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**LACUNAS OF THE COPYRIGHT SYSTEM IN INDIA WITH SPECIAL
EMPHASIS ON DIGITALIZATION**

Abstract

This article seeks to delve upon the limitations of the copyright regime as it stands in the present era considering the backdrop of digitalization and the internet. It starts by defining copyright law in the broad ambit of intellectual property rights and covering its various facets in this regard. It then briefly touches upon the history of the copyright law and how it has expanded over the years and the amendments that have happened with regards to the same in India. The latest 2012 amendment is then analyzed in detail along with covering the aspects related to the offences of digitalization. Subsequently the remedies available under the copyright act of India are talked about in detail before addressing the challenges that are there in the present regime because of the wide spread of Internet and lack of effective enforcement and regulatory mechanism. Lastly some possibly solutions are briefly discussed considering the complexity of the issues related to the dynamics shared between the copyright law and the information technology.

Introduction

The copyright regime in India has been one that has developed considerably over the years either because of various amendments or due to landmark judicial interventions. Copyrights refers to a kind of intellectual property which basically implies that it is a sort of an idea that is created by individuals and due to the protection of law being granted to it, it cannot be copied

by other individuals readily or without giving due credit to the original person who is holding that intellectual property in his stride; in this particular instance it would mean having a copyright. In this regard considering that copyright is a subcategory of the broader intellectual property; the copyright law in turn also is a kind of broader ambit that grants certain protection with regards to the copyright holder in cases of an original or novel literary work such as a book being written, artistic creation such as a song being made, cinematographic experiences being made such as in the form of films or video games or any other such endeavor. It is also worth noting that a same literature related or art related creation can have multiple copyrights attached to it. This means that a work made in this regard such as a song would have different copyright protection for the lyrics being written in the form of giving due credits and protection along with a separate copyright protection for the composer of music who gives the beats related to the same and also several other copyrights in this regard for instance if there are multiple verses being contributed by several artists and so on and so forth. Thus, copyright itself is a very dynamic field that grants due protection to the person having the copyright law in the first place. Not only does it recognize the person holding the copyright as the original and sole owner but also in cases of violations or copyright infringement there are effective remedies also that are available and prescribed under the legal system. Injunctions can also be issued which are basically restraining orders that would not allow the individuals to keep on dealing with the work that is copyrighted and which they are without any rights dealing in. Although there is certain exception to the same such as in the form of free and fair use which includes things like for educational purposes; still there are several problems within the present regimes especially because of the advent of the digital age and everything being available at the touch of our fingers. In this regard because of the ready availability of copyrighted material online in the form of direct download links such as through telegrams or through websites like pirate bay; effective safeguards against the copyright infringements have been greatly lacking. There is a need to address this concern at the earliest possible instance not only because of the economic repercussions of the same but also because of how the same also leads to an undue violation of someone's hard work or even hard work of multiple individuals at a single point of time, such as in cases of film leaks.

History of Copyright Law in India

The landmark legislation when it comes to copyright law in India has undoubtedly been the copyright act of 1957¹. Although it has gone through several fundamental changes over the years though important amendments; it is worth mentioning herein that it was not the first legislation regulating the copyright regime in India. The enactment of copyright regimes and the codifications of the same has been happening in India even as early as during the colonial period itself such as the 1847 enactments in this regard that talked about the duration of copyright in relation with literary works such as books and other such materials. The need for a proper codification of copyright law in India was felt because of the limited mandate of the earlier copyright regime and legislations and also because of the new and nuanced understandings that have come about when it comes to the copyright law of the world. Although the copyright act thus was an important legislation that covered several diverse aspects and avenues related to the copyright regime such as how to apply for a copyright, or how to use certain copyrighted material in certain cases, cases where the same is prohibited, punishments for violation of the same, various different remedies available to the copyright holder along with the different forms of injunctions and how to enforce the same in the course of law among other such avenues; certain advancements internationally and domestically required certain changes in the act itself. The latest among these was the 2012 amendment act² to the copyright law which was a major upheaval in the right direction when it comes to emphasizing on India's international commitments as well as granting of important protective measures to certain functionaries under the copyright regime who were earlier left out due to one or the other reason. Also, considering the previous amendment happened more than a decade ago in the form of the 1999 amendment act³, it was indeed the need of the hour that certain fundamental changes are made in the legislative instrument for the protection of individuals.

Recent Changes

In this backdrop thus the 2012 amendment introduced certain key changes in the form of establishing a certain fair and levelled ground in the form of granting certain protection to luminaries such as lyricists which was much lacking in the earlier regimes. This was also necessary in light of the fact that multi media houses and big companies that produced expensive budget films often did not give due credit to these lyricists even though their

¹The Copyright Act, 1957 (Act 14 OF 1957).

²The Indian Copyright (Amendment) Act, 2012 (Act 27 OF 2012).

³The Indian Copyright (Amendment) Act, 1999 (Act 49 OF 1999).

contribution is indeed important when it comes to bringing soul to any song. Considering that most songs in the Indian Film Fraternity are indeed lyrically potent thus their protection was indeed the need of the hour. This was done in the form of important sections such as Section 17⁴ in which clauses (b) and (c) were added which ensured that the rights of music composers and lyricists remained to some extent as it is even if their songs are added to the films as their songs were often flat out bought by a lump sum amount and thus their due regards in terms of certain royalty rights were also taken away. Apart from these, certain amendments were also made with regards to certain aspects of conversion of data, intermediary rights, among other such things. Of particular importance when it comes to the aspect of digitalization were Section 65A⁵ and Section 65B.⁶ Section 65A in this regard introduced penal punishments along with fine in cases of violation of certain important technological measures made for the protection of the rights granted under the act. Although there are certain exceptions to the same such as in cases of lawful investigations the broad ambit of this section thus provides some respite when it comes to the protection of copyright holders in the international settings and avenues. Section 65B further deals with the aspects related to the rights management information. The same is defined in section 2⁷ clause (xa) of the act. Right management information thus is a broad term that includes aspects such as aspects that would make it known as to what is the work or performance or other identification related aspects. The name of the performer who has contributed to the said performance or the author who has contributed to the said work. Along with this terms and conditions with regards to the usage of the same are also dealt with and other such interrelated aspects. In this regard thus section 65B provides further penal punishments in the form of fines and jail terms in case someone removes or changes or modifies any information or aspects related to the rights management information or further acts in the distribution or broadcasting of such tampered work. Thus, the 2012 amendment introduces two important sections when it comes to the aspect of digitalization. However, the enforceability of the same still remains a distant challenge apart from the fact that other avenues need to be worked upon such as performers rights especially when it comes to live performance or control over administration of certain rights when it comes to authors and their underlying work. Before delving on the aspect of the lacunas when it comes to the digital system and the

⁴The Copyright Act, 1957 (Act 14 OF 1957), s. 17.

⁵The Copyright Act, 1957 (Act 14 OF 1957), s. 65A.

⁶The Copyright Act, 1957 (Act 14 OF 1957), s. 65B.

⁷The Copyright Act, 1957 (Act 14 OF 1957), s. 2.

copyright law in detail it is imperative to understand the existing remedies that are available in cases of copyright infringement

Remedies Available for Copyright Infringement

In cases where there has been an infringement related to the copyright law the copyright act itself provides for certain important remedies and redressal measures. These are diverse in nature and effect ranging from criminal remedies to civil remedies; penal provisions to fines and even monetary damages. Injunctions of various kinds are also talked about in detail and in the recent years due to the judicial interventions in various regards the scope of the same has also expanded considerably.

To attract any kind of copyright infringement it is first and foremost necessary that there should be a novel and original work that has not only been recognized as such but also has some protection granted under the force of law. Thereafter there exclusive and sole right over their novel work should be violated in terms of various facets such as not giving the credit where it is due when it comes to the work or not sharing the revenue among other such aspects. This can be both at a small scale or a very small level to a big form of infringement. The small-scale level could be simply making a cover of a song on YouTube which if not properly following the guidelines specified by the same would lead to a violation of the copyright law and therefore a strike; to full on plagiarism of someone's research paper to write your own paper without giving due credit or copying someone else's movie or songs to create your own piece of art.

In this regard thus first and foremost certain civil remedies are available under the copyright regime. They are talked about and dealt with in depth in section 55 of the copyright act.⁸ These are further divided into two main categories which range from prohibitory remedies such as stopping the act or compensatory remedies which basically means that certain monetary compensation or such has to be given for the perceived damages that have been done because of the violation that has happened because of the same. The most well known and arguably the most used civil remedy thus in this regard is a temporary injunction which is also often referred to as an interlocutory injunction. It is most commonly used during the pendency of the trial itself to ensure that the negative impact does not become widespread until and unless the matter is well decided by the court of law. For claiming compensation, the Mareva Injunction becomes an important interlocutory order. Explained and derived from the landmark case of Mareva

⁸The Copyright Act, 1957 (Act 14 OF 1957), s. 55.

*Compania Naviera SA v. International Bulk Carriers SA*⁹ it basically allows certain assets or resources of the defendant to be stopped or frozen so that in case of a favorable order which is against the defendant the same can be used to adequately provide compensation towards the victim.

Other such injunctions include the Anton Piller orders which haven't been very frequently used but have wide ranging powers such as allowing the plaintiff to search the premises of the defendant in rarest cases wherein the court is of the opinion that there is some asset that is being kept therein and the value of the same is getting diminished. In India although not much has been said about such orders, the aspect has been covered in brief in the case of *National Garments v. National Apparels*.¹⁰ When we talk about cases in which the identity of the person who has caused the infringement is not known John Doe orders are issued. In the era of digitalization, it is imperative that such orders are recognized and given their due importance as often it is very difficult to understand who exactly leaked a particular song or a movie or a snippet related to the same or any other such infringements.

Apart from this aspect there are permanent injunctions which are great tools that can be used by the plaintiff even in cases where there is no actual damage. There is merely a need to show a probability or propensity that the said damages may occur and the court can thus issue a permanent injunction on solely these grounds. Compensatory civil remedies are different in the sense that rather than focusing on the injunction they instead focus on analyzing the negative impact of the said work, the perceived profits and thus how much compensation should be subsequently granted. These kinds of remedies are important so as to ensure that the copyright holder is also adequately compensated for all the damages suffered by him as the same can often be large amounts such as crores of rupees.

Criminal remedies are covered in detail in section 63¹¹ of the act. These remedies are important measures in creation of deterrent effects and provide for penal provisions such as jail terms for the accused individuals. Administrative remedies also exist in India which are basically moving the competent authorities who oversee the granting of copyright law and other such aspects in matters of infringements so that they can take relevant measures such as putting a certain kind of a ban on the sale or import of certain material which is in some or the other regard related to the aspect of copyright infringement. In this regard perhaps criminal remedies act as a more

⁹*Mareva Compania Naviera SA v. International Bulkcarriers SA the Mareva*, [1980] 1 All ER 213.

¹⁰*National Garments v. National Apparels*, AIR 1990 Ker 119.

¹¹The Copyright Act, 1957 (Act 14 OF 1957), s. 63.

of a deterrent measure but civil remedies allow a proper respite and hence both are necessary to some extent in their own right.

Challenges Posed by Digitalization

Despite many remedies available and the 2012 amendment act in place still there are certain lacunas in the copyright system that exists in India which make it impossible to effectively respond to the new era challenges and problems posed by the 21st century. In particular the aspects related to digitalization and everything being readily available on the internet without any proper checking mechanism has aggravated the same. In this regard further considering that the internet system in India is itself readily expanding it is the need of the hour to address certain fundamental loopholes.

It is worth mentioning that copyright law was originally made in cases of books and other such materials wherein it was not easily possible to replicate the same. However, in the present age even though there are headlines issued everywhere and laws made with regards to the aspect of piracy, any book or paper can be perfectly replicated and reproduced without even damaging the quality. The same can then also be made into multiple copies without paying any dues or any monetary royalty or anything to the original makers of the material and the copyright holders. Further, considering now digital copies exist everywhere one is easily at the liberty of sending the same to his friends and even uploading it on an independent network from where each and every individual can have their own subsequent access with regards to this without any thing to keep this spread of the material in check.

In this regard the first challenge is the amount of information that should be made available and the subsequent safeguards for the same. In simple terms the amount of information being made available should not be compromised and at the same time balancing of the interests of the copyright holders should be maintained. The service providers need certain safeguards but the right amount of interference is also something that has to necessarily be worked about. The next challenge related to the same is how to administer and keep a check on the same. This aspect again would require developments related to complex and nuanced technological measures which again are something that need to be looked at as a standpoint of a necessary investment. Another issue that needs to be worked upon is through the aspect of liability. If reproduction is readily happening online then even during the transient measure itself there is certain data that is being stored and transmitted by even the Internet Service Providers. So, the question arises whether the internet service provider should be found to be liable for the actions

of the individuals who have subscribed to the network and are thereby violating certain copyright standards or should they be absolved of their actions. Another, issue that arises subsequent to this is even if Indian law absolves the liability considering that the internet itself is not regulated by any one country, can they be held liable for the supposed breach in some other country.

Apart from these aspects the supposed piracy that happens online in the form of downloading of songs in the mobile phones or movies illegally through websites like pirate bay or even streaming of the same through online movie sites and apps like movie time are also other major areas of concern. This not only causes harm to the copyright holders of these individuals but also cause significant economic damages to other legal platforms such as the OTT platforms or apps in which music is streamed legally such as the Gaana or the Jio Saavn app.

Conclusion and The Way Forward

At the very onset it might seem a herculean and hectic task to regulate the widespread digital landscape with its own unique nuances and challenges which have yet to properly be evaluated in and of themselves and see the light of the day. Considering that even at an individual level people do these small acts such as replicating books online or streaming movies illegally without any concern whatsoever of the legal ramifications of the same are major areas that need to be addressed. In this regard what needs to be done at the onset is a harmonious construction between the copyright act¹² and the landmark legislation when it comes to the management of information technology in the form of Information Technology act.¹³ In this regard considering that banned sites or other materials can also be accessed through the means and usage of VPN regulations also have to be made in this regard even when it comes to the intermingling of the copyright law and the IT act.

Considering all of the issues at hand, and the fact that it is next to impossible to regulate all of the same, perhaps a more plausible alternative would be reworking on the idea of what exactly constitutes a fair use and how the aspect of the same can be broadened to include certain things which are as of now penalized but have no concrete negative repercussions for the copyright holders. Considering that it is at the end of the day people and their welfare for whom the laws are primarily made unless people themselves are willing to work in tandem with the laws related to copyright no tangible change can accrue. Perhaps, learning from more developed

¹²The Copyright Act, 1957 (Act 14 OF 1957).

¹³The Information Technology Act, 2000 (Act 21 of 2000).

legislations such as the European Union and the United States of America is one approach that India can look upon.