
13. Section 25 of the principal Act shall be omitted. Omission of section 25.
14. In section 30 of the principal Act, for the words "writing signed by him", the words "writing by him" shall be substituted. Amendment of section 30.
15. In section 30A of the principal Act and in its marginal heading, for the words, figures and letter, "section 19 and 19A", the word and figures "section 19" shall be substituted. Amendment of section 30A.
16. In section 31 of the principal Act,— Amendment of section 31.
- (i) in sub-section (1),—
- (a) for the words "any Indian work", the words "any work" shall be substituted;
- (b) for the words "licence to the complainant" the words "licence to such person or persons who, in the opinion of the Copyright Board, is or are qualified to do so" shall be substituted;
- (c) the *Explanation* shall be omitted;
- (ii) sub-section (2) shall be omitted.
17. In section 31A of the principal Act,— Amendment of section 31A.
- (i) in the marginal heading, for the words "Indian works", the words "or published works" shall be substituted;
- (ii) for sub-section (1), the following sub-section shall be substituted, namely:—
- “(1) Where, in the case of any unpublished work or any work published or communicated to the public and the work is withheld from the public in India, the author is dead or unknown or cannot be traced, or the owner of the copyright in such work cannot be found, any person may apply to the Copyright Board for a licence to publish or communicate to the public such work or a translation thereof in any language.”.
18. After section 31A of the principal Act, the following sections shall be inserted, namely:— Insertion of new sections 31B, 31C and 31D.
- ‘31B. (1) Any person working for the benefit of persons with disability on a profit basis or for business may apply to the Copyright Board, in such form and manner and accompanied by such fee as may be prescribed, for a compulsory licence to publish any work in which copyright subsists for the benefit of such persons, in a case to which clause (zb) of sub-section (1) of section 52 does not apply and the Copyright Board shall dispose of such application as expeditiously as possible and endeavour shall be made to dispose of such application within a period of two months from the date of receipt of the application. Compulsory licence for benefit of disabled.
- (2) The Copyright Board may, on receipt of an application under sub-section (1), inquire, or direct such inquiry as it considers necessary to establish the credentials of the applicant and satisfy itself that the application has been made in good faith.
- (3) If the Copyright Board is satisfied, after giving to the owners of rights in the work a reasonable opportunity of being heard and after holding such inquiry as it may deem necessary, that a compulsory licence needs to be issued to make the work available to the disabled, it may direct the Registrar of Copyrights to grant to the applicant such a licence to publish the work.
- (4) Every compulsory licence issued under this section shall specify the means and format of publication, the period during which the compulsory licence may be exercised and, in the case of issue of copies, the number of copies that may be issued including the rate or royalty:

Provided that where the Copyright Board has issued such a compulsory licence it may, on a further application and after giving reasonable opportunity to the owners of rights, extend the period of such compulsory licence and allow the issue of more copies as it may deem fit.

Statutory
licence for
cover
versions.

31C. (1) Any person desirous of making a cover version, being a sound recording in respect of any literary, dramatic or musical work, where sound recordings of that work have been made by or with the licence or consent of the owner of the right in the work, may do so subject to the provisions of this section:

Provided that such sound recordings shall be in the same medium as the last recording, unless the medium of the last recording is no longer in current commercial use.

(2) The person making the sound recordings shall give prior notice of his intention to make the sound recordings in the manner as may be prescribed, and provide in advance copies of all covers or labels with which the sound recordings are to be sold, and pay in advance, to the owner of rights in each work royalties in respect of all copies to be made by him, at the rate fixed by the Copyright Board in this behalf:

Provided that such sound recordings shall not be sold or issued in any form of packaging or with any cover or label which is likely to mislead or confuse the public as to their identity, and in particular shall not contain the name or depict in any way any performer of an earlier sound recording of the same work or any cinematograph film in which such sound recording was incorporated and, further, shall state on the cover that it is a cover version made under this section.

(3) The person making such sound recordings shall not make any alteration in the literary or musical work which has not been made previously by or with the consent of the owner of rights, or which is not technically necessary for the purpose of making the sound recordings:

Provided that such sound recordings shall not be made until the expiration of five calendar years after the end of the year in which the first sound recordings of the work was made.

(4) One royalty in respect of such sound recordings shall be paid for a minimum of fifty thousand copies of each work during each calendar year in which copies of it are made:

Provided that the Copyright Board may, by general order, fix a lower minimum in respect of works in a particular language or dialect having regard to the potential circulation of such works.

(5) The person making such sound recordings shall maintain such registers and books of account in respect thereof, including full details of existing stock as may be prescribed and shall allow the owner of rights or his duly authorised agent or representative to inspect all records and books of account relating to such sound recording:

Provided that if on a complaint brought before the Copyright Board to the effect that the owner of rights has not been paid in full for any sound recordings purporting to be made in pursuance of this section, the Copyright Board is, *prima facie*, satisfied that the complaint is genuine, it may pass an order *ex parte* directing the person making the sound recording to cease from making further copies and, after holding such inquiry as it considers necessary, make such further order as it may deem fit, including an order for payment of royalty.

Explanation.—For the purposes of this section “cover version” means a sound recording made in accordance with this section.

31D. (1) Any broadcasting organisation desirous of communicating to the public by way of a broadcast or by way of performance of a literary or musical work and sound recording which has already been published may do so subject to the provisions of this section.

Statutory licence for broadcasting of literary and musical works and sound recording.

(2) The broadcasting organisation shall give prior notice, in such manner as may be prescribed, of its intention to broadcast the work stating the duration and territorial coverage of the broadcast, and shall pay to the owner of rights in each work royalties in the manner and at the rate fixed by the Copyright Board.

(3) The rates of royalty for radio broadcasting shall be different from television broadcasting and the Copyright Board shall fix separate rates for radio broadcasting and television broadcasting.

(4) In fixing the manner and the rate of royalty under sub-section (2), the Copyright Board may require the broadcasting organisation to pay an advance to the owners of rights.

(5) The names of the authors and the principal performers of the work shall, except in case of the broadcasting organisation communicating such work by way of performance, be announced with the broadcast.

(6) No fresh alteration to any literary or musical work, which is not technically necessary for the purpose of broadcasting, other than shortening the work for convenience of broadcast, shall be made without the consent of the owners of rights.

(7) The broadcasting organisation shall—

(a) maintain such records and books of account, and render to the owners of rights such reports and accounts; and

(b) allow the owner of rights or his duly authorised agent or representative to inspect all records and books of account relating to such broadcast,

in such manner as may be prescribed.

(8) Nothing in this section shall affect the operation of any licence issued or any agreement entered into before the commencement of the Copyright (Amendment) Act, 2012.

19. In section 33 of the principal Act,—

Amendment of section 33.

(i) in sub-section (1), for the words "provided further", the following shall be substituted, namely:—

"Provided further that the business of issuing or granting license in respect of literary, dramatic, musical and artistic works incorporated in a cinematograph films or sound recordings shall be carried out only through a copyright society duly registered under this Act:

Provided also";

(ii) after sub-section (3), the following shall be inserted, namely:—

"(3A) The registration granted to a copyright society under sub-section (3) shall be for a period of five years and may be renewed from time to time before the end of every five years on a request in the prescribed form and the Central Government may renew the registration after considering the report of Registrar of Copyrights on the working of the copyright society under section 36:

Provided that the renewal of the registration of a copyright society shall be subject to the continued collective control of the copyright society being shared with the authors of works in their capacity as owners of copyright or of the right to receive royalty:

Provided further that every copyright society already registered before the coming into force of the copyright (Amendment) Act, 2012 shall get itself registered under this

Chapter within a period of one year from the date of commencement of the Copyright (Amendment) Act, 2012.”;

(iii) in sub-sections (4) and (5), for the words "owners of rights", the words "authors and other owners of right" shall be substituted;

(iv) in sub-section (5), after the word "concerned" the words "or for non-compliance of sections 33A, sub-section (3) of section 35 and section 36 or any change carried out in the instrument by which the copyright society is established or incorporated and registered by the Central Government without prior notice to it" shall be inserted.

Insertion of new section 33A.

Tariff Scheme by copyright societies.

20. After section 33 of the principal Act, the following section shall be inserted, namely:—

“33A. (1) Every copyright society shall publish its tariff scheme in such manner as may be prescribed.

(2) Any person who is aggrieved by the tariff scheme may appeal to the Copyright Board and the Board may, if satisfied after holding such inquiry as it may consider necessary, make such orders as may be required to remove any unreasonable element, anomaly or inconsistency therein:

Provided that the aggrieved person shall pay to the copyright society any fee as may be prescribed that has fallen due before making an appeal to the Copyright Board and shall continue to pay such fee until the appeal is decided, and the Board shall not issue any order staying the collection of such fee pending disposal of the appeal:

Provided further that the Copyright Board may after hearing the parties fix an interim tariff and direct the aggrieved parties to make the payment accordingly pending disposal of the appeal.”.

Amendment of section 34.

21. In section 34 of the principal Act, for the words “owner of rights”, wherever they occur, the words “author and other owners of right” shall be substituted.

Omission of section 34A.

22. Section 34A of the principal Act shall be omitted.

Amendment of section 35.

23. In section 35 of the principal Act and its marginal heading,—

(a) for the words “owners of rights”, wherever they occur, the words “author and other owners of right” shall be substituted;

(b) after sub-section (2), the following sub-sections shall be inserted, namely:—

(3) Every copyright society shall have a governing body with such number of persons elected from among the members of the society consisting of equal number of authors and owners of work for the purpose of the administration of the society as may be specified.

(4) All members of copyrights society shall enjoy equal membership rights and there shall be no discrimination between authors and owners of rights in the distribution of royalties.

Amendment of section 36A.

24. In section 36A of the principal Act,—

(a) for the words “performing rights society”, the words “copyright society” shall be substituted;

(b) for the words, brackets and figures “the Copyright (Amendment) Act, 1994”, the words, brackets and figures “the Copyright (Amendment) Act, 2012” shall be substituted.

38 of 1994.

Amendment of section 37.

25. In section 37 of the principal Act, in sub-section (3), for clause (e), the following clause shall be substituted, namely:—

“(e) sells or gives on commercial rental or offer for sale or for such rental, any such sound recording or visual recording referred to in clause (c) or clause (d).”.

26. In section 38 of the principal Act, sub-sections (3) and (4) shall be omitted.

Amendment of section 38.

27. After section 38 of the principal Act, the following sections shall be inserted, namely:—

Insertion of new sections 38A and 38B.

“38A. (1) Without prejudice to the rights conferred on authors, the performer’s right which is an exclusive right subject to the provisions of this Act to do or authorise for doing any of the following acts in respect of the performance or any substantial part thereof, namely:—

Exclusive right of performers.

(a) to make a sound recording or a visual recording of the performance, including—

(i) reproduction of it in any material form including the storing of it in any medium by electronic or any other means;

(ii) issuance of copies of it to the public not being copies already in circulation;

(iii) communication of it to the public;

(iv) selling or giving it on commercial rental or offer for sale or for commercial rental any copy of the recording;

(b) to broadcast or communicate the performance to the public except where the performance is already broadcast.

(2) Once a performer has, by written agreement, consented to the incorporation of his performance in a cinematograph film he shall not, in the absence of any contract to the contrary, object to the enjoyment by the producer of the film of the performer’s right in the same film:

Provided that, notwithstanding anything contained in this sub-section, the performer shall be entitled for royalties in case of making of the performances for commercial use.

38B. The performer of a performance shall, independently of his right after assignment, either wholly or partially of his right, have the right,—

Moral rights of the performer.

(a) to claim to be identified as the performer of his performance except where omission is dictated by the manner of the use of the performance; and

(b) to restrain or claim damages in respect of any distortion, mutilation or other modification of his performance that would be prejudicial to his reputation.

Explanation.—For the purposes of this clause, it is hereby clarified that mere removal of any portion of a performance for the purpose of editing, or to fit the recording within a limited duration, or any other modification required for purely technical reasons shall not be deemed to be prejudicial to the performer’s reputation.

28. For section 39A of the principal Act, the following section shall be substituted, namely:—

Substitution of a new section for section 39A.

“39A. (1) Sections 18, 19, 30, 30A, 33, 33A, 34, 35, 36, 53, 55, 58, 63, 64, 65, 65A, 65B and 66 shall, with necessary adaptations and modifications, apply in relation to the broadcast reproduction right in any broadcast and the performer’s right in any performance as they apply in relation to copyright in a work:

Certain provisions to apply in case of broadcast reproduction right and performer’s rights.

Provided that where copyright or performer’s right subsists in respect of any work or performance that has been broadcast, no licence to reproduce such broadcast, shall be given without the consent of the owner of right or performer, as the case may be, or both of them:

Provided further that the broadcast reproduction right or performer’s right shall not subsist in any broadcast or performance if that broadcast or performance is an infringement of the copyright in any work.

(2) The broadcast reproduction right or the performer's right shall not affect the separate copyright in any work in respect of which, the broadcast or the performance, as the case may be, is made."

Amendment
of section 40.

29. In section 40 of the principal Act, in the proviso, in clause (iii), after the words "the order relates", the words "but such a term of copyright shall not exceed the term of copyright provided under this Act" shall be inserted.

Amendment
of section
40A.

30. In section 40A of the principal Act, in sub-section (2), in clause (ii), the following proviso shall be inserted, namely:—

"Provided that it does not exceed the period provided under this Act;"

Amendment
of section 45.

31. In section 45 of the principal Act, in sub-section (1), in the proviso,—

(i) for the words "relation to any goods", the words "relation to any goods or services" shall be substituted;

(ii) for the words and figures "section 4 of the Trade and Merchandise Marks Act, 1958" the words and figures "section 3 of the Trade Marks Act, 1999" shall be substituted.

43 of 1958.
47 of 1999.

Amendment
of section 52.

32. In section 52 of the principal Act, in sub-section (1),—

(i) for clause (a), the following clause shall be substituted, namely:—

(a) a fair dealing with any work, not being a computer programme, for the purposes of—

(i) private or personal use, including research;

(ii) criticism or review, whether of that work or of any other work;

(iii) the reporting of current events and current affairs, including the reporting of a lecture delivered in public.

Explanation.—The storing of any work in any electronic medium for the purposes mentioned in this clause, including the incidental storage of any computer programme which is not itself an infringing copy for the said purposes, shall not constitute infringement of copyright."

(ii) for clauses (b), (c), (d), (e), (f), (g), (h), (i) and (j), the following shall be substituted, namely:—

"(b) the transient or incidental storage of a work or performance purely in the technical process of electronic transmission or communication to the public;

(c) transient or incidental storage of a work or performance for the purpose of providing electronic links, access or integration, where such links, access or integration has not been expressly prohibited by the right holder, unless the person responsible is aware or has reasonable grounds for believing that such storage is of an infringing copy:

Provided that if the person responsible for the storage of the copy has received a written complaint from the owner of copyright in the work, complaining that such transient or incidental storage is an infringement, such person responsible for the storage shall refrain from facilitating such access for a period of twenty-one days or till he receives an order from the competent court refraining from facilitating access and in case no such order is received before the expiry of such period of twenty-one days, he may continue to provide the facility of such access;

(d) the reproduction of any work for the purpose of a judicial proceeding or for the purpose of a report of a judicial proceeding;

(e) the reproduction or publication of any work prepared by the Secretariat of a Legislature or, where the Legislature consists of two Houses, by the Secretariat of either House of the Legislature, exclusively for the use of the members of that Legislature;";

(f) the reproduction of any work in a certified copy made or supplied in accordance with any law for the time being in force;

(g) the reading or recitation in public of reasonable extracts from a published literary or dramatic work;

(h) the publication in a collection, mainly composed of non-copyright matter, *bona fide* intended for instructional use, and so described in the title and in any advertisement issued by or on behalf of the publisher, of short passages from published literary or dramatic works, not themselves published for such use in which copyright subsists:

Provided that not more than two such passages from works by the same author are published by the same publisher during any period of five years.

Explanation.—In the case of a work of joint authorship, references in this clause to passages from works shall include references to passages from works by any one or more of the authors of those passages or by any one or more of those authors in collaboration with any other person;

(i) the reproduction of any work—

(i) by a teacher or a pupil in the course of instruction; or

(ii) as part of the questions to be answered in an examination; or

(iii) in answers to such questions;

(j) the performance, in the course of the activities of an educational institution, of a literary, dramatic or musical work by the staff and students of the institution, or of a cinematograph film or a sound recording if the audience is limited to such staff and students, the parents and guardians of the students and persons connected with the activities of the institution or the communication to such an audience of a cinematograph film or sound recording;";

(iii) for clause (n), the following clause shall be substituted, namely:—

"(n) the storing of a work in any medium by electronic means by a non-commercial public library, for preservation if the library already possesses a non-digital copy of the work;";

(iv) in clause (o), for the words "public library", the words, "non-commercial public library" shall be substituted;

(v) after clause (v), the following clause shall be inserted, namely:—

"(w) the making of a three-dimensional object from a two-dimensional artistic work, such as a technical drawing, for the purposes of industrial application of any purely functional part of a useful device;

(vi) in clause (y), for the words "dramatic or", the words "dramatic, artistic or" shall be substituted;

(vii) after clause (za) and the *Explanation* thereunder, the following shall be inserted, namely:—

"(zb) the adaptation, reproduction, issue of copies or communication to the public of any work in any accessible format, by—

(i) any person to facilitate persons with disability to access to works including sharing with any person with disability of such accessible format for private or personal use, educational purpose or research; or

(ii) any organisation working for the benefit of the persons with disabilities in case the normal format prevents the enjoyment of such works by such persons:

Provided that the copies of the works in such accessible format are made available to the persons with disabilities on a non-profit basis but to recover only the cost of production:

Provided further that the organisation shall ensure that the copies of works in such accessible format are used only by persons with disabilities and takes reasonable steps to prevent its entry into ordinary channels of business.

Explanation.—For the purposes of this sub-clause, “any organisation” includes and organisation registered under section 12A of the Income-tax Act, 1961 and working for the benefit of persons with disability or recognised under Chapter X of the Persons with Disabilities (Equal Opportunities, Protection or Rights and full Participation) Act, 1995 or receiving grants from the government for facilitating access to persons with disabilities or an educational institution or library or archives recognised by the Government.”

43 of 1961.

1 of 1996.

(zc) the importation of copies of any literary or artistic work, such as labels, company logos or promotional or explanatory material, that is purely incidental to other goods or products being imported lawfully.”

Omission of section 52B.

33. Section 52B of the principal Act shall be omitted.

Substitution of new section for section 53.

34. For section 53 of the principal Act, the following section shall be substituted, namely:—

Importation of infringing copies.

“53. (1) The owner of any right conferred by this Act in respect of any work or any performance embodied in such work, or his duly authorised agent, may give notice in writing to the Commissioner of Customs, or to any other officer authorised in this behalf by the Central Board of Excise and Customs,—

(a) that he is the owner of the said right, with proof thereof; and

(b) that he requests the Commissioner for a period specified in the notice, which shall not exceed one year, to treat infringing copies of the work as prohibited goods, and that infringing copies of the work are expected to arrive in India at a time and a place specified in the notice.

(2) The Commissioner, after scrutiny of the evidence furnished by the owner of the right and on being satisfied may, subject to the provisions of sub-section (3), treat infringing copies of the work as prohibited goods that have been imported into India, excluding goods in transit:

Provided that the owner of the work deposits such amount as the Commissioner may require as security having regard to the likely expenses on demurrage, cost of storage and compensation to the importer in case it is found that the works are not infringing copies.

(3) When any goods treated as prohibited under sub-section (2) have been detained, the Customs Officer detaining them shall inform the importer as well as the person who gave notice under sub-section (1) of the detention of such goods within forty-eight hours of their detention.

(4) The Customs Officer shall release the goods, and they shall no longer be treated as prohibited goods, if the person who gave notice under sub-section (1) does not produce any order from a court having jurisdiction as to the temporary or permanent disposal of such goods within fourteen days from the date of their detention.”

35. In section 55 of the principal Act, in sub-section (2), for the portion beginning with the words "a name purporting to be" and ending with the words "as the case may be, appears", the following shall be substituted, namely:—

Amendment
of section 55.

"or, subject to the provisions of sub-section (3) of section 13, a cinematograph film or sound recording, a name purporting to be that of the author, or the publisher, as the case may be, of that work, appears".

36. In section 57 of the principal Act,—

Amendment
of section 57.

(i) in sub-section (1), in clause (b), the words "which is done before the expiration of the term of copyright" shall be omitted;

(ii) in sub-section (2), the words "other than the right to claim authorship of the work" shall be omitted.

37. After section 65 of the principal Act, the following sections shall be inserted, namely:—

Insertion of
new sections
65A and 65B.

"65A. (1) Any person who circumvents an effective technological measure applied for the purpose of protecting any of the rights conferred by this Act, with the intention of infringing such rights, shall be punishable with imprisonment which may extend to two years and shall also be liable to fine.

Protection of
technological
measures.

(2) Nothing in sub-section (1) shall prevent any person from,—

(a) doing anything referred to therein for a purpose not expressly prohibited by this Act:

Provided that any person facilitating circumvention by another person of a technological measure for such a purpose shall maintain a complete record of such other person including his name, address and all relevant particulars necessary to identify him and the purpose for which he has been facilitated; or

(b) doing anything necessary to conduct encryption research using a lawfully obtained encrypted copy; or

(c) conducting any lawful investigation; or

(d) doing anything necessary for the purpose of testing the security of a computer system or a computer network with the authorisation of its owner; or

(e) operator; or

(f) doing anything necessary to circumvent technological measures intended for identification or surveillance of a user; or

(g) taking measures necessary in the interest of national security.

65B. Any person, who knowingly,—

Protection of
Rights
Management
Information.

(i) removes or alters any rights management information without authority, or

(ii) distributes, imports for distribution, broadcasts or communicates to the public, without authority, copies of any work, or performance knowing that electronic rights management information has been removed or altered without authority,

shall be punishable with imprisonment which may extend to two years and shall also be liable to fine:

Provided that if the rights management information has been tampered with in any work, the owner of copyright in such work may also avail of civil remedies provided under Chapter XII against the persons indulging in such acts."

Amendment
of section 66.

38. In section 66 of the principal Act, after the words “delivered up to the owner of the copyright,” the words “or may make such order as it may deem fit regarding the disposal of such copies or plates” shall be inserted.

Amendment
of section 78.

39. In section 78 of the principal Act, in sub-section (2),—

(i) for clause (a), the following clause shall be substituted, namely:—

(a) the salaries and allowances payable to and the other terms and conditions of service of the chairman and other members of the Copyright Board under sub-section (2) of section 11;

(ii) after clause (c), the following clauses shall be inserted, namely:—

“(cA) the form and manner in which an organisation may apply to the Copyright Board for compulsory licence for disabled and the fee which may accompany such application under sub-section (1) of section 31B;

(cB) the manner in which a person making sound recording may give prior notice of his intention to make sound recording under sub-section (2) of section 31C;

(cC) the register and books of account and the details of existing stock which a person making sound recording may maintain under sub-section (5) of section 31C;

(cD) the manner in which prior notice may be given by a broadcasting organisation under sub-section (2) of section 31D;

(cE) the reports and accounts which may be maintained under clause (a), and the inspection of records and books of account which may be made under clause (b) of sub-section (7) of section 31D;”;

(iii) after clause (cc), the following clauses shall be inserted, namely:—

“(ccA) the manner in which a copyright society may publish its Tariff Scheme under sub-section (1) of section 33A;

(ccB) the fee which is to be paid before filing an appeal to the Copyright Board under sub-section (2) of section 33A;”;

(ccC) the form of application for renewal of registration of a copyright society and the fee which may accompany such application under sub-section (3A) of section 33;

(iv) clause (db) shall be omitted.

V. K. BHASIN,
Secretary to the Govt. of India.



INDIAN COPYRIGHT ACT, 1957

INDIAN COPYRIGHT ACT, 1957

CHAPTER I Preliminary

[4th June, 1957] An Act to amend and consolidate the law relating to copyright.
Be it enacted by Parliament in the Eighth Year of the Republic of India as follows:

1. Short title, extent and commencement. -(1) This Act may be called the Copyright Act, 1957.

(2) It extends to the whole of India.

(3) It shall come into force on such date² as the Central Government may, by notification in the Official Gazette, appoint.

2. Interpretation. -In this Act, unless the context otherwise requires,-

(a) "adaptation" means,-

(i) in relation to a dramatic work, the conversion of the work into a non-dramatic work;

(ii) in relation to a literary work or an artistic work, the conversion of the work into a dramatic work by way of performance in public or otherwise;

(iii) in relation to a literary or dramatic work, any abridgement of the work or any version of the work in which the story or action is conveyed wholly or mainly by means of pictures in a form suitable for reproduction in a book, or in a newspaper, magazine or similar periodical;³

(iv) in relation to a musical work, any arrangement or transcription of the work;⁴ and

(v)⁵ in relation to any work, any use of such work involving its re-arrangement or alteration;

(b) "work of architecture" means any building or structure having an artistic character or design, or any model for such building or structure;⁶

(c) "artistic work" means-

(i) a painting, a sculpture, a drawing (including a diagram, map, chart or plan), an engraving or a photograph, whether or not any such work possesses artistic quality;

(ii) work of architecture;⁷ and

(iii) any other work of artistic craftsmanship;

(d) "author" means,-

(i) in relation to a literary or dramatic work, the author of the work;

(ii) in relation to a musical work, the composer;

(iii) in relation to an artistic work other than a photograph, the artist;

(iv) in relation to a photograph, the person taking the photograph;

(v) in relation to a cinematograph⁸ or sound recording the producer; and

(vi) in relation to⁹ [any literary, dramatic, musical or artistic work which is computer-generated, the person who causes the work to be created;]

[(dd) ¹⁰ "broadcast" means communication to the public-

(i) by any means of wireless diffusion, whether in any one or more of the forms of signs, sounds or visual images; or

(ii) by wire, and includes a re-broadcast;]

(e) "calendar year" means the year commencing on the 1st day of January;

(f) ¹¹ "cinematograph film" means any work of visual recording on any medium produced through a process from which a moving image may be produced by any means and includes a sound recording accompanying such visual recording and "cinematograph" shall be construed as including any work produced by any process analogous to cinematography including video films;

(ff) ¹² "communication to the public" means making any work available for being seen or heard or otherwise enjoyed by the public directly or by any means of display or diffusion other than by issuing copies of such work regardless of whether any member of the public actually sees, hears or otherwise enjoys the work so made available.

Explanation.- For the purposes of this clause, communication through satellite or cable or any other means of simultaneous communication to more than one household or place of residence including residential rooms of any hotel or hostel shall be deemed to be communication to the public;

(ffa) ¹³ "composer", in relation to a musical work, means the person who composes the music regardless of whether he records it in any form of graphical notation;

(ffb) ¹⁴ "computer" includes any electronic or similar device having information processing capabilities;

(ffc) ¹⁵ "computer programme" 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;

(ffd) ¹⁶ "copyright society" means a society registered under sub-section (3) of section 33

(g) "delivery", in relation to a lecture, includes delivery by means of any mechanical instrument or ¹⁷[broadcast] by;

(h) "dramatic work" includes any piece for recitation, choreographic work or entertainment in dumb show, the scenic arrangement or acting form of which is fixed in writing or otherwise but does not include a cinematograph film;

[(hh) ¹⁸ "duplicating equipment" means any mechanical contrivance or device used or intended to be used for making copies of any work;]

(i) "engravings" include etchings, lithographs, wood-cuts, prints and other similar works, not being photographs;

(j) "exclusive licence" means a licence which confers on the licensee or on the licensee and persons authorised by him, to the exclusion of all other persons (including the owner of the copyright), any right comprised in the copyright in a work, and "exclusive licensee" shall be construed accordingly;

(k) "Government work" means a work which is made or published by or under the direction or control of-

(i) the Government or any department of the Government;

(ii) any Legislature in India;

(iii) any court, tribunal or other judicial authority in India;

[(l) ¹⁹ "Indian work" means a literary, dramatic or musical work, -

(i) the author of which is a citizen of India; or

(ii) which is first published in India; or

(iii) the author of which, in the case of an unpublished work, is, at the time of the making of the work, a citizen of India;]

(m) ²⁰ "infringing copy" means, -

(i) in relation to a literary, dramatic, musical or artistic work, a reproduction thereof otherwise than in the form of a cinematographic film;

(ii) in relation to a cinematographic film, a copy of the film made on any medium by any means;

(iii) in relation to a sound recording, any other recording embodying the same sound recording, made by any means;

(iv) in relation to a programme or performance in which such a broadcast reproduction right or a performer's right subsists under the provisions of this Act, the sound recording or a cinematographic film of such programme or performance, if such reproduction, copy or sound recording is made or imported in contravention of the provisions of this Act;

(n) "lecture" includes address, speech and sermon;

(o) ²¹ "literary work" includes computer programmes, tables and compilations including computer ^{35A} "literary data bases ;

(p) ²² "musical work" means a work consisting of music and includes any graphical notation of such work but does not include any words or any action intended to be sung, spoken or performed with the music;

(q) ²³ "performance", in relation to performer's right, means any visual or acoustic presentation made live by one or more performers;

(qq) ²⁴ "performer" includes an actor, singer, musician, dancer, acrobat, juggler, conjurer, snake charmer, a person delivering a lecture or any other person who makes a performance;

²⁵ *****

(s) "photograph" includes photo-lithograph and any work produced by any process analogous to photography but does not include any part of a cinematograph film;

(t) "plate" includes any stereotype or other plate, stone, block, mould, matrix, transfer, negative, ²⁶ [duplicating equipment] or other device used or intended to be used for printing or reproducing copies of any work, and any matrix or other appliance by which ²⁷ Sound recording for the acoustic presentation of the work are or are intended to be made;

(u) "prescribed" means prescribed by rules made under this Act;

(uu) ²⁸ "producer", in relation to a cinematograph film or sound recording, means a person who takes the initiative and responsibility for making the work;

29 *****

30 >*****

(x) ³¹ "reprography" means the making of copies of a work, by photo-copying or similar means;

(xx) ³² "sound recording" means a recording of sounds from which such sounds may be produced regardless of the medium on which such recording is made or the method by which the sounds are produced;

(y) "work" means any of the following works, namely:-

(i) a literary, dramatic, musical or artistic work;

(ii) a cinematograph film;

(iii) a ³³[sound recording];

(z) "work of joint authorship" means a work produced by the collaboration of two or more authors in which the contribution of one author is not distinct from the contribution of the other author or authors;

(za) "work of sculpture" includes casts and models.

3. Meaning of publication. ³⁴ For the purposes of this Act, "publication" means making a work available to the public by issue of copies or by communicating the work to the public.

4. When work not deemed to be published or performed in public. - Except in relation to infringement of copyright, a work shall not be deemed to be published or performed in public, if published, or performed in public, without the licence of the owner of the copyright.

5. When work deemed to be first published in India. - For the purposes of this Act, a work published in India shall be deemed to be first published in India, notwithstanding that it has been published simultaneously in some other country, unless such other country provides a shorter term of copyright for such work; and a work shall be deemed to be published simultaneously in India and in another country if the time between the publication in India and the publication in such other country does not exceed thirty days or such other period as the Central Government may, in relation to any specified country, determine.

6. Certain disputes to be decided by Copyright Board. ³⁵ If any question arises,-

(a) whether a work has been published or as to the date on which a work was published for the purposes of Chapter V, or

(b) whether the term of copyright for any work is shorter in any other country than that provided in respect of that work under this Act, it shall be referred to the Copyright Board constituted under section 11 whose decision thereon shall be final:

Provided that if in the opinion of the Copyright Board, the issue of copies or communication to the public referred to in section 3 was of an insignificant nature it shall not be deemed to be publication for the purposes of that section.

7. Nationality of author where the making of unpublished work is extended over considerable period. -Where, in the case of an unpublished work, the making of the work is extended over a considerable period, the author of the work shall, for the purposes of this Act, be deemed to be a citizen of, or domiciled in, that country of which he was a citizen or wherein he was domiciled during any substantial part of that period.

8. Domicile of corporations. - For the purposes of this Act, a body corporate shall be deemed to be

domiciled in India if it is incorporated under any law in force in India.

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1. *The Act has been extended to Goa, Daman and Diu by Reg. 12 of 1962, s. 3 and Sch.; to Dadra and Nagar Haveli by Reg. 6 of 1963, s. 2 and Sch. 1; to Pondicherry by Reg. 7 of 1963, S. 3 and Sch. 1; and brought into force in the State of Sikkim (w.e.f. 27-4-1979): vide Notification No. S.O. 226(E), dated 27-4-1979, Gazette of India, Extraordinary, Part II, Section 3(ii), page 430*
 2. *21st January, 1968, vide Notification No. S.R.O. 269, dated 21-1-1958, Gazette of India, Extraordinary, Part II, Section 3, page 167*
 3. *Certain words omitted by Act 38 of 1994, s. 2.*
 4. *Ins. by Act 38 of 1994, s. 2.*
 5. *Ins. by Act 38 of 1994, s. 2.*
 6. *Subs. by Act 38 of 1994, s. 2, for 'architectural work of art'.*
 7. *Subs. by Act 38 of 1994, s. 2 for "architectural work of art",*
 8. *Ins. by Act 38 of 1994, s. 2.*
 9. *Ins. by Act 38 of 1994, s. 2.*
 10. *Subs. by Act 23 of 1983, s. 3 (w.e.f. 9-8-1984)*
 11. *Subs. by Act 38 of 1994, s. 2*
 12. *Subs. by Act 38 of 1994, s. 2.*
 13. *Subs. by Act 38 of 1994, s. 2.*
 14. *Ins. by Act 38 of 1994, s. 2.*
 15. *Ins. by Act 38 of 1994, s. 2.*
 16. *Subs. by Act 38 of 1994, s. 2.*
 17. *Subs. by Act 23 of 1983, s. 2, for "radio-diffusion" (w.9.f. 9-8-1984)*
 18. *Subs. by Act 66 of 1984, s. 2 (w.e.f. 8-10-1984)*
 19. *Subs. by s. 3, ibid for cl. (1) (w.e.f. 9.8.1984).*
 20. *Subs. by Act 38 of 1994, s. 2.*
 21. *Subs. by Act 38 of 1994, s. 2.*
 22. *Subs. by Act 38 of 1994, s. 2*
 23. *Subs. by Act 38 of 1994, s. 2*
 24. *Subs. by Act 38 of 1994, s. 2.*
 25. *Clause (r) omitted by Act 38 of 1994, s. 2.*
 26. *Ins. by Act 68 of 1984, s. 2 (w.e.f. 8-10-1984).*
 27. *Subs. by Act 38 of 1994, s. 2 for "records'*
 28. *Ins. by Act 38 of 1994, s. 2.*
 29. *Clause (v) omitted by Act 23 of 1983, s. 3 (w.e.f. 9.8.1984)*
 30. *Clause (w) omitted by Act 38 of 1994, s. 2.*
 31. *Subs. by Act 38 of 1994, s. 2.*
 32. *Ins. by Act 38 of 1994, s. 2.*
 33. *Subs. by Act 38 of 1994, s. 2. for "record".*
 34. *Subs. by Act 38 of 1994, s. 3.*
 35. *Subs. by Act 38 of 1994, s. 6*

[35A. . Subs. by Act 49 of 1999, Section 2, for databasis (wef 15.1.2000)]

INDIAN COPYRIGHT ACT, 1957

CHAPTER II

Copyright Office and Copyright Board

9. Copyright Office. - (1) There shall be established for the purposes of this Act an office to be called the Copyright Office.

(2) The Copyright Office shall be under the immediate control of the Registrar of Copyrights who shall act under the superintendence and direction of the Central Government.

(3) There shall be a seal for the Copyright Office.

10. Registrar and Deputy Registrars of Copyrights . - (1) The Central Government shall appoint a Registrar of Copyrights and may appoint one or more Deputy Registrars of Copyrights.

(2) A Deputy Registrar of Copyrights shall discharge under the superintendence and direction of the Registrar of Copyrights such functions of the Registrar under this Act as the Registrar may, from time to time, assign to him; and any reference in this Act to the Registrar of Copyrights shall include a reference to a Deputy Registrar of Copyrights when so discharging any such functions.

11. Copyright Board. - (1) As soon as may be after the commencement of this Act, the Central Government shall constitute a Board to be called the Copyright Board which shall consist of a Chairman and not less than two or more than ³⁶ [fourteen] other members.

(2) The Chairman and other members of the Copyright Board shall hold office for such period and on such terms and conditions as may be prescribed.

(3) The Chairman of the Copyright Board shall be a person who is, or has been, a Judge ³⁷ * * of a High Court or is qualified for appointment as a Judge of a High Court.

(4) The Registrar of Copyrights shall be the Secretary of the Copyright Board and shall perform such functions as may be prescribed.

12. Powers and procedure of Copyright Board. - (1) The Copyright Board shall, subject to any rules that may be made under this Act, have power to regulate its own procedure, including the fixing of places and times of its sittings:

Provided that the Copyright Board shall ordinarily hear any proceeding instituted before it under this Act within the zone in which, at the time of the institution of the proceeding, the person instituting the proceeding actually and voluntarily resides or carries on business or personally works for gain.

Explanation. - In this sub-section "zone" means a zone specified in section 15 of the States Reorganisation Act, 1956.

(2) The Copyright Board may exercise and discharge its powers and functions through Benches constituted by the Chairman of the Copyright Board from amongst its members, each Bench consisting of not less than three members.

³⁸ "Provided that, if the Chairman is of opinion that any matter of importance is required to be heard by a larger bench, he may refer the matter to a special bench consisting of five members.";

(3) If there is a difference of opinion among the members of the Copyright Board or any Bench thereof in respect of any matter coming before it for decision under this Act, the opinion of the majority shall prevail:

³⁹ Provided that where there is no such majority, the opinion of the Chairman shall prevail.

(4) The ⁴⁰ [Chairman] may authorise any of its members to exercise any of the powers conferred on it by section 74 and any order made or act done in exercise of those powers by the member so authorised shall be deemed to be the order or act, as the case may be, of the Board.

(5) No member of the Copyright Board shall take part in any proceedings before the Board in respect of any matter in which he has a personal interest.

(6) No act done or proceeding taken by the Copyright Board under this Act shall be questioned on the ground merely of the existence of any vacancy in, or defect in the constitution of, the Board.

(7) The Copyright Board shall be deemed to be a civil court for the purposes of ⁴¹ [sections 345 and 346 of the Code of Criminal Procedure, 1973], and all proceedings before the Board shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code.

36. Subs. By Act 38 of 1994, s. 11 for "eight".

37. Certain words omitted by Act 38 of 1994, s. 11

38. Ins. by Act 38 of 1994, s. 12.

39. Subs. By Act 38 of 1994, s. 12.

40. Subs. By Act 38 of 1994, s. 12, for 'Copyright Board'

41. Subs. By Act 23 of 1983, s. 6, for certain words (w.e.f. 9-8-1984).

INDIAN COPYRIGHT ACT, 1957

CHAPTER III

Copyright

13. Works in which copyright subsists.- (1) Subject to the provisions of this section and the other provisions of this Act, copyright shall subsist throughout India in the following classes of works, that is to say, -

- (a) original literary, dramatic, musical and artistic works;
- (b) cinematograph films; and
- (c) ⁴²[sound recordings;]

(2) Copyright shall not subsist in any work specified in sub-section (1), other than a work to which the provisions of section 40 or section 41 apply, unless, -

(i) in the case of a published work, the work is first published in India, or where the work is first published outside India, the author is at the date of such publication, or in a case where the author was dead at that date, was at the time of his death, a citizen of India;

(ii) in the case of an unpublished work other than a ⁴³[work of architecture] the author is at the date of the making of the work a citizen of India or domiciled in India; and

(iii) in the case of ⁴⁴[work of architecture] the work is located in India.

Explanation.- in the case of a work of joint authorship, the conditions conferring copyright specified in this sub-section shall be satisfied by all the authors of the work.

(3) Copyright shall not subsist-

(a) in any cinematograph film a substantial part of the film is an infringement of the copyright in any other work;

(b) in any ⁴⁵[sound recording] made in respect of a literary, dramatic or musical work, if in making the ⁴⁶[sound recording], copyright in such work has been infringed.

(4) The copyright in a cinematograph film or a ⁴⁷[sound recording] shall not affect the separate copyright in any work in respect of which or a substantial part of which, the film, or as the case may be, the ⁴⁸[sound recording] is made.

(5) In the case of a ⁴⁹[work of architecture] copyright shall subsist only in the artistic character and design and shall not extend to processes or methods of construction.

14.⁵⁰ **Meaning of copyright.**-For the purposes of this Act, "copyright" means the exclusive right subject to the provisions of this Act, to do or authorise the doing of any of the following acts in respect of a work or any substantial part thereof, namely:-

(a) in the case of a literary, dramatic or musical work, not being a computer programme, -

(i) to reproduce the work in any material form including the storing of it in any medium by electronic means;

(ii) to issue copies of the work to the public not being copies already in circulation;

(iii) to perform the work in public, or communicate it to the public;

- (iv) to make any cinematograph film or sound recording in respect of the work;
- (v) to make any translation of the work;
- (vi) to make any adaptation of the work;
- (vii) to do, in relation to a translation or an adaptation of the work, any of the acts specified in relation to the work in sub-clauses (i) to (vi);

(b) in the case of a computer programme,-

(i) to do any of the acts specified in clause (a);

^{51A}“(ii) to sell or give on commercial rental or offer for sale or for commercial rental any copy of the computer programme:

Provided that such commercial rental does not apply in respect of computer programmes where the programme itself is not the essential object of the rental.”

(c) in the case of an artistic work,-

(i) to reproduce the work in any material form including depiction in three dimensions of a two dimensional work or in two dimensions of a three dimensional work;

(ii) to communicate the work to the public;

(iii) to issue copies of the work to the public not being copies already in circulation;

(iv) to include the work in any cinematograph film;

(v) to make any adaptation of the work;

(vi) to do in relation to an adaptation of the work any of the acts specified in relation to the work in sub-clauses (i) to (iv);

(d) In the case of cinematograph film, -

(i) to make a copy of the film, including a photograph of any image forming part thereof;

(ii) to sell or give on hire, or offer for sale or hire, any copy of the film, regardless of whether such copy has been sold or given on hire on earlier occasions;

(iii) to communicate the film to the public;

(e) In the case of sound recording, -

(i) to make any other sound recording embodying it;

(ii) to sell or give on hire, or offer for sale or hire, any copy of the sound recording regardless of whether such copy has been sold or given on hire on earlier occasions;

(iii) to communicate the sound recording to the public.

Explanation : For the purposes of this section, a copy which has been sold once shall be deemed to be a copy already in circulation.

15. Special provision regarding copyright in designs registered or capable of being registered under the Designs Act,1911.-(1) Copyright shall not subsist under this Act in any design which is

registered under the ^{51***} Designs Act, 1911.

(2) Copyright in any design, which is capable of being registered under the Designs Act, 1911, but which has not been so registered, shall cease as soon as any article to which the design has been applied has been reproduced more than fifty times by an industrial process by the owner of the copyright or, with his license, by any other person.

16. No copyright except as provided in this Act.-No person shall be entitled to copyright or any similar right in any work, whether published or unpublished, otherwise than under and in accordance with the provisions of this Act or any other law for the time being in force, but nothing in this section shall be constructed as abrogating any right or jurisdiction to restrain a breach of trust or confidence.

42. Subs. by Act 38 of 1994, s. 12, for "records"

43. Subs. by Act 38 of 1994, s. 12, for `architecture work of art'.

44. Subs. by Act 38 of 1994, s. 12, for "an architectural work of art'.

45. Subs. by Act 38 of 1994, s. 12, for 'record'.

46. Subs. by Act 38 of 1994, s. 12, for 'rerord'.

47. Subs. by Act 38 of 1994, s. 12, for `record'.

48. Subs. by Act 38 of 1994, s. 12, for "record'.

49. Subs. by Act 38 of 1994, s. 2, for "architecture work act'.

50. Subs. by Act 38 of 1994, s. 14.

51. The words "Indian Patents and" omitted by Act 23 of 1983, s.7(w.e.f. 9-8-1984)

[51A. Subs by Act 49 of 1999, Section 3, for sub clause (ii) (wef 15.1.2000)]

INDIAN COPYRIGHT ACT, 1957

CHAPTER IV

Ownership of Copyright and the Rights of the Owner

17. First owner of copyright.-Subject to the provisions of this Act, the author of a work shall be the first owner of the copyright therein

Provided that-

(a) in the case of a literary, dramatic or artistic work made by the author in the course of his employment by the proprietor of a newspaper, magazine or similar periodical under a contract of service or apprenticeship, for the purpose of publication in a newspaper, magazine or similar periodical, the said proprietor shall, in the absence of any agreement to the contrary, be the first owner of the copyright in the work in so far as the copyright relates to the publication of the work in any newspaper, magazine or similar periodical, or to the reproduction of the work for the purpose of its being so published, but in all other respects the author shall be the first owner of the copyright in the work;

(b) subject to the provisions of clause (a), 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, in the absence of any agreement to the contrary, be the first owner of the copyright therein;

(c) in the case of a work made in the course of the author's employment under a contract of service or apprenticeship, to which clause (a) or clause (b) does not apply, the employer shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein;

[(cc)⁵² in the case of any address or speech delivered in public, the person who has delivered such address or speech or if such person has delivered such address or speech on behalf of any other person, such other person shall be the first owner of the copyright therein notwithstanding that the person who delivers such address or speech, or, as the case may be, the person on whose behalf such address or speech is delivered, is employed by any other person who arranges such address or speech or on whose behalf or premises such address or speech is delivered;]

(d) in the case of a Government work, Government shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein;

[(dd)⁵³ in the case of a work made or first published by or under the direction or control of any public undertaking, such public undertaking shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein.

Explanation.- For the purposes of this clause and section 28A, "public undertaking" means-

(i) an undertaking owned or controlled by Government; or

(ii) a Government company as defined in section 617 of the Companies Act, 1956; or

(iii) a body corporate established by or under any Central, Provincial or State Act;]

(e) in the case of a work to which the provisions of section 41 apply, the international organisation concerned shall be the first owner of the copyright therein.

18. Assignment of copyright. -(1) 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.

(2) Where the assignee of a copyright becomes entitled to any right comprised in the copyright, the assignee as respects the rights so assigned, and the assignor as respects the rights not assigned, shall be treated for the purposes of this Act as the owner of copyright and the provisions of this Act shall have effect accordingly.

(3) In this section, the expression "assignee" as respects the assignment of the copyright in any future work includes the legal representatives of the assignee, if the assignee dies before the work comes into existence.

19. Mode of assignment.- [(1)]⁵⁴ 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.

(2)⁵⁵ 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.

(3)⁵⁶ The assignment of copyright in any work shall also specify the amount of royalty payable, if any, to the author or his legal heirs during the currency of the assignment and the assignment shall be subject to revision, extension or termination on terms mutually agreed upon by the parties.

(4)⁵⁷ Where the assignee does not exercise the rights assigned to him under any of the other sub-sections of this section within a period of one year from the date of assignment, the assignment in respect of such rights shall be deemed to have lapsed after the expiry of the said period unless otherwise specified in the assignment.

(5)⁵⁸ If the period of assignment is not stated, it shall be deemed to be five years from the date of assignment.

(6)⁵⁹ If the territorial extent of assignment of the rights is not specified, it shall be presumed to extend within India.

(7)⁶⁰ Nothing in sub-section (2) or sub-section (3) or sub-section (4) or sub-section (5) or sub-section (6) shall be applicable to assignments made before the coming into force of the Copyright (Amendment) Act, 1994.

19A⁶¹ **Disputes with respect to assignment of copyright.**-(1) If an assignee fails to make sufficient exercise of the rights assigned to him, and such failure is not attributable to any act or omission of the assignor, then, the Copyright Board may, on receipt of a complaint from the assignor and after holding such inquiry as it may deem necessary, revoke such assignment.

(2) If any dispute arises with respect to the assignment of any copyright the Copyright Board may, on receipt of a complaint from the aggrieved party and after holding such inquiry as it considers necessary, pass such order as it may deem fit including an order for the recovery of any royalty payable:

Provided that the Copyright Board shall not pass any order under this sub-section to revoke the assignment unless it is satisfied that the terms of assignment are harsh to the assignor in case the assignor is also the author :

Provided further that no order of revocation of assignment under this sub-section, be made within a period of five years from the date of such assignment.

20. Transmission of copyright in manuscript by testamentary disposition.-Where under a bequest a person is entitled to the manuscript of a literary, dramatic or musical work, or to an artistic

work, and the work was not published before the death of the testator, the bequest shall, unless the contrary intention is indicated in the testator's will or any codicil thereto, be construed as including the copyright in the work in so far as the testator was the owner of the copyright immediately before his death.

Explanation.- In this section, the expression "manuscript" means the original document embodying the work, whether written by hand or not.

21. Right of author to relinquish copyright.-(1) The author of a work may relinquish all or any of the rights comprised in the copyright in the work by giving notice in the prescribed form to the Registrar of Copyrights and thereupon such rights shall, subject to the provisions of sub-section (3), cease to exist from the date of the notice.

(2) On receipt of a notice under sub-section (1), the Registrar of Copyrights shall cause it to be published in the Official Gazette and in such other manner as he may deem fit.

(3) The relinquishment of all or any of the rights comprised in the copyright in a work shall not affect any rights subsisting in favour of any person on the date of the notice referred to in sub-section (1).

52. *Ins. by s. 8, ibid. (w.e.f. 9-8-1984)*

53. *Ins. by Act 23 of 1983, s. 8 (w.e.f. 9-8-1984)*

54. *S. 19 re-numbered as sub-section (1) thereof by s. 9, ibid., (W.G.f. 9-8-1984)*

55. *(Subs. by Act 38 of 1994, s. 19.)*

56. *(Subs. by Act 38 of 1994, s. 19)*

57. *(Subs. by Act 38 of 1994, s. 19)*

58. *(Subs. by Act 38 of 1994, s. 19.)*

59. *(Subs. by Act 38 of 1994, s. 19.)*

60. *(Subs. by Act 38 of 1994, s. 19.)*

61. *Subs. by Act 38 of 1994, s. 19*

INDIAN COPYRIGHT ACT, 1957

CHAPTER V Term of Copyright

22. Term of copyright in published literary, dramatic, musical and artistic works.-Except as otherwise hereinafter provided, copyright shall subsist in any literary, dramatic, musical or artistic work (other than a photograph) published within the lifetime of the author until ⁶²[sixty] years from the beginning of the calendar year next following the year in which the author dies.

Explanation.- In this section the reference to the author shall, in the case of a work of joint authorship, be construed as a reference to the author who dies last.

23. Term of copyright in anonymous and pseudonymous works.-(1) In the case of a literary, dramatic, musical or artistic work (other than a photograph), which is published anonymously or pseudonymously, copyright shall subsist until ⁶³[sixty] years from the beginning of the calendar year next following the year in which the work is first published :

Provided that where the identity of the author is disclosed before the expiry of the said period, copyright shall subsist until ⁶⁴[sixty] years from the beginning of the calendar year next following the year in which the author dies.

(2) In sub-section (1), references to the author shall, in the case of an anonymous work of joint authorship, be construed,-

(a) where the identity of one of the authors is disclosed, as references to that author;

(b) where the identity of more authors than one is disclosed, as references to the author who dies last from amongst such authors.

(3) In sub-section (1) references to the author shall, in the case of a pseudonymous work of joint authorship, be construed,-

(a) where the names of one or more (but not all) of the authors are pseudonymous and his or their identity is not disclosed, as references to the author whose name is not a pseudonym, or, if the names of two or more of the authors are not pseudonyms, as references to such of those authors who dies last;

(b) where the names of one or more (but not all) of the authors are pseudonyms and the identity of one or more of them is disclosed, as references to the author who dies last from amongst the authors whose names are not pseudonyms and the authors whose names are pseudonyms and are disclosed; and

(c) where the names of all the authors are pseudonyms and the identity of one of them is disclosed, as references to the author whose identity is disclosed or if the identity of two or more of such authors is disclosed, as references to such of those authors who dies last.

Explanation.- For the purposes of this section, the identity of an author shall be deemed to have been disclosed, if either identity of the author is disclosed publicly by both the author and the publisher or is otherwise established to the satisfaction of the Copyright Board by that author.

24. Term of copyright in the posthumous work.-(1) In the case of a literary, dramatic or musical work or an engraving, in which copyright subsists at the date of the death of the author or, in the case of any such work of joint authorship, at or immediately before the date of the death of the author who dies last, but which, or any adaptation of which, has not been published before that date, copyright shall subsist until ⁶⁵[sixty] years from the beginning of the calendar year next following the year in which the work is first published or, where an adaptation of the work is published in any earlier year,

from the beginning of the calendar year next following that year.

(2) For the purposes of this section a literary, dramatic or musical work or an adaptation of any such work shall be deemed to have been published, if it has been performed in public or if any records made in respect of the work have been sold to the public or have been offered for sale to the public.

25. Term of copyright in photographs.-In the case of a photograph, copyright shall subsist until ⁶⁶[sixty] years from the beginning of the calendar year next following the year in which the photograph is published.

26. Term of copyright in cinematograph films.-In the case of a cinematograph film, copyright shall subsist until ⁶⁷[sixty] years from the beginning of the calendar year next following the year in which the film is published.

27. Term of copyright in records.-In the case of a ⁶⁸[sound recording], copyright shall subsist until ⁶⁹[sixty] years from the beginning of the calendar year next following the year in which the ⁷⁰[sound recording] is published.

28. Term of copyright in Government work.- In the case of Government work, where Government is the first owner of the copyright therein, copyright shall subsist until ⁷¹[Sixty] years from the beginning of the calendar year next following the year in which the work is first published.

⁷²**[28A. Term of copyright in works of public undertakings.**- In the case of a work, where a public undertaking is the first owner of the copyright therein, copyright shall until ⁷³[sixty] years from the beginning of the calendar year next following the year in which the work is first published.

29. Term of copyright in works of international organisations.- In the case of a work of an international organisation to which the provisions of section 41 apply, copyright shall subsist until ⁷⁴[sixty] years from the beginning of the calendar year next following the year in which the work is first published.

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62. Subs. by Act 13 of 1992, s. 2 for 'fifty'.
63. Subs. by Act 13 of 1992, s. 2 for 'fifty'.
64. Subs. by Act 13 of 1992, s. 2 for 'fifty'.
65. Subs. by Act 13 of 1992, S. 2 for 'fifty'
66. Subs. by Act 13 of 1992, s. 2 for 'fifty'.
67. Subs. by Act 13 of 1992, s. 2 for 'fifty'.
68. Subs. by Act 38 of 1994, s. 2 for "record".
69. Subs. by Act 13 of 1992, 2 for 'fifty'.
70. Subs. by Act 38 of 1994, s. 2 for "record"
71. Subs. by Act 13 of 1992, s. 2 for "fiW"
72. Ins. by Act 23 of 1983, s. 11 (w.e.f. 9-8-1994)
73. Subs. by Act 13 of 1992, s. 2 for "lifty"
74. Subs. by Act 13 of 1992, s. for "fifty"

INDIAN COPYRIGHT ACT, 1957

CHAPTER VI LICENCES

30. Licences by owners of copyright.- The owner of the copyright in any existing work or the prospective owner of the copyright in any future work may grant any interest in the right by licence in writing signed by him or by his duly authorised agent:

Provided that in the case of a licence relating to copyright in any future work, the licence shall take effect only when the work comes into existence.

Explanation.- Where a person to whom a licence relating to copyright in any future work is granted under this section dies before the work comes into existence, his legal representatives shall, in the absence of any provision to the contrary in the licence, be entitled to the benefit of the licence.

⁷⁵ **30A. Application of sections 19 and 19A.**-The provisions of sections 19 and 19A shall, with any necessary adaptations and modifications, apply in relation to a licence under section 30 as they apply in relation to assignment of copyright in a work.

31. Compulsory licence in works withheld from public.-(1) If at any time during the term of copyright in any Indian work which has been published or performed in public, a complaint is made to the Copyright Board that the owner of copyright in the work- (a) has refused to republish or allow the republication of the work or has refused to allow the performance in public of the work, and by reason of such refusal the work is withheld from the public; or

(b) has refused to allow communication to the public by ⁷⁶[broadcast], of such work or in the case of ⁷⁷[sound recording] the work recorded in such [sound recording], on terms which the complainant considers reasonable; the Copyright Board, after giving to the owner of the copyright in the work a reasonable opportunity of being heard and after holding such inquiry as it may deem necessary, may, if it is satisfied that the grounds for such refusal are not reasonable, direct the Registrar of Copyrights to grant to the complainant a licence to republish the work, perform the work in public or communicate the work to the public by [broadcast], as the case may be, subject to payment to the owner of the copyright of such compensation and subject to such other terms and conditions as the Copyright Board may determine; and thereupon the Registrar of Copyrights shall grant the licence to the complainant in accordance with the directions of the Copyright Board, on payment of such fee as may be prescribed.

Explanation.- In this sub-section, the expression "Indian work" includes-

- (i) an artistic work, the author of which is a citizen of India; and
- (ii) a cinematograph film or a record made or manufactured in India.

(2) Where two or more persons have made a complaint under sub-section (1), the licence shall be granted to the complainant who in the opinion of the Copyright Board would best serve the interests of the general public.

31A. Compulsory licence in unpublished Indian works.-(1) Where, in the case of an Indian work referred to in sub-clause (iii) of clause (a) of section 2, the author is dead or unknown or cannot be traced, or the owner of the copyright in such work cannot be found, any person may apply to the Copyright Board for a licence to publish such work or a translation thereof in any language.

(2) Before making an application under sub-section (1), the applicant shall publish his proposal in one issue of a daily newspaper in the English language having circulation in the major part of the

country and where the application is for the publication of a translation in any language, also in one issue of any daily newspaper in that language.

(3) Every such application shall be made in such form as may be prescribed and shall be accompanied with a copy of the advertisement issued under sub-section (2) and such fee as may be prescribed.

(4) Where an application is made to the Copyright Board under this section, it may, after holding such inquiry as may be prescribed, direct the Registrar of Copyrights to grant to the applicant a licence to publish the work or a translation thereof in the language mentioned in the application subject to the payment of such royalty and subject to such other terms and conditions as the Copyright Board may determine, and thereupon the Registrar of Copyrights shall grant the licence to the applicant in accordance with the direction of the Copyright Board.

(5) Where a licence is granted under this section, the Registrar of Copyrights may, by order, direct the applicant to deposit the amount of the royalty determined by the Copyright Board in the public account of India or in any other account specified by the Copyright Board so as to enable the owner of the copyright or, as the case may be, his heirs, executors or the legal representatives to claim such royalty at any time.

(6) Without prejudice to the foregoing provisions of this section, in the case of a work referred to in sub-section (1), if the original author is dead, the Central Government may, if it considers that the publication of the work is desirable in the national interest, require the heirs, executors or legal representatives of the author to publish such work within such period as may be specified by it.

(7) Where any work is not published within the period specified by the Central Government under sub-section (6), the Copyright Board may, on an application made by any person for permission to publish the work and after hearing the parties concerned, permit such publication on payment of such royalty as the Copyright Board may, in the circumstances of such case, determine in the prescribed manner.]

32.Licence to produce and publish translations.- (1) Any person may apply to the Copyright Board for a licence to produce and publish a translation of a literary or dramatic work in any language 2[after a period of seven years from the first publication of the work].

(1A)⁸⁰ Notwithstanding anything contained in sub-section (1), any person may apply to the Copyright Board for a licence to produce and publish a translation, in printed or analogous forms of reproduction, of a literary or dramatic work, other than an Indian work, in any language in general use in India after a period of three years from the publication of such work, if such translation is required for the purposes of teaching, scholarship or research:

Provided that where such translation is in a language not in general use in any developed country, such application may be made after a period of one year from such publications.]

(2) Every ⁸¹[application under this section] shall be made in such form as may be prescribed and shall state the proposed retail price of a copy of the translation of the work.

(3) Every applicant for a licence under this section shall, along with his application, deposit with the Registrar of Copyrights such fee as may be prescribed.

(4) Where an application is made to the Copyright Board under this section, it may, after holding such inquiry as may be prescribed, grant to the applicant a licence, not being an exclusive licence, to produce and publish a translation of the work in the language mentioned in ⁸²[the application-

(i) subject to the condition that the applicant shall pay to the owner of the copyright in the work royalties in respect of copies of the translation of the work sold to the public, calculated at such rate as the Copyright Board may, in the circumstances of each case, determine in the prescribed

manner; and

(ii) where such licence is granted on an application under sub-section (1A), subject also to the condition that the licence shall not extend to the export of copies of the translation of the work outside India and every copy of such translation shall contain a notice in the language of such translation that the copy is available for distribution only in India:

Provided that nothing in clause (ii) shall apply to the export by Government or any authority under the Government of copies of such translation in a language other than English, French or Spanish to any country if-

(1) such copies are sent to citizens of India residing outside India or to any association of such citizens outside India; or

(2) such copies are meant to be used for purposes of teaching, scholarship or research and not for any commercial purpose; and

(3) in either case, the permission for such export has been given by the Government of that country] ⁸³[Provided further that no licence under this section] shall be granted, unless-

(a) a translation of the work in the language mentioned in the application has not been published by the owner of the copyright in the work or any person authorised by him, ⁸²[within seven years or three years or one year, as the case may be, of the first publication of the work], or if a translation has been so published, it has been out of print;

(b) the applicant has proved to the satisfaction of the Copyright Board that he had requested and had been denied authorisation by the owner of the copyright to produce and publish such translation, or that ⁸⁴[he was, after due diligence on his part, unable to find] the owner of the copyright;

(c) where the applicant was unable to find the owner of the copyright, he had sent a copy of his request for ⁸⁵[such authorisation by registered air mail post to the publisher whose name appears from the work, and in the case of an application for a licence under sub-section (1)], not less than two months before ⁸⁵[such application];

[(cc)⁸⁴ a period of six months in the case of an application under sub-section (1A) (not being an application under the proviso thereto), or nine months in the case of an application under the proviso to that sub-section, has elapsed from the date of making the request under clause (b) of this proviso, or where a copy of the request has been sent under clause (c) of this proviso, from the date of sending of such copy, and the translation of the work in the language mentioned in the application has not been published by the owner of the copyright in the work or any person authorised by him within the said period of six months or nine months, as the case may be;

(ccc) in the case of any application made under sub-section (1A),-

(i) the name of the author and the title of the particular edition of the work proposed to be translated are printed on all the copies of the translation;

(ii) if the work is composed mainly of illustrations, the provisions of section 32A are also complied with;]

(d) the Copyright Board is satisfied that the applicant is competent to produce and publish a correct translation of the work and possesses the means to pay to the owner of the copyright the royalties payable to him under this section;

(e) the author has not withdrawn from circulation copies of the work; and

(f) an opportunity of being heard is given, wherever practicable, to the owner of the copyright in the

work.

[(5)⁸⁴ Any broadcasting authority may apply to the Copyright Board for a licence to produce and publish the translation of-

(a) a work referred to in sub-section (1A) and published in printed or analogous forms of reproduction; or

(b) any text incorporated in audio-visual fixations prepared had published solely for the purpose of systematic instructional activities, for broadcasting such translation for the purposes of teaching or for the dissemination of the results of specialised, technical or scientific research to the experts in any particular field.

(6) The provisions of sub-sections (2) to (4) in so far as they are relatable to an application under sub-section (1A), shall, with the necessary modifications, apply to the grant of a licence under sub-section (5) and such licence shall not also be granted unless-

(a) the translation is made from a work lawfully acquired;

(b) the broadcast is made through the medium of sound and visual recordings;

(c) such recording has been lawfully and exclusively made for the purpose of broadcasting in India by the applicant or by any other broadcasting agency; and

(d) the translation and the broadcasting of such translation are not used for any commercial purposes. *Explanation.*- For the purposes of this section,-

(a) "developed country" means a country which is not a developing country;

(b) "developing country" means a country which is for the time being regarded as such in conformity with the practice of the General Assembly of the United Nations;

(c) "purposes of research" does not include purposes of industrial research, or purposes of research by bodies corporate (not being bodies corporate owned or controlled by Government) or other associations or body of persons for commercial purposes;

(d) "purposes of teaching, research or scholarship" includes-

(i) purposes of instructional activity at all levels in educational institutions, including Schools, Colleges, Universities and tutorial institutions; and

(ii) purposes of all other types of organised educational activity.]

[32A. Licence to reproduce and publish works for certain purposes.-⁸⁶(1) Where, after the expiration of the relevant period from the date of the first publication of an edition of a literary, scientific or artistic work,-

(a) the copies of such edition are not made available in India; or

(b) such copies have not been put on sale in India for a period of six months to the general public, or in connection with systematic instructional activities at a price reasonably related to that normally charged in India for comparable works by the owner of the right of reproduction or by any person authorised by him in this behalf, any person may apply to the Copyright Board for a licence to reproduce and publish such work in printed or analogous forms of reproduction at the price at which such edition is sold or a lower price for the purposes of systematic instructional activities.

(2) Every such application shall be made in such form as may be prescribed and shall state the proposed retail price of a copy of the work to be reproduced.

(3) Every applicant for a licence under this section shall, along with his application, deposit with the Registrar of Copyrights such fee as may be prescribed.

(4) Where an application is made to the Copyright Board under this section, it may, after holding such inquiry as may be prescribed, grant to the applicant a licence, not being an exclusive licence, to produce and publish a reproduction of the work mentioned in the application subject to the conditions that,-

(i) the applicant shall pay to the owner of the copyright in the work royalties in respect of copies of the reproduction of the work sold to the public, calculated at such rate as the Copyright Board may, in the circumstances of each case, determine in the prescribed manner;

(ii) a licence granted under this section shall not extend to the export of copies of the reproduction of the work outside India and every copy of such reproduction shall contain a notice that the copy is available for distribution only in India :

Provided that no such licence shall be granted unless-

(a) the applicant has proved to the satisfaction of the Copyright Board that he had requested and had been denied authorisation by the owner of the copyright in the work to reproduce and publish such work or that he was, after due diligence on his part, unable to find such owner;

(b) where the applicant was unable to find the owner of the copyright, he had sent a copy of his request for such authorisation by registered airmail post to the publisher whose name appears from the work not less than three months before the application for the licence;

(c) the Copyright Board is satisfied that the applicant is competent to reproduce and publish an accurate reproduction of the work and possesses the means to pay to the owner of the copyright the royalties payable to him under this section;

(d) the applicant undertakes to reproduce and publish the work at such price as may be fixed by the Copyright Board, being a price reasonably related to the price normally charged in India for works of the same standard on the same or similar subjects;

(e) a period of six months in the case of application for the reproduction and publication of any work of natural science, physical science, mathematics or technology, or a period of three months in the case of an application for the reproduction and publication of any other work, has elapsed from the date of making the request under clause (a), or where a copy of the request has been sent under clause (b), from the date of sending of a copy, and a reproduction of the work has not been published by the owner of the copyright in the work or any person authorised by him within the said period of six months or, three months, as the case may be;

(f) the name of the author and the title of the particular edition of the work proposed to be reproduced are printed on all the copies of the reproduction;

(g) the author has not withdrawn from circulation copies of the work; and

(h) an opportunity of being heard is given, wherever practicable, to the owner of the copyright in the work.

(5) No licence to reproduce and publish the translation of a work shall be granted under this section unless such translation has been published by the owner of the right of translation or any person authorised by him and the translation is not in a language in general use in India.

(6) The provisions of this section shall also apply to the reproduction and publication, or translation into a language in general use in India, of any text incorporated in audio-visual fixations prepared and published solely for the purpose of systematic instructional activities.

Explanation.- For the purposes of this section, "relevant period", in relation to any work, means a period of-

(a) seven years from the date of the first publication of that work, where the application is for the reproduction and publication of any work of, or relating to, fiction, poetry, drama, music or art;

(b) three years from the date of the first publication of that work, where the application is for the reproduction and publication of any work of, or relating to, natural science, physical science, mathematics or technology; and

(c) five years from the date of the first publication of that work, in any other case.

32B. Termination of licences issued under this chapter.-(1) If, at any time after the granting of a licence to produce and publish the translation of a work in any language under sub-section (1A) of section 32 (hereafter in this sub-section referred to as the licensed work), the owner of the copyright in the work or any person authorised by him publishes a translation of such work in the same language and which is substantially the same in content at a price reasonably related to the price normally charged in India for the translation of works of the same standard on the same or similar subject, the licence so granted shall be terminated:

Provided that no such termination shall take effect until after the expiry of a period of three months from the date of service of a notice in the prescribed manner on the person holding such licence by the owner of the right of translation intimating the publication of the translation as aforesaid:

Provided further that copies of the licensed work produced and published by the person holding such licence before the termination of the licence takes effect may continue to be sold or distributed until the copies already produced and published are exhausted.

(2) If, at any time after the granting of a licence to produce and publish the reproduction or translation of any work under section 32A, the owner of the right of reproduction or any person authorised by him sells or distributes copies of such work or a translation thereof, as the case may be, in the same language and which is substantially the same in content at a price reasonably related to the price normally charged in India for work of the same standard on the same or similar subject, the licence so granted shall be terminated:

Provided that no such termination shall take effect until after the expiry of a period of three months from the date of service of a notice in the prescribed manner on the person holding the licence by the owner of the right of reproduction intimating the sale or distribution of the copies of the editions of work as aforesaid:

Provided further that any copies already reproduced by the licensee before such termination takes effect may continue to be sold or distributed until the copies already produced are exhausted.]

75. *Ins. by Act 38 of 1994, s. 30.)*

76. *Subs. by Act 23 of 1983, s. 2 for "radio-diffusion" (w.e.f. 9-8-1984)*

77. *Subs. by Act 38 of 1994, s. 2 for "record"*

78. *Lins. by Act 23 of 1983, s. 12 (w.e.f. 9-8-1984).*

79. *Subs. by Act 38 of 1994, s. 12 (w.e.f. 9-8-1984).*

80. *Ins. by S. 13, ibid. (w.e.f. 9-8-1984).*

81. *Subs. by Act 23 of 1983, for "such application" (w.e.f. 9-8-1984).*

82. *Subs. by s. 13, ibid., for certain words (w.e.f. 9-8-1984).*

83. *Subs. by s. 13, ibid., for "Provided that no such licence" (w.e.f. 9-8-1984).*

84. *Ins. by s. 13, ibid (w.e.f. 9-8-94).*

85. *Subs. by Act 23 of 1983, s. 13 for certain words (w.e.f. 9-8-94).*

86. *Ins. by Act 23 of 1983, s. 14 (w.e.f. 9-8-1984).*

INDIAN COPYRIGHT ACT, 1957

CHAPTER VII Copyright Societies

33. ¹ Registration of Copyright Society.- (1) No person or association of persons shall, after coming into force of the Copyright (Amendment) Act, 1994 commence or, carry on the business of issuing or granting licences in respect of any work in which copyright subsists on respect or in respect of any other rights conferred by this Act except under or in accordance with the registration granted under sub-section (3):

Provided that owner of copyright shall, in his individual capacity, continue to have the right to grant licences in respect of his own works consistent with his obligations as a member of the registered copyright society:

Provided further that the performing rights society functioning in accordance with the provisions of section 33 on the date immediately before the coming into force of the Copyright (Amendment) Act, 1994 shall be deemed to be a copyright society for the purposes of this Chapter and every such society shall get itself registered within a period of one year from the date of commencement of the Copyright (Amendment) Act, 1994.

(2) Any association of persons who fulfils such conditions as may be prescribed may apply for permission to do the business specified in sub-section (1) to the Registrar of Copyrights who shall submit the application to the Central Government.

(3) The Central Government may, having regard to the interests of the authors and other owners of rights under this Act, the interest and convenience of the public and in particular of the groups of persons who are most likely to seek licences in respect of the relevant rights and the ability and professional competence of the applicants, register such association of persons as a copyright society subject to such conditions as may be prescribed:

Provided that the Central Government shall not ordinarily register more than one copyright society to do business in respect of the same class of works.

(4) The Central Government may, if it is satisfied that a copyright society is being managed in a manner detrimental to the interests of the owners of rights concerned, cancel the registration of such society after such inquiry as may be prescribed.

(5) If the Central Government is of the opinion that in the interest of the owners of rights concerned, it is necessary so to do, it may, by order, suspend the registration of such society pending inquiry for such period not exceeding one year as may be specified in such order under sub-section (4) and that Government shall appoint an administrator to discharge the functions of the copyright society.

34. ⁸⁷ Administration of rights of owner by copyright society.-(1) Subject to such conditions as may be prescribed,-

(a) a copyright society may accept from an owner of rights exclusive authorisation to administer any right in any work by issue of licences or collection of licence fees or both; and

(b) an owner of rights shall have the right to withdraw such authorisation without prejudice to the rights of the copyright society under any contract.

(2) It shall be competent for a copyright society to enter into agreement with any foreign society or organisation administering rights corresponding to rights under this Act, to entrust to such foreign society or organisation the administration in any foreign country of rights administered by the said copyright society in India, or for administering in India the rights administered in a foreign country by

such foreign society or organisation:

Provided that no such society or organisation shall permit any discrimination in regard to the terms of licence or the distribution of fees collected between rights in Indian and other works.

(3) Subject to such conditions as may be prescribed, a copyright society may-

- (i) issue licences under section 30 in respect of any rights under this Act;
- (ii) collect fees in pursuance of such licences;
- (iii) distribute such fees among owners of rights after making deductions for its own expenses;
- (iv) perform any other functions consistent with the provisions of section 35.

34A. ⁸⁸ **Payment of remuneration by copyright society.-** (1) If the Central Government is of the opinion that a copyright society for a class of work is generally administering the rights of the owners of rights in such work throughout India, it shall appoint that society for the purpose of this section.

(2) The copyright society shall, subject to such rules as may be made in this behalf, frame a scheme for determining the quantum of remuneration payable to individual copyright owners having regard to the number of copies of the work in circulation:

Provided that such scheme shall restrict payment to the owners of rights whose works have attained a level of circulation which the copyright society considers reasonable.

35. Control over the copyright society by the owner of rights.- ⁸⁹ (1) Every copyright society shall be subject to the collective control of the owners of rights under this Act whose rights it administers (not being owners of rights under this Act administered by a foreign society or organisation referred to in sub-section (2) of section (34) and shall, in such manner as may be prescribed,- (a) obtain the approval of such owners of rights for its procedures of collection and distribution of fees;

(b) obtain their approval for the utilisation of any amounts collected as fees for any purpose other than distribution to the owner of rights; and

(c) provide to such owners regular, full and detailed information concerning all its activities, in relation to the administration of their rights.

(2) All fees distributed among the owners of rights shall, as far as may be, be distributed in proportion to the actual use of their works.

36. Submission of returns and reports.- ⁹⁰ (1) Every copyright society shall submit to the Registrar of Copyrights such returns as may be prescribed.

(2) Any officer duly authorised by the Central Government in this behalf may call for any report and also call for any records of any copyright society for the purpose of satisfying himself that the fees collected by the society in respect of rights administered by it are being utilised or distributed in accordance with the provisions of this Act.

36A. Rights and liabilities of performing rights societies.- ⁹¹ Nothing in this Chapter shall affect any rights or liabilities in any work in connection with a performing rights society which had accrued or were incurred on or before the day prior to the commencement of the Copyright (Amendment) Act, 1994, or any legal proceedings in respect of any such rights or liabilities pending on that day."

1. The Act has been extended to Goa, Daman and Diu by Reg. 12 of 1962, s. 3 and Sch.; to Dadra and Nagar Haveli by Reg. 6 of 1963, s. 2 and Sch. 1; to Pondicherry by Reg. 7 of 1963, S. 3 and Sch. 1; and brought into force in the State of Sikkim (w.e.f. 27-4-1979): vide Notification No. S.O.

226(E), dated 27-4-1979, Gazette of India, Extraordinary, Part II, Section 3(ii), page 430
86a. Subs. by Act 38 of 1994, s. 33
87. Subs. by Act 38 of 1994, s. 34
88. Ins. by Act 38 of 1994, s. 34A
89. Subs. by Act 38 of 1994, s. 35
90. Subs. by Act 38 of 1994, s. 36
91. Ins. of Act 38 of 1994, s. 36A

INDIAN COPYRIGHT ACT, 1957

CHAPTER VIII

Rights of Broadcasting ⁹² Organisation and of Performers

37.⁹³ Broadcast reproduction right.-(1) Every broadcasting organisation shall have a special right to be known as "broadcast reproduction right" in respect of its broadcasts.

(2) The broadcast reproduction right shall subsist until twenty-five years from the beginning of the calendar year next following the year in which the broadcast is made.

(3) During the continuance of a broadcast reproduction right in relation to any broadcast, any person who, without the licence of the owner of the right does any of the following acts of the broadcast or any substantial part thereof,-

(a) re-broadcasts the broadcast; or

(b) causes the broadcast to be heard or seen by the public on payment of any charges; or

(c) makes any sound recording or visual recording of the broadcast; or

(d) makes any reproduction of such sound recording or visual recording where such initial recording was done without licence or, where it was licensed, for any purpose not envisaged by such licence; or

(e) sells or hires to the public or offers for such sale or hire, any such sound recording or visual recording referred to in clause (c) or clause (d) shall, subject to the provisions of section 39, be deemed to have infringed the broadcast reproduction right.

38.⁹⁴ Performer's right- (1) Where any performer appears or engages in any performance, he shall have a special right to be known as the "performer's right" in relation to such performance.

(2) The performer's right shall subsist until ^{96A} fifty years from the beginning of the calendar year next following the year in which the performance is made.

(3) During the continuance of a performer's right in relation to any performance, any person who, without the consent of the performer, does any of the following acts in respect of the performance or any substantial part thereof, namely :-

(a) makes a sound recording or visual recording of the performance; or

(b) reproduces a sound recording or visual recording of the performance, which sound recording or visual recording was-

(i) made without the performer's consent; or

(ii) made for purposes different from those for which the performer gave his consent; or

(iii) made for purposes different from those referred to in section 39 from a sound recording or visual recording which was made in accordance with section 39; or

(c) broadcasts the performance except where the broadcast is made from a sound recording or visual recording other than one made in accordance with section 39, or is a re-broadcast by the same broadcasting organisation of an earlier broadcast which did not infringe the performer's right; or

(d) communicates the performance to the public otherwise than by broadcast, except where such communication to the public is made from a sound recording or a visual recording or a broadcast, shall, subject to the provision of section 39, be deemed to have infringed the performer's right.

(4) Once a performer has consented to the incorporation of his performance in a cinematograph film, the provisions of sub-sections (1), (2) and (3) shall have no further application to such performance.

39.⁹⁵ Acts not infringing broadcast reproduction right or performer's right. – No broadcast reproduction right or performer's right shall be deemed to be infringed by-

(a) the making of any sound recording or visual recording for the private use of the person making such recording, or solely for purposes of *bona fide* teaching or research; or

(b) the use, consistent with fair dealing, of excerpts of a performance or of a broadcast in the reporting of current events or for *bona fide* review, teaching or research; or

(c) such order acts, with any necessary adaptations and modifications, which do not constitute infringement of copyright under section 52.

39A.⁹⁶ Other provisions applying to broadcast reproduction right and performer's right.-

Sections 18, 19, 30, 53, 55, 58, 64, 65 and 66 shall, with any necessary adaptations and modifications, apply in relation to the broadcast reproduction right in any broadcast and the performers' right in any performance as they apply in relation to copyright in a work :

Provided that where copyright or performer's right subsists in respect of any work or performance that has been broadcast, no licence to reproduce such broadcast shall take effect without the consent of the owner of rights or performer, as the case maybe, or both of them.

92. Subs. by Act.38 of 1994, cl. 12 for 'Authorities'

93. Subs. by Act 38 of 1994, s. 37

94. Subs. by Act 38 of 1994, s. 38

95. Subs. by Act 38 of 1994, s. 39

96. Subs. by Act 38 of 1994, s. 39A.

[96A. Subs. By Act 49 of 1999, Section 4, for twenty five years (wef 15.1.2000)]

INDIAN COPYRIGHT ACT, 1957

CHAPTER IX

International Copyright

40. Power to extend copyright to foreign works.-- The Central Government may, by ⁹⁷ order published in the Official Gazette, direct that all or any provisions of this Act shall apply-

(a) to work first published in any class territory outside India to which the order relates in like manner as if they were first published within India;

(b) to unpublished works, or any class thereof, the authors whereof were at the time of the making of the work, subjects or citizens of a foreign country to which the order relates, in like manner as if the authors were citizens of India;

(c) in respect of domicile in any territory outside India to which the order relates in like manner as if such domicile were in India;

(d) to any work of which the author was at the date of the first publication thereof, or, in a case where the author was dead at that date, was at the time of his death, a subject or citizen of a foreign country to which the order relates in like manner as if the author was a citizen of India at that date or time; and thereupon, subject to the provisions of this Chapter and of the order, this Act shall apply accordingly:

Provided that-

(i) before making an order under this section in respect of any foreign country (other than a country with which India has entered into a treaty or which is a party to a convention relating to copyright to which India is also a party), the Central Government shall be satisfied that that foreign country has made, or has undertaken to make, such provisions if any, as it appears to the Central Government expedient to require for the protection in that country of works entitled to copyright under the provisions of this Act;

(ii) the order may provide that the provisions of this Act shall apply either generally or in relation to such classes of works or such classes of cases as may be specified in the order;

(iii) the order may provide that the term of copyright in India shall not exceed that conferred by the law of the country to which the order relates;

(iv) the order may provide that the enjoyment of the rights conferred by this Act shall be subject to the accomplishment of such conditions and formalities, if any, as may be prescribed by the order;

(v) in applying the provisions of this Act as to ownership of copyright, the order may make such exceptions and modifications as appear necessary, having regard to the law of the foreign country;

(vi) the order may provide that this Act or any part thereof shall not apply to works made before the commencement of the order or that this Act or any part thereof shall not apply to works first published before the commencement of the order.

^{98A} "40A. (1) If the Central Government is satisfied that a foreign country (other than a country with which India has entered into a treaty or which is a party to a convention relating to rights of broadcasting organisations and performers to which India is also a party) has made or has undertaken to make such provisions, if any, as it appears to the Central Government expedient to require, for the protection in that foreign country, of the rights of broadcasting organisations and

performers as is available under this Act, it may, by order published in the Official Gazette, direct that the provisions of Chapter VIII shall apply -

- (a) to broadcasting organisations whose headquarters is situated in a country to which the order relates or, the broadcast was transmitted from a transmitter situated in a country to which the order relates as if the headquarters of such organisation were situated in India or such broadcast were made from India;
- (b) to performances that took place outside India to which the order relates in like manner as if they took place in India;
- (c) to performances that are incorporated in a sound recording published in a country to which the order relates as if it was published in India;
- (d) to performances not fixed on a sound recording broadcast by a broadcasting organisation the headquarters of which is located in a country to which the order relates or where the broadcast is transmitted from a transmitter which is situated in a country to which the order relates as if the headquarters of such organisation were situated in India or such broadcast were made from India.

(2) Every order made under sub-section (1) may provide that -

- (i) the provisions of Chapter VIII shall apply either generally or in relation to such class or classes of broadcasts or performances or such other class or classes of cases as may be specified in the order;
- (ii) the term of the rights of broadcasting organisations and performers in India shall not exceed such term as is conferred by the law of the country to which the order relates;
- (iii) the enjoyment of the rights conferred by Chapter VIII shall be subject to the accomplishment of such conditions and formalities, if any, as may be specified in that order;
- (iv) Chapter VIII or any part thereof shall not apply to broadcast and performances made before the commencement of the order or that Chapter VIII or any part thereof shall not apply to broadcasts and performances broadcast or performed before the commencement of the order;
- (v) in case of ownership of rights of broadcasting organisations and performers, the provisions of Chapter VIII shall apply with such exceptions and modifications as the Central Government may, having regard to the law of the foreign country, consider necessary."

41. Provisions as to works of certain international organisations. -(1) Where-

(a) any work is made or first published by or under the direction or control of any organisation to which this section applies, and

(b) there would, apart from this section, be no copyright in the work in India at the time of the making or, as the case may be, of the first publication thereof, and

(c) either-

(i) the work is published as aforesaid in pursuance of an agreement in that behalf with the author, being an agreement which does not reserve to the author the copyright, if any, in the work, or

(ii) under section 17 any copyright in the work would belong to the organisation; there shall, by virtue of this section, be copyright in the work throughout India.

(2) Any organisation to which this section applies which at the material time had not the legal capacity of a body corporate shall have and be deemed at all material times to have had the legal capacity of a body corporate for the purpose of holding, dealing with, and enforcing copyright and in connection with all legal proceedings relating to copyright.

(3) The organisation to which this section applies are such organisations as the Central Government may, by ⁹⁸order published in the Official Gazette, declare to be organisations of which one or more sovereign powers or the Government or Governments thereof are members to which it is expedient

that this section shall apply.

42. Power to restrict rights in works of foreign authors first published in India. -If it appears to the Central Government that a foreign country does not give or has not undertaken to give adequate protection to the works of Indian authors, the Central Government may, by order published in the Official Gazette, direct that such of the provisions of this Act as confer copyright on works first published in India shall not apply to works, published after the date specified in the order, the authors whereof are subjects or citizens of such foreign country and are not domiciled in India, and thereupon those provisions shall not apply to such works.

^{98B} "42A. If it appears to the Central Government that a foreign country does not give or has not undertaken to give adequate protection to rights of broadcasting organisations or performers, the Central Government may, by order published in the Official Gazette, direct that such of the provisions of this Act as confer right to broadcasting organisations or performers, as the case may be, shall not apply to broadcasting organisations or performers whereof are based on incorporated in such foreign country or are subjects or citizens of such foreign country and are not incorporated or domiciled in India, and thereupon those provisions shall not apply to such broadcasting organisations or performers."

43. Orders under this Chapter to be laid before Parliament.- Every order made by the Central Government under this Chapter shall, as soon as may be after it is made, be laid before both Houses of Parliament and shall be subject to such modifications as Parliament may make during the session in which it is so laid or the session immediately following.

97. *For International Copyright Order, 1991, see Gazette of India, Extraordinary, Pt. II, Sec. 3, No. 561*

98. *For Copyright (International Organisations) Order, 1991, see Gazette of India, Pt. II, Sec. 3, No. 561*

[98A. Ins. By Act 49 of 1999, Section 5 (wef 15.1.2000)]

[98B. Ins. By Act 49 of 1999, Section 6(wef 15.1.2000)]

INDIAN COPYRIGHT ACT, 1957

CHAPTER X Registration of Copyright

44. Register of Copyrights. -There shall be kept at the Copyright Office a register in the prescribed form to be called the Register of Copyrights in which may be entered the names or titles of works and the names and addresses of authors, publishers and owners of copyright and such other particulars as may be prescribed.

45. Entries in register of Copyrights. -(1) The author or publisher of, or the owner of or other person interested in the copyright in, any work may make an application in the prescribed form accompanied by the prescribed fee to the Registrar of Copyrights for entering particulars of the work in the Register of Copyrights :

⁹⁹ [Provided that in respect of an artistic work which is used or is capable of being used in relation to any goods, the application shall include a statement to that effect and shall be accompanied by a certificate from the Registrar of Trade Marks referred to in section 4 of the Trade and Merchandise Marks Act, 1958, to the effect that no trade mark identical with or deceptively similar to such artistic work has been registered under that Act in the name of, or that no application has been made under that Act for such registration by, any person other than the applicant.]

(2) On receipt of an application in respect of any work under sub-section (1), the Registrar of Copyrights may, after holding such inquiry as he may deem fit, enter the particulars of the work in the Register of Copyrights.

46. Indexes. -There shall be also kept at the Copyright Office such indexes of the Register of Copyrights as may be prescribed.

47. Forms and inspection of register. -The Register of Copyrights and indexes thereof kept under this Act shall at all reasonable times be open to inspection, and any person shall be entitled to take copies of, or make extracts from, such register or indexes on payment of such fee and subject to such conditions as may be prescribed.

48. Register of Copyrights to be *prima facie* evidence of particulars entered therein. -The Register of Copyrights shall be *prima facie* evidence of the particulars entered therein and documents purporting to be copies of any entries therein, or extracts therefrom certified by the Registrar of Copyrights and sealed with the seal of the Copyright Office shall be admissible in evidence in all courts without further proof or production of the original.

49. Correction of entries in the Register of Copyrights. -The Registrar of Copyrights may, in the prescribed cases and subject to the prescribed conditions, amend or alter the Register of Copyrights by-

- (a) correcting any error in any name, address or particulars; or
- (b) correcting any other error which may have arisen therein by accidental slip or omission.

50. Rectification of Register by Copyright Board. -The Copyright Board, on application of the Registrar of Copyrights or of any person aggrieved, shall order the rectification of the Register of Copyrights by-

- (a) the making of any entry wrongly omitted to be made in the register, or

(b) the expunging of any entry wrongly made in, or remaining on, the register, or

(c) the correction of any error or defect in the register.

[50A. Entries in the Register of Copyrights, etc, to be published. ¹⁰⁰ Every entry made in the Register of Copyrights or the particulars of any work entered under section 45, the correction of every entry made in such register under section 49, and every rectification ordered under section 50, shall be published by the Registrar of Copyrights in the Official Gazette or in such other manner as he may deem fit.]

99. Added by Act 23 of 1983, s. 16 (w.e.f. 9-8-1984).

100. Ins. by Act 23 of 1983, s. 17 (w.e.f. 9-8-1984).

INDIAN COPYRIGHT ACT, 1957

CHAPTER XI Infringement of Copyright

51. When copyright infringed. -Copyright in a work shall be deemed to be infringed-

(a) when any person, without a licence granted by the owner of the copyright or the Registrar of Copyrights under this Act or in contravention of the conditions of a licence so granted or of any condition imposed by a competent authority under this Act-

(i) does anything, the exclusive right to do which is by this Act conferred upon the owner of the copyright, or

(ii)¹⁰¹ permits for profit any place to be used for the communication of the work to the public where such communication constitutes an infringement of the copyright in the work, unless he was not aware and had no reasonable ground for believing that such communication to the public would be an infringement of copyright; or

(b) when any person-

(i) makes for sale or hire, or sells or lets for hire, or by way of trade displays or offers for sale or hire, or

(ii) distributes either for the purpose of trade or to such an extent as to affect prejudicially the owner of the copyright, or

(iii) by way of trade exhibits in public, or

(iv) imports ^{102*****} into India, any infringing copies of the work

¹⁰³Provided that nothing in sub-clause (iv) shall apply to the import of one copy of any work for the private and domestic use of the importer.

Explanation. - For the purposes of this section, the reproduction of a literary, dramatic, musical or artistic work in the form of a cinematograph film shall be deemed to be an "infringing copy".

52. Certain acts not to be infringement of copyright. -(1) The following acts shall not constitute an infringement of copyright, namely:

(a) a fair dealing with a literary, dramatic, musical or artistic work ¹⁰⁴[not being a computer programme] for the purposes of-

(i) ¹⁰⁵private use, including research;

(ii) criticism or review, whether of that work or of any other work; "

(aa)¹⁰⁶ the making of copies or adaptation of a computer programme by the lawful possessor of a copy of such computer programme, from such copy-

(i) in order to utilise the computer programme for the purposes for which it was supplied; or

(ii) to make back-up copies purely as a temporary protection against loss, destruction or damage in order only to utilise the computer programme for the purpose for which it was supplied;"

^{121A} "(ab) the doing of any act necessary to obtain information essential for operating inter-operability

of an independently created computer programme with other programmes by a lawful possessor of a computer programme provided that such information is not otherwise readily available;

(ac) the observation, study or test of functioning of the computer programme in order to determine the ideas and principles which underline any elements of the programme while performing such acts necessary for the functions for which the computer programme was supplied;

(ad) the making of copies or adaptation of the computer programme from a personally legally obtained copy for non-commercial personal use; ;

(b) a fair dealing with a literary, dramatic, musical or artistic work for the purpose of reporting current events-

(i) in a newspaper, magazine or similar periodical, or

(ii) by ¹⁰⁷[broadcast] or in a cinematograph film or by means of photographs.

¹⁰⁸[*Explanation.*- The publication of a compilation of addresses or speeches delivered in public is not a fair dealing of such work within the meaning of this clause;]

(c) the reproduction of a literary, dramatic, musical or artistic work for the purpose of a judicial proceeding or for the purpose of a report of a judicial proceeding;

(d) the reproduction or publication of a literary, dramatic, musical or artistic work in any work prepared by the Secretariat of a Legislature or, where the Legislature consists of two Houses, by the Secretariat of either House of the Legislature, exclusively for the use of the members of that Legislature;

(e) the reproduction of any literary, dramatic or musical work in a certified copy made or supplied in accordance with any law for the time being in force;

(f) the reading or recitation in public of any reasonable extract from a published literary or dramatic work;

(g) the publication in a collection, mainly composed of non-copyright matter, *bona fide* intended for the use of educational institutions, and so described in the title and in any advertisement issued by or on behalf of the publisher, of short passages from published literary or dramatic works, not themselves published for the use of educational institutions, in which copyright subsists :

Provided that not more than two such passages from works by the same author are published by the same publisher during any period of five years.

Explanation.- In the case of a work of joint authorship, references in this clause to passages from works shall include references to passages from works by any one or more of the authors of those passages or by any one or more of those authors in collaboration with any other person;

(h) the reproduction of a literary, dramatic, musical or artistic work-

(i) by a teacher or a pupil in the course of instruction; or

(ii) as part of the questions to be answered in an examination; or

(iii) in answers to such questions;

(i) the performance, in the course of the activities of an educational institution, of a literary, dramatic or musical work by the staff and students of the institution, or of a cinematograph film or a ¹⁰⁹[sound recordings] if the audience is limited to such staff and students, the parents and guardians of the students and persons directly connected with the activities of the institution ¹¹⁰[or the communication to such an audience of a cinematograph film or sound recording].

(j) ¹¹¹ the making of sound recordings in respect of any literary, dramatic or musical work, if-

(i) sound recordings of that work have been made by or with the licence or consent of the owner of the right in the work;

(ii) the person making the sound recordings has given a notice of his intention to make the sound recordings, has provided copies of all covers or labels with which the sound recordings are to be sold, and has paid in the prescribed manner to the owner of rights in the work royalties in respect of all such sound recordings to be made by him, at the rate fixed by the Copyright Board in this behalf:

Provided that-

(i) no alterations shall be made which have not been made previously by or with the consent of the owner of rights, or which are not reasonably necessary for the adaptation of the work for the purpose of making the sound recordings;

(ii) the sound recordings shall not be issued in any form of packaging or with any label which is likely to mislead or confuse the public as to their identity;

(iii) no such sound recording shall be made until the expiration of two calendar years after the end of the year in which the first sound recording of the work was made; and

(iv) the person making such sound recordings shall allow the owner of rights or his duly authorised agent or representative to inspect all records and books of account relating to such sound recording:

Provided further that if on a complaint brought before the Copyright Board to the effect that the owner of rights has not been paid in full for any sound recordings purporting to be made in pursuance of this clause, the Copyright Board is, *prima facie*, satisfied that the complaint is genuine, it may pass an order *ex parte* directing the person making the sound recording to cease from making further copies and, after holding such inquiry as it considers necessary, make such further order as it may deem fit, including an order for payment of royalty;

(k) ¹¹² the causing of a recording to be heard in public by utilising it,-

(i) in an enclosed room or hall meant for the common use of residents in any residential premises (not being a hotel or similar commercial establishment) as part of the amenities provided exclusively or mainly for residents therein; or

(ii) as part of the activities of a club or similar organisation which is not established or conducted for profit;

(iii) as part of the activities of a club, society or other organisation which is not established or conducted for profit;

(l) the performance of a literary, dramatic or musical work by an amateur club or society, if the performance is given to a non-paying audience, or for the benefit of a religious institution;

(m) the reproduction in a newspaper, magazine or other periodical of an article on current economic, political, social or religious topics, unless the author of such article has expressly reserved to himself the right of such reproduction;

(n) the publication in a newspaper, magazine or other periodical of a report of a lecture delivered in public;

(o) the making of not more than three copies of a book (including a pamphlet, sheet of music, map, chart or plan) by or under the direction of the person in charge of a public library for the use of the library if such book is not available for sale in India;

(p) the reproduction, for the purpose of research or private study or with a view to publication, of an unpublished literary, dramatic or musical work kept in a library, museum or other institution to which the public has access :

Provided that where the identity of the author of any such work or, in the case of a work of joint authorship, of any of the authors is known to the library, museum or other institution, as the case may be, the provisions of this clause shall apply only if such reproduction is made at a time more than ^{121B} sixty years from the date of the death of the author or, in the case of a work of joint authorship, from the death of the author whose identity is known or, if the identity of more authors than one is known from the death of such of those authors who dies last;

(q) the reproduction or publication of-

(i) any matter which has been published in any Official Gazette except an Act of a Legislature;

(ii) any Act of a Legislature subject to the condition that such Act is reproduced or published together with any commentary thereon or any other original matter;

(iii) the report of any committee, commission, council, board or other like body appointed by the Government if such report has been laid on the Table of the Legislature, unless the reproduction or publication of such report is prohibited by the Government;

(iv) any judgement or order of a court, tribunal or other judicial authority, unless the reproduction or publication of such judgement or order is prohibited by the court, the tribunal or other judicial authority, as the case may be;

(r) the production or publication of a translation in any Indian language of an Act of a Legislature and of any rules or orders made thereunder-

(i) if no translation of such Act or rules or orders in that language has previously been produced or published by the Government; or

(ii) where a translation of such Act or rules or orders in that language has been produced or published by the Government, if the translation is not available for sale to the public:

Provided that such translation contains a statement at a prominent place to the effect that the translation has not been authorised or accepted as authentic by the Government;

(s) ¹¹³ the making or publishing of a painting, drawing, engraving or photograph of a work of architecture or the display of a work of architecture;

(t) the making or publishing of a painting, drawing, engraving or photograph of a sculpture, or other artistic work failing under sub-clause (iii) of clause (c) of section 2, if such work is permanently situate in a public place or any premises to which the public has access;

(u) the inclusion in a cinematograph film of-

(i) any artistic work permanently situate in a public place or any premises to which the public has access; or

(ii) any other artistic work, if such inclusion is only by way of background or is otherwise incidental to the principal matters represented in the film;

(v) the use by the author of an artistic work, where the author of such work is not the owner of the copyright therein, of any mould, cast, sketch, plan, model or study made by him for the purpose of the work :

Provided that he does not thereby repeat or imitate the main design of the work;

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(x) the reconstruction of a building or structure in accordance with the architectural drawings or plans by reference to which the building or structure was originally constructed :

Provided that the original construction was made with the consent or licence of the owner of the copyright in such drawings and plans;

(y) in relation to a literary, dramatic or musical work recorded or reproduced in any cinematograph film the exhibition of such film after the expiration of the term of copyright therein :

Provided that the provisions of sub-clause (ii) of clause (a), sub-clause (a) of clause (b) and clauses (d), (f), (g), (m) and (p) shall not apply as respects any act unless that act is accompanied by an acknowledgment-

(i) identifying the work by its title or other description; and

(ii) unless the work is anonymous or the author of the work has previously agreed or required that no acknowledgement of his name should be made, also identifying the author.

(z) ¹¹⁵ the making of an ephemeral recording, by a broadcasting organisation using its own facilities for its own broadcast by a broadcasting organisation of a work which it has the right to broadcast; and the retention of such recording for archival purposes on the ground of its exceptional documentary character;

(za) ¹¹⁶ the performance of a literary, dramatic or musical work or the communication to the public of such work or of a sound recording in the course of any *bona fide* religious ceremony or an official ceremony held by the Central Government or the State Government or any local authority.

Explanation.- For the purpose of this clause, religious ceremony including a marriage procession and other social festivities associated with a marriage.

(2) The provisions of sub-section (1) shall apply to the doing of any act in relation to the translation of a literary, dramatic or musical work or the adaptation of a literary, dramatic, musical or artistic work as they apply in relation to the work itself.

[52A. Particulars to be included in records and video films. ¹¹⁷ (1) No person shall publish a ¹¹⁸[sound recording] in respect of any work unless the following particulars are displayed on the [sound recording] and on any container thereof, namely:-

(a) the name and address of the person who has made the [sound recording];

(b) the name and address of the owner of the copyright in such work; and

(c) the year of its first publication.

(2) No person shall publish a video film in respect of any work unless the following particulars are displayed in the video film, when exhibited, and on the video cassette or other container thereof, namely :-

(a) if such work is a cinematograph film required to be certified for exhibition under the provisions of the Cinematograph Act, 1952, a copy of the certificate granted by the Board of Film Certification under section 5A of that Act in respect of such work;

(b) the name and address of the person who has made the video film and a declaration by him that he has obtained the necessary licence or consent from the owner of the copyright in such work for

making such video film; and

(c) the name and address of the owner of the copyright in such work.]

52B. Accounts and Audit. ¹¹⁹ (1) Every copyright society appointed under section 34A shall maintain proper accounts and other relevant records and prepare an annual statement of accounts, in such form and in such manner as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of each of the copyright societies in relation to the payments received from the Central Government shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the copyright society to the Comptroller and Auditor-General.

(3) The Comptroller and Auditor-General of India or any other person appointed by him in connection with the audit of the accounts of the copyright society referred to in sub-section (2) shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General has in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts and other documents and papers and to inspect any of the offices of the copyright society for the purpose only of such audit.

(4) The accounts of each of the copyright societies as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament.

53. Importation of infringing copies. -(1) The Registrar of Copyrights, on application by the owner of the copyright in any work or by his duly authorised agent and on payment of the prescribed fee, may, after making such inquiry as he deems fit, order that copies made out of India of the work which if made in India would infringe copyright shall not be imported.

(2) Subject to any rules made under this Act, the Registrar of Copyrights or any person authorised by him in this behalf may enter any ship, dock or premises where any such copies as are referred to in sub-section (1) may be found and may examine such copies.

(3) All copies to which any order made under sub-section (1) applies shall be deemed to be goods of which the import has been prohibited or restricted ¹²⁰[under section 11 of the Customs Act, 1962], and all the provisions of that Act shall have effect accordingly:

Provided that all such copies confiscated under the provisions of the said Act shall not vest in the Government but shall be delivered to the owner of the copyright in the work.

53A. Resale share right in original copies. ¹²¹ (1) In the case of resale for a price exceeding ten thousand rupees, of the original copy of a painting, sculpture or drawing, or of the original manuscript of a literary or dramatic work or musical work, the author of such work if he was the first owner of rights under section 17 or his legal heirs shall, notwithstanding any assignment of copyright in such work, have a right to share in the resale-price of such original copy or manuscript in accordance with the provisions of this section:

Provided that such right shall cease to exist on the expiration of the term of copyright in the work.

(2) The share referred to in sub-section (1) shall be such as the Copyright Board may fix and the decision of the Copyright Board in this behalf shall be final :

Provided that the Copyright Board may fix different shares for different classes of work :

Provided further that in no case shall the share exceed ten per cent of the resale price.

(3) If any dispute arises regarding the right conferred by this section, it shall be referred to the Copyright Board whose decision shall be final.

101. *Subs. by Act 38 of 1994, s. 51.*
102. *Certain words omitted by Act 65 of 1984, s. 3 (w.e.f. 8-10-1984).*
103. *Subs. by Act 38 of 1994, s. 5 1*
104. *Ins. by Act 38 of 1984, s. 52.*
105. *Ins. by Act 38 of 1994, s. 52.*
106. *Ins. by Act 38 of 1994, s. 52.*
107. *Subs. by Act 23 of 1983, s. 2, for "radio-diffusion" (w.o.f. .9-8-1994).*
108. *Ins. by s. 18, ibid (w.e.f. 9-8-1984).*
109. *Subs. by Act 38 of 1984, s. 2, for "record".*
110. *Ins. by Act 38 of 1994, s. 52.*
111. *Subs. by Act 38 of 1994, s. 52.*
112. *Subs. by Act 38 of 1994, s. 52*
113. *Subs by Act 38 of 1994, s. 52*
114. *Clause (w) omitted by Act 38 of 1994, s. 52.*
115. *Ins. by Act 38 of 1994, s. 52.*
116. *Ins. by Act 38 of 1994, s. 52.*
117. *Ins. by Act 65 of 1984, s. 4 (w.e.f. 8-10-1984).*
118. *Subs. by Act 38 of 1994, s. 2 for `record'.*
119. *Ins. by Act 38 of 1994, s. 52B*
120. *Sub. by-Act 23 Df 1983, s. 19, for "under section 19 of the Sea Customs Act, 1878" (w.e.f. 9-8-1984).*
121. *Ins. by Act 38 of 1994, s. 53A.*

[121A. *Ins. By Act 49 of 1999, Section 7(wef 15.1.2000)*]

[121B. *Subs. By Act 49 of 1999 Section 7 for fifty years (wef 15.1.2000)*]

INDIAN COPYRIGHT ACT, 1957

CHAPTER XII Civil Remedies

54. Definition. -For the purposes of this Chapter, unless the context otherwise requires, the expression "owner of copyright" shall include-

(a) an exclusive licensee;

(b) in the case of an anonymous or pseudonymous literary, dramatic, musical or artistic work, the publisher of the work, until the identity of the author or, in the case of an anonymous work of joint authorship, or a work of joint authorship published under names all of which are pseudonyms, the identity of any of the authors, is disclosed publicly by the author and the publisher or is otherwise established to the satisfaction of the Copyright Board by that author or his legal representatives.

55. Civil remedies for infringement of copyright. - (1) Where copyright in any work has been infringed, the owner of the copyright shall, except as otherwise provided by this Act, be entitled to all such remedies by way of injunction, damages, accounts and otherwise as are or may be conferred by law for the infringement of a right :

Provided that if the defendant proves that at the date of the infringement he was not aware and had no reasonable ground for believing that copyright subsisted in the work, the plaintiff shall not be entitled to any remedy other than an injunction in respect of the infringement and a decree for the whole or part of the profits made by the defendant by the sale of the infringing copies as the court may in the circumstances deem reasonable.

(2) Where, in the case of a literary, dramatic, musical or artistic work, a name purporting to be that of the author or the publisher, as the case may be, appears on copies of the work as published, or, in the case of an artistic work, appeared on the work when it was made, the person whose name so appears or appeared shall, in any proceeding in respect of infringement of copyright in such work, be presumed, unless the contrary is proved, to be the author or the publisher of the work, as the case may be.

(3) The costs of all parties in any proceedings in respect of the infringement of copyright shall be in the discretion of the court.

56. Protection of separate rights. - Subject to the provisions of this Act, where the several rights comprising the copyright in any work are owned by different persons, the owner of any such right shall, to the extent of that right be entitled to the remedies provided by this Act and may individually enforce such right by means of any suit, action or other proceeding without making the owner of any other right a party to such suit, action or proceeding.

57.¹²² **[Author's special rights.** (1) Independently of the author's copyright and even after the assignment either wholly or partially of the said copyright, the author of a work shall have the right-

(a) to claim authorship of the work; and

(b) to restrain or claim damages in respect of any distortion, mutilation, modification or other act in relation to the said work which is done before the expiration of the term of copyright if such distortion, mutilation, modification or other act would be prejudicial to his honour or reputation:

Provided that the author shall not have any right to restrain or claim damages in respect of any

adaptation of a computer programme to which clause (aa) of sub-section (1) of section 52 applies.

Explanation. - Failure to display a work or to display it to the satisfaction of the author shall not be deemed to be an infringement of the rights conferred by this section.]

(2) The right conferred upon an author of a work by sub-section (1), other than the right to claim authorship of the work, may be exercised by the legal representatives of the author.

58. Rights of owner against persons possessing or dealing with infringing copies. - All infringing copies of any work in which copyright subsists, and all plates used or intended to be used for the production of such infringing copies, shall be deemed to be the property of the owner of the copyright, who accordingly may take proceedings for the recovery of possession thereof or in respect of the conversion thereof :

Provided that the owner of the copyright shall not be entitled to any remedy in respect of the conversion of any infringing copies, if the opponent proves-

(a) that he was not aware and had no reasonable ground to believe that copyright subsisted in the work of which such copies are alleged to be infringing copies; or

(b) that he had reasonable grounds for believing that such copies or plates do not involve infringement of the copyright in any work.

59. Restriction on remedies in the case of works of architecture. -(1) Notwithstanding anything contained in ¹²³[the Specific Relief Act, 1963], where the construction of a building or other structure which infringes or which, if completed, would infringe the copyright in some other work has been commenced, the owner of the copyright shall not be entitled to obtain an injunction to restrain the construction of such building or structure or to order its demolition.

(2) Nothing in section 58 shall apply in respect of the construction of a building or other structure which infringes or which, if completed, would infringe the copyright in some other work.

60. Remedy in the case of groundless threat of legal proceedings. - Where any person claiming to be the owner of copyright in any work, by circulars, advertisements or otherwise, threatens any other person with any legal proceedings or liability in respect of an alleged infringement of the copyright, any person aggrieved thereby may, notwithstanding anything contained ¹²⁴[in section 34 of the Specific Relief Act, 1963] institute a declaratory suit that the alleged infringement to which the threats related was not in fact an infringement of any legal rights of the person making such threats and may in any such suit-

(a) obtain an injunction against the continuance of such threats; and

(b) recover such damages, if any, as he has sustained by reason of such threats.

Provided that this section shall not apply if the person making such threats, with due diligence, commences and prosecutes an action for infringement of the copyright claimed by him.

61. Owners of copyright to be party to the proceeding. - (1) In every civil suit or other proceeding regarding infringement of copyright instituted by an exclusive licensee, the owner of the copyright shall, unless the court otherwise directs, be made a defendant and where such owner is made a defendant, he shall have the right to dispute the claim of the exclusive licensee.

(2) Where any civil suit or other proceeding regarding infringement of copyright instituted by an exclusive licensee is successful, no fresh suit or other proceeding in respect of the same cause of action shall lie at the instance of the owner of the copyright.

62. Jurisdiction of court over matters arising under this Chapter. - (1) Every suit or other civil proceeding arising under this Chapter in respect of the infringement of copyright in any work or the infringement of any other right conferred by this Act shall be instituted in the district court having jurisdiction.

(2) For the purpose of sub-section (1), and "district court having jurisdiction" shall, notwithstanding anything contained in the Code of Civil Procedure, 1908, or any other law for the time being in force, include a district court within the local limits of whose jurisdiction, at the time of the institution of the suit or other proceeding, the person instituting the suit or other proceeding or, where there are more than one such persons, any of them actually and voluntarily resides or carries on business or personally works for gain.

122. *Sub. by Act 38 of 1984, s. 57.*

123. *Subs. by Act 23 of 1983, s. 20, for "the Specific Relief Act, 1877" (w.e.f. 9-8-1984)*

124. *Subs. by s. 21, ibid., for "in section 42 of the Specific Relief Act, 1877" (w.e.f. 9;8-1984).*

INDIAN COPYRIGHT ACT, 1957

CHAPTER XIII

Offences

63. Offence of infringement of copyright or other rights conferred by this Act. Any person who knowingly infringes or abets the infringement of-

(a) the copyright in a work, or

(b) any other right conferred by this Act, ¹²⁵[except the right conferred by section 53A]

¹²⁶[shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees :

Provided that ¹²⁷[where the infringement has not been made for gain in the course of trade or business] the court may, for adequate and special reasons to be mentioned in the judgement, impose a sentence of imprisonment for a term of less than six months or a fine of less than fifty thousand rupees.]

Explanation.-Construction of a building or other structure which infringes or which, if completed, would infringe the copyright in some other work shall not be an offence under this section.

¹²⁸[**63A. Enhanced penalty on second and subsequent convictions.** - Whoever having already been convicted of an offence under section 63 is again convicted of any such offence shall be punishable for the second and for every subsequent offence, with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to two lakh rupees :

Provided that ¹²⁹[where the infringement has not been made for gain in the course of trade or business] the court may, for adequate and special reasons to be mentioned in the judgment impose a sentence of imprisonment for a term of less than one year or a fine of less than one lakh rupees:

Provided further that for the purposes of this section, no cognizance shall be taken of any conviction made before the commencement of the Copyright (Amendment) Act, 1984.]

"63B. Knowing use of infringing copy of computer programme to be an offence. ¹³⁰ Any person who knowingly makes use on a computer of an infringing copy of a computer programme shall be punishable with imprisonment for a term which shall not be less than seven days but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees:

Provided that where the computer programme has not been used for gain or in the course of trade or business, the court may, for adequate and special reasons to be mentioned in the judgment, not impose any sentence of imprisonment and may impose a fine which may extend to fifty thousand rupees."

64. Power of police to seize infringing copies . -(1)¹³¹ Any police officer, not below the rank of a sub-inspector, may, if he is satisfied that an offence under section 63 in respect of the infringement of copyright in any work has been, is being, or is likely to be, committed, seize without warrant, all copies of the work, and all plates used for the purpose of making infringing copies of the work, wherever found, and all copies and plates so seized shall, as soon as practicable, be produced

before a Magistrate.]

(2) Any person having an interest in any copies of a work ¹³²[or plates] seized under sub-section (1) may, within fifteen days of such seizure, make an application to the Magistrate for such copie. ¹³³[or plates] being restored to him and the Magistrate, after hearing the applicant and the complainant and making such further inquiry as may be necessary, shall make such order on the application as he may deem fit.

65. Possession of plates for purpose of making infringing copies. – Any person who knowingly makes, or has in his possession, any plate for the purpose of making infringing copies of any work in which copyright subsists shall be punishable with imprisonment which may extend to ¹³⁴[two years and shall also be liable to fine].

66. Disposal of infringing copies or plates for purpose of making infringing copies. -The court trying any offence under this Act may, whether the alleged offender is convicted or not, order that all copies of the work or all plates in the possession of the alleged offender, which appear to it to be infringing copies, or plates for the purpose of making infringing copies, be delivered up to the owner of the copyright.

67. Penalty for making false entries in register, etc., for producing or tendering false entries . - Any person who,-

(a) makes or causes to be made a false entry in the Register of Copyrights kept under this Act, or

(b) makes or causes to be made a writing falsely purporting to be a copy of any entry in such register, or

(c) produces or tenders or causes to be produced or tendered as evidence any such entry or writing, knowing the same to be false,

shall be punishable with imprisonment which may extend to one year, or with fine, or with both.

68. Penalty for making false statements for the purpose of deceiving or influencing any authority or officer. Any person who, -

(a) with a view to deceiving any authority or officer in the execution provisions of this Act, or

(b) with a view to procuring or influencing the doing or omission of anything relation to this Act or any matter thereunder,

makes a false statement or representation knowing the same to be false, shall be punishable with imprisonment which may extend to one year, or with fine, or with both.

¹³⁵**[68A. Penalty for contravention of section 52A.** -Any person who publishes a ¹³⁶[sound recording] or a video film in contravention of the provisions of section 52A shall be punishable with imprisonment which may extend to three years and shall also be liable to fine.]

69. Offences by companies. -(1) Where any offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to the company for, the conduct of the business of the company, as well as the company shall be deemed to be guilty of such offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any person liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been

committed by a company, and it is proved that the offence was committed with the consent or connivance of, or is attributable to any negligence on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.- For the purposes of this section-

(a) "company" means any body corporate and includes a firm or other association of persons; and

(b) "director" in relation to a firm means a partner in the firm.

70. Cognizance of offences. - No court inferior to that of ¹³⁷a Metropolitan Magistrate or a Judicial Magistrate of the first class] shall try any offence under this Act.

125. *Ins. by Act 38 of 1994, s. 63.*

126. *Subs. by Act 65 of 1984, s. 5, for certain words (w.e.f. 8-10-1984).*

127. *Ins. by Act 38 of 1994, s. 63.*

128. *Ins. by Act 65 of 1984, s. 6 (w.e.f. 8-10-1984).*

129. *Ins. by Act 38 of 1994, s. 63.*

130. *Ins. by Act 38 of 1994, s. 63B.*

131. *Subs. by s. 7, ibid., for sub section (1) (w.e.f. 8-10-1984).*

132. *Ins. by Act 65 of 1984, s. 7 (w.e.f. 8-10-1984).*

133. *Ins. by s. 7, ibid, (w.e.f. 8-10-1984).*

134. *Subs. by s. 8, ibid., for "one year, or with fine, or with both" (w.e.f. 8-10-1984).*

135. *Ins. by Act 65 of 1984, s. 9 (w.e.f. 8-10-1984).*

136. *Subs. by Act 38 of 1994, s. 2, for 'record'.*

137. *Subs. by Act 23 of 1983, s. 22, for "a Presidency Magistrate or a Magistrate of the first class" (w.e.f. 9-8-1984). 73. The High Court may make rules consistent with this Act as to the procedure to be followed in respect of appeals made to it under section 72.*

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CHAPTER XIV Appeals

71. Appeals against certain orders of Magistrate. -Any person aggrieved by an order made under sub-section (2) of section 64 or section 66 may, within thirty days of the date of such order, appeal to the court to which appeals from the court making the order ordinarily lie, and such appellate court may direct that execution of the order be stayed pending disposal of the appeal.

72. Appeals against orders of Registrar of Copyrights and Copyright Board. - (1) Any person aggrieved by any final decision or order of the Registrar of Copyrights may, within three months from the date of the order or decision, appeal to the Copyright Board.

(2) Any person aggrieved by any final decision or order of the Copyright Board, not being a decision or order made in an appeal under sub-section (1), may, within three months from the date of such decision or order, appeal to the High Court within whose jurisdiction the appellant actually and voluntarily resides or carries on business or personally works for gain;

Provided that no such appeal shall lie against a decision of the Copyright Board under section 6.

(3) In calculating the period of three months provided for an appeal under this section, the time taken in granting a certified copy of the order or record of the decision appealed against shall be excluded.

73. Procedure for appeals. – The High Court may make rules consistent with this Act as to the procedure to be followed in respect of appeals made to it under section 72.

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CHAPTER XV Miscellaneous

74. Registrar of Copyrights and Copyright Board to possess certain powers of civil courts. -

The Registrar of Copyrights and the Copyright Board shall have the powers of a civil court when trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely :-

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of any document;
- (c) receiving evidence on affidavits;
- (d) issuing commissions for the examination of witnesses or documents;
- (e) requisitioning any public record or copy thereof from any court or office;
- (f) any other matter which may be prescribed.

Explanation.- For the purpose of enforcing the attendance of witnesses, the local limits of the jurisdiction of the Registrar of Copyrights or the Copyright Board, as the case may be, shall be limits of the territory of India.

75. Orders for payment of money passed by Registrar of Copyrights and Copyright Board to be executable as a decree. - Every order made by the Registrar of Copyrights or the Copyright Board under this Act for the payment of any money or by the High Court in any appeal against any such order of the Copyright Board shall, on a certificate issued by the Registrar of Copyrights, the Copyright Board or the Registrar of the High Court, as the case may be, be deemed to be a decree of a civil court and shall be executable in the same manner as a decree of such court.

76. Protection of action taken in good faith. - No suit or other legal proceeding shall lie against any person in respect of anything which is in good faith done or intended to be done in pursuance of this Act.

77. Certain persons to be public servants. - Every officer appointed under this Act and every member of the Copyright Board shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

78. Power to make rules. - (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, the Central Government may make rules to provide for all or any of the following matters, namely :-

- (a) the term of office and conditions of service of the Chairman and other members of the Copyright Board;
- (b) the form of complaints and applications to be made, and the licences to be granted, under this Act;
- (c) the procedure to be followed in connection with any proceeding before the Registrar of

Copyrights;

- (ca)¹³⁹ the conditions for submission of application under sub-section (2) of section 33;
- (cb)¹⁴⁰ the conditions subject to which a copyright society may be registered under sub-section (3) of section 33;
- (cc)¹⁴¹ the inquiry for cancellation of registration under sub-section (4) of section 33;
- (cd)¹⁴² the conditions subject to which the copyright society may accept authorisation under clause (a) of sub-section (1) of section 34 and the conditions subject to which owners of rights have right to withdraw such authorisation under clause (b) of that sub-section;
- (ce)¹⁴³ the conditions subject to which a copyright society may issue licences, collect fees and distribute such fees amongst owners of rights under sub-section (3) of section 34;
- (cf)¹⁴⁴ the manner in which the approval of the owners of rights regarding collection and distribution of fees, approval for utilisation of any amount collected as fees and to provide to such owners information concerning activities in relation to the administration of their rights under sub-section (1) of section 35;
- (cg)¹⁴⁵ the returns to be filed by copyright societies to the Registrar of Copyrights under sub-section (1) of section 36;
- (d) the manner of determining any royalties payable under this Act, and the security to be taken for the payment of such royalties;
- (da)¹⁴⁶ the manner of payment of royalty under clause (j) of sub-section (1) of section 52;
- (db)¹⁴⁷ the form and the manner in which the copyright society shall maintain accounts and other relevant records and prepare annual statements of accounts and the manner in which the quantum of remuneration is to be paid to individual owner of rights under sub-section (1) of section 52B;
- (e) the form of Register of Copyrights to be kept under this Act and the particulars to be entered therein;
- (f) the matter in respect of which the Registrar of Copyrights and the Copyright Board shall have powers of a civil court;
- (g) the fees which may be payable under this Act;
- (h) the regulation of business of the Copyright Office and of all things by this Act placed under the direction or control of the Registrar of Copyrights.

[(3)¹⁴⁸ Every rule made under this section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.]

79. Repeals, savings and transitional provisions. - (1) The Indian Copyright Act, 1914, and the Copyright Act of 1911 passed by the Parliament of the United Kingdom as modified in its application to India by the Indian Copyright Act, 1914, are hereby repealed.

(2) Where any person has, before the commencement of this Act, taken any action whereby he has

incurred any expenditure or liabilities in connection with the reproduction or performance of any work in a manner which at the time was lawful or for the purpose of or with a view to the reproduction or performance of a work at a time when such reproduction or performance would, but for the coming into force of this Act, have been lawful, nothing in this section shall diminish or prejudice any rights or interests arising from or in connection with such action which are subsisting and valuable at the said date, unless the person who, by virtue of this Act, becomes entitled to restrain such reproduction or performance agrees to pay such compensation as, failing agreement, may be determined by the Copyright Board.

(3) Copyright shall not subsist by virtue of this Act in any work in which copyright did not subsist immediately before the commencement of this Act under any Act repealed by sub-section (1).

(4) Where copyright subsisted in any work immediately before the commencement of this Act, the rights comprising such copyright shall, as from the date of such commencement, be the rights specified in section 14 in relation to the class of works to which such work belongs, and where any new rights are conferred by that section, the owner of such rights shall be-

(a) in any case where copyright in the work was wholly assigned before the commencement of this Act, the assignee or his successor-in-interest;

(b) in any other case, the person who was the first owner of the copyright in the work under any Act repealed by sub-section (1) or his legal representatives.

(5) Except as otherwise provided in this Act, where any person is entitled immediately before the commencement of this Act to copyright in any work or any right in such copyright or to an interest in any such right, he shall continue to be entitled to such right or interest for the period for which he would have been entitled thereto if this Act had not come into force.

(6) Nothing contained in this Act shall be deemed to render any act done before its commencement an infringement of copyright if that act would not otherwise have constituted such an infringement.

(7) Save as otherwise provided in this section, nothing in this section shall be deemed to affect the application of the General Clauses Act, 1897, with respect to the effect of repeals.

139. *Ins. by Act 38 of 1994, s. 78(2).*

140. *Ins. by Act 38 of 1994, s. 78(2).*

141. *Ins. by Act 38 of 1994, s. 78(2).*

142. *Ins. by Act 38 of 1994, s. 78(2).*

143. *Ins. by Act 38 of 1994, s. 78(2).*

144. *Ins. by Act 38 of 1994, s. 78(2).*

145. *Ins. by Act 38 of 1994, s. 78(2).*

146. *Ins. by Act 38 of 1994, s. 78(2).*

147. *Ins. by Act 38 of 1994, s. 78(2).*

148. *Subs. by Act 23 of 1983, s. 23, for sub-section (3) (w.e.f. 9-8-1984).*