

Protecting Literature under Copyright Law in India: Opportunities and Challenges

By

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Abstract

Intellectual property laws have gained significance in recent times across the world as it generates immense benefits to the creators and provides them recognition. Amongst different types of Intellectual Property Rights protected under the domestic frameworks of Nations and regulated by International Treaties, Copyright Law protects creativity in forms of literary, artistic, dramatic, musical works, sound recordings and cinematograph films. Each of these are to be well-defined to extend protection to the creators under the Copyright Law, and hence the term literary work includes amongst many other things Literature. Works of literature in the 21st century have become vulnerable due to several factors which infringes the rights of the creators. At the same time, it is pertinent to know the available legal framework that provides opportunities in protecting the works of literature. The paper discusses the legal aspects providing protection to the works of literature under the Copyright Law of India and identifies issues and challenges that requires a special attention in ensuring the rights of creators at the national and global levels.

Key words: Copyright, Works of Literature, Rights of Creators, Fair use, Digital space

1.1 Introduction

Ideas and their expressions play a vital role in disseminating information and knowledge and also aids in transmitting cultures from one generation to the other generation. It is the expression of ideas in words that helps people to comprehend the available information and develop skills to gain knowledge. Significant literature traditionally has been found in books and writings. People in olden days used various mechanisms to pen down their ideas and make it available to the society, and hence making the work to survive in eternity. The expression of ideas is an artistic creation and it is the record of man's dreams and ideals, his hopes and aspirations, his failures and disappointments, his motives and passions, his experience and observations.¹ The digital world, today, has offered many more opportunities to people to express their ideas and individuality, making a huge availability of literary writing across the globe. Together with the opportunities comes the challenges too, especially when looked from the legal perspective. The law on Copyright comprehensively covers all forms of expressions in forms of literary, artistic, dramatic or musical works, together with cinematograph films and sound recordings and provides a bundle of rights including, inter alia, rights of reproduction, communication to the public, adaptation and translation of the work.² Copyright endows upon the originator a bundle of rights for a fixed term which the owner can enjoy during his life and to his successors after his death. Historically, the concerns about protecting literary expressions grew in western countries with the invention of the Gutenberg's

¹ Literature and Copyright Act in India, Dr Sanjeev Gandhi, https://www.researchgate.net/publication/339296385_Literature_and_Copyright_Act_in_India

² A HAND BOOK OF COPYRIGHT LAW, Government of India, Department For Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, <https://copyright.gov.in/documents/handbook.html>

printing press during the middle of 15th century, however the Statute of Anne passed in 1709 and implemented from 1710 in England laid down the foundation of modern copyright laws.

1.2 Indian Copyright Law

In India, the first Copyright Law was enacted in 1847 during the regime of East India Company and later the Copyright Act, 1914 was enacted by the British Government which was in lines with the UK Copyright Act, 1911. The 1914 Act remained in force till the present law was enacted in 1957. The Indian law on Copyright is in compliance with the Berne Convention for the Protection of Literary and Artistic Works, 1886 and The Agreement on Trade Related Aspects of Intellectual Property Rights of the World Trade Organization. Further, the Internet Treaties³ of the World Intellectual Property Rights Organization has shaped the Copyright law to provide protection to works uploaded in digital space. Influenced by these dominant treaties providing for minimum standards to be adhered by its signatories, the Copyright Act, 1957 has been amended many times to address the obligations of international laws and also to meet the changing needs of the society. The Copyright Law ensures certain minimum safeguards of the rights of authors over their creations, thereby protecting and rewarding creativity. Creativity being the keystone of progress, no civilized society can afford to ignore the basic requirement of encouraging the same. Further, economic and social development of a society is dependent on creativity.⁴ On the other hand, Copyright Law also ensures that the creative works are available in the society so that people can take the benefit of the same. On account of that, it balances the rights of creators and also the needs of the society.

1.3 Literary Works under Copyright Law

Section 2(o) of the Act defines “literary work” to include computer programmes, tables and compilations including computer databases.” The definition is an inclusive definition and it is to be interpreted in a broader perspective. Hence, any kind of literature that intends to provide information or instruction in form of written matter can be considered to be within the definition of literary work. Some examples of literary works include books, novels, written stories, written plays, poems, lyrics of a song, concept notes, lectures, written lectures and speeches, tables, interpretation, review and analysis of judicial pronouncements, commentaries, compilations, directories, encyclopedia, dictionaries, research thesis, research papers, dissertations, comic books, website content, contents in blogs, panchang, questionnaires, question papers, brochures, pamphlets, catalog, activity reports, translation, abridgement and adaptation of literary work. Further, Section 13(1)(a) clearly states that Copyright shall subsist on Original Literary works. This may create a confusion as to how originality in a work is to be judged. Originality as per Copyright Law does not mean that the work has to be new or inventive as like the Patent Law which provides protection only to new inventions. It means that the work should not be copied and should originate from the author. An ‘original’ must be a “product of an exercise of skill and judgment”, where ‘skill’ is “the use of one's knowledge, developed aptitude or practiced ability in producing the work” and ‘judgment’ is “the use of one's capacity for discernment or ability to form an opinion or evaluation by comparing different possible options in producing the work”.⁵ Here again the literary merit, the quality of work are not the determining factors too. Does this mean that any kind of work created by oneself with the use of skill, labour and judgement would lead to a copyrightable subject matter? To understand this, two doctrines are relevant to be studied; the

³ WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty both were finalized in 1996

⁴ *ibid.*

⁵ Copyright Office, Government of India, *Practice and Procedure Manual-Literary Works*, 2018

Doctrine of Sweat of the Brow and Doctrine of Modicum of Creativity. The Doctrine of Sweat of the Brow as applied in England indicates that at least some minimal degree of creativity which is very low and even a slight amount of change is sufficient to make a work entitled for protection under Copyright Law like a Street Directory. Conversely, the Doctrine of Modicum of Creativity as adopted by the US Courts in *Fiest Publications Inc. v. Rural Telephone Service Co.*⁶ states that not every effort or expending of skill, labour results in copyrightable work but the work must involve intellectual effort and a certain degree of creativity. In India, Doctrine of Sweat of the Brow is been rejected in the case of *Eastern Book Company v. D. B. Modak*⁷ and it was held that the work must be original in the sense that by virtue of selection, co-ordination or arrangement of pre-existing data contained in the work, a work somewhat different in character is produced by the author. The Supreme Court noticed the doctrines of Sweat of the Brow and Modicum of Creativity are both on extreme ends. It is observed that not every expending of skill and labour is copyrightable but those creating works should have some intellectual effort and certain minimum degree of creativity, hence a neutral stand is taken by India.

1.4 Rights protected under Copyright Law for works of Literature

Any intellectual work falling within the domain of Copyright Law would grant rights to its owner for a fixed period of time. In case of Literary works, the Copyright Law protects such rights for the lifetime of the author and 60 years after the death of the author, making the rights inheritable to the successors. In cases, where the author is not known or the work is posthumous, the 60 years period would start from the date of publication. It is this period during which the Author remains the exclusive owner of the work created unless the same is transferred by way of Assignment. Assignment of Copyright would mean that the rights have been assigned to the Assignee either wholly or partially as per the terms of the contract. For the rights not assigned, the Author exercises exclusive rights being the owner of the work. Also, through voluntary licenses, the work can be economically exploited by the owner. However, attention should be drawn to the provisions relating to the decisive factor on ownership of copyrighted works. Section 2(d) defines author of a literary work as the author of the work. That means, primarily the creator of the work will itself be the author of work and eventually the first owner of the work.⁸ However, Section 17 itself enlists specific circumstances under which the author of the work would not be considered as the first owner of copyright. Section 17 provides the criteria of ownership of work based upon the concept of Contract of Service and Contract for Service. When works are created in employment, or as per the directions of the employer, it would lead to a Contract of Service wherein, the employer would be the first owner of the work created. Whereas, in cases of Contract for Service, the author has much of the independence to decide the nature of work and hence he himself becomes the first owner of Copyright.

In case of joint owners, both remain equal owners to the work created unless they have agreed otherwise. However, there may arise certain complexities in joint works as ideas are not copyrightable and only expressions are copyrighted. In *Donoghue v. Allied Newspapers*⁹, the Court denied authorship to Donoghue in spite of the fact that he had only provided the entire idea to Felstead for writing the article. The Indian Courts have however taken a more practical view on the issue in case of *Najma Heptullah v. Orient Longman Ltd.*¹⁰, wherein a book entitled

⁶ 499 US 340

⁷ 2008 (1) SCC 1

⁸ Section 17

⁹ (1937) 3 All ER 503

¹⁰ AIR 1989 Del 63

'India Wins Freedom' was under issue. The book was although written by Humayun Kabir, a close associate of Maulana Abdul Kalam Azad but the ideas and experiences were provided by Maulana. The Court observed that if the reasoning of Donoghue's case is adopted, then the material on the basis of which the book was created was of no importance. Hence the Court concluded that the Book was a work of joint authorship.

As provided under Section 14, the owner of literary works is endowed with the Right to Reproduction, a significant right in the jurisprudence of copyright. Right of reproduction includes reproduction of work in any material form including storing of the work in any medium by electronic means. What amounts to reproduction further depends upon nature of reproduction. The meaning of reproduction was explained in *British Northrop v. Texteam Blackburn*¹¹, in which it was held that "there must be a high degree of similarity before one thing can be said to be reproduction of another; but minor or trivial differences will not prevent one work from being a reproduction of another. The case *Ladbroke (Football) Ltd. v. William Hill (Football) Ltd.*¹² decided by the English Court observed that broadly reproduction meant copying and did not include cases where an author or compiler produced a substantially similar result by independent work without copying. If he did copy, the question whether he had copied a substantial part depended much more on the quality than on the quantity of what he has taken.¹³ The House of Lords in case of *Franz Hanfstaengl v. H. R. Binos*¹⁴ observed, "The question may be solved by taking each of the works to be compared as a whole and determining whether there is not merely a similarity or resemblance in some leading feature or in certain of the details, but whether keeping in view the idea and general effect created by the original, there is such a degree of similarity as would lead one to say that the alleged infringement is a copy or reproduction of the original."¹⁵ Reproduction, would thus mean to include substantial copying, whether directly or indirectly and also would include making multiple copies of work by making photocopies.

Secondly, the owner of copyright acquires right to issue copies of the work not being copies already in circulation. This provision mentions about the right of exhaustion of the owner, which means that after the first sale of the work, the rights extinguish and the owner then cannot control the sale or any kind of dealing with the work, except the protection of his moral rights. It is clear that being the owner of work, the right to communicate the work to the public remains an exclusive right of the owner.

Thirdly, an owner of copyright has certain other exclusive rights to convert the work into a cinematograph film or sound recording or to make a translation or adaptation of the work. Adaptation in relation to literary work includes any abridgement of the work¹⁶ and is entitled to protection if it is original and the author has bestowed sufficient skill and labour upon it. Further, in case of *Macmillan and Co. v. K. J. Cooper*¹⁷, Lord Atkinson defined abridgement as "a statement designated to be complete and accurate of the thoughts, opinions and ideas by him expressed therein, but set forth much more concisely in the compressed language of the abridger." In all these circumstances, it is notable that when an owner of copyright permits another person by way of a licence agreement to convert his work in any form, the licensee for the converted work would be the first owner.

¹¹ (1974) RPC 57

¹² [1964] 1 All ER 465

¹³ As quoted in V.K. Ahuja, *Law of Copyrights and Neighboring Rights: National and International Perspectives*, (Lexis Nexis 2015)

¹⁴ 1895 AC 20

¹⁵ Ibid.

¹⁶ Section 2(a)(iii)

¹⁷ AIR 1924 PC 75

Moral Rights regime is also developed at global and national levels, which protects the owners of copyright even after the work has passed on to others. These rights as per Indian law are Right to Attribution and Right to Integrity and are also referred to as Author's Special Rights. Right to Attribution, also known as Right to Authorship or Right to Paternity allows the Author or Creator to be credited for his work and identifies the Author. It also includes the right to keep one's work as anonymous or pseudonymous. It was for the first time that Michelangelo secretly carved his name in his statue so that his boss doesn't claim the work, the right was exercised. Right to attribution also includes Right against false attribution, although the same has not been specified in certain jurisdictions like India. However, remedies are available on infringement of the said right. On the other hand, Right to integrity helps the author to control destruction, manipulation, modification or any type of derogatory treatment to the work. It is known as Right to object Derogatory Treatment to the work.

1.5 Infringement of Literature work

Infringement of Copyright results when any person without any authorization or permission enters into the domain of the owner and deals with the work. Section 51 lays down acts amounting to infringement of copyright which can be categorized as direct infringement and indirect infringement. Section 51 of the Act in light of literary works lays down that when a person, without a licence from the owner of the copyright, or the Registrar of Copyrights or in contravention of the condition of a license so granted or of any condition imposed by a competent authority does anything, the exclusive right to do which is by this Act conferred upon the owner of the copyright infringes the Copyright. The rights that the owners enjoy upon his work is the determining factor to decide infringement and depends on case to case. Any kind of copying of the work whether in a direct manner, indirect manner or the substantial taking of the work could lead to infringement of copyright. In *Corelli v. Gray*¹⁸, it was observed that where the aggregate of the similarities between the copyrighted work and the copy leads to the cumulative effect that the defendant had imitated the original and that the similarities between the two works were not coincidental, a reasonable inference of colorable imitation or of appropriation of labour of the owner of the copyright by the defendant was proved. At times, the lay reader's or lay spectators test is applied to determine infringement of work.

However, not all kinds of otherwise dealing with the work would result into infringement of Copyright as the Copyright Law enlists various acts that do not lead to infringement and are considered as fair dealings of the work. This is done considering the use of work for bonafide purposes wherein the interests of the owner is not affected on one hand, and the society can make free uses of the work to some extent.¹⁹

1.6 Doctrine of Fair Use

The copyright law provides for certain acts which would not be considered to be infringement of copyright. These are common law exceptions and known as the Doctrine of Fair Dealing. In case of *Super Cassettes Industries Ltd. v. Hamar Television Network Pvt.*²⁰, the Delhi High Court gleaned five factors in order to determine whether a fair use of the copyrighted material has been made:

¹⁸ (1913) 29 TLR 570

¹⁹ *R.G Anand v. Delux Films*, AIR 1978 SC 1613, the case decided by Supreme Court lays down parameters for infringement of Copyright

²⁰ 2011 (45) PTC 70

- (i) The purpose and character of the use, including whether such use is of a commercial nature or is for non-profit educational purposes;
- (ii) The nature of the copyrighted work;
- (iii) The amount and substantiality of the portion used in relation to the copyrighted work as a whole;
- (iv) The effect of the use upon the potential market for or value of the copyrighted work; and
- (v) Whether and to what extent the new work is “transformative”.

Section 52 of the Act enlists acts not amounting to infringement of copyright. Relevant provisions are mentioned as under:

1. Private or personal use, including research; criticism or review, or the reporting of current events and current affairs, including the reporting of a lecture delivered in public;
2. Reproduction of any work for the purpose of a judicial proceeding or for the purpose of a report of a judicial proceeding;
3. Reproduction or publication of any work prepared by the Secretariat of a Legislature;
4. Reproduction of any work in a certified copy made or supplied in accordance with any law for the time being in force;
5. Reading or recitation in public of reasonable extracts from a published literary or dramatic work;
6. Publication of short passages composed of non-copyright matter for instructional use and described as such by the publisher. Further, not more than two such passages from works by the same author are published by the same publisher during any period of five years;
7. Reproduction of work by teacher or a pupil in the course of instruction or examination;
8. Performance of literary work in the course of the activities of an educational institution by the staff and students of the institution with audience limited to staff, students and parents;
9. Performance of a literary 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;
10. 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;
11. 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 non-commercial public library for the use of the library if such book is not available for sale in India;
12. 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. In case the identity of the author is known then it can be permitted only after the term of copyright;
13. 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 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;
14. Performance of a literary work or the communication to the public of such work 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;
 15. Adaptation, reproduction, issue of copies or communication to the public of any work in any accessible format for the benefit of disabled by any person or organization.

Considering the provisions of rights, infringement of copyright and the fair uses of the work, the Court may order Civil Remedies including injunction, damages or accounts for profit and/or Criminal Remedies resulting to imprisonment and/or fine upon infringement of Copyright.

1.7 Challenges in protecting Literature as a Copyrighted Work

Despite the fact the law is worded strongly in favor of creators, in practice there exists gaps in realizing the rights of the copyright owners. These gaps pose real challenge before the enforcement bodies to check infringement of copyright and also to the owners in exercise of their rights. The remedies available under the law of copyright seems sufficient and adequate in protecting the rights, but the issue goes beyond the remedies available. The following challenges have been identified considering the exploitation of work in digital space and the exploitation of work beyond and within the boundaries.

Literature uploaded in Cyber Space

Advent of the Internet is the major breakthrough of this century as plenty of Literature is seen uploaded on it. It has changed the way the work can be communicated wherein authors have become direct publishers. Not only this, it allows easy and fast unauthorized reproduction, distribution and communication even without the knowledge or consent of the copyright owner. Many a times, entire pdf versions of books are distributed through social media platforms which seems to be dangerous as it results in bulk sharing and is devoid of being traced as the sharing may be beyond the borders. The means and mechanisms developed by International Treaties and National frameworks to protect the copyrighted work seems to be going in vain posing a major challenge for the law enforcers to trap such unauthorized acts. As Internet knows no boundaries, the works have become miserable to just one click to be distributed globally to the ignorance of the owner. It actually is a challenge to monitor the protected work and pin down an infringer. The issue of infringement of literature available on internet is further intensified with its adaptations and translations posing a massive challenge. There is no foolproof way to ensure protection to literature works available on the digital space. The legal provisions protecting literature on the Internet differs from country to country. Although, WIPO Internet Treaties are providing for a mechanism to protect the work in the digital medium, but not all countries are Members to the same.

Digital Rights Management

WIPO in order to address the issue of protection of works on the digital medium, came out with WIPO Copyright Treaty in 1996 as a special agreement to Berne Convention, but the scope is limited to computer programs, compilation of data and databases. Hence, literature is clearly beyond the purview of the Treaty. Still, with the Digital Rights Management Techniques, an owner of copyright can protect the work on internet and can prevent unauthorized copying and distribution of the work. These techniques include insertion of

watermark, controlled access to digital files, limit on the number of copies that can be made, prevention of unauthorized modifications, restrictive licensing, controlling of duplication and distribution of work, encryption, copy controls, digital locks to name a few. Section 65A of the Copyright Act, 1957 provides protection to works available online by imposing a criminal penalty on anyone who circumvents an effective technological measure meant to protect the work on the internet. The remedy seems to be inadequate owing to the fact that not all literature uploaded on the internet is protected through these technologies. Secondly, as the nature of internet is global whereas the applicability of Copyright law is territorial. The Copyright Law doesn't have any framework to address these intricate issues. It is a need to enact a special law in lines with United States Digital Millennium Copyright Act that provides a framework for addressing online copyright infringement. The European Union has enacted a Directive on Copyright in the Digital Single Market, which seeks to modernize copyright law for the digital age, including provisions for online content-sharing platforms and the use of text and data mining.

Jurisdictional Issues

As mentioned earlier, Copyright Law has its applicability within its territory only and this is again a major hindrance in protecting works available through digital space and non-digital spaces. If a mass of literature work is distributed through illegal exports or imports, the same can at least be trapped by the Custom Authorities providing an effective remedy to the owners. But for infringement of the works of literature, even one copy is sufficient as illegal photocopy and pirated reproduction can be done anywhere. This poses a major trouble as it is impossible for the owner to even know if the work is reproduced in a foreign land. Whether infringement of copyright has taken through digital medium or not, a question remains to be unanswered in context of jurisdictional issues. Berne Convention, 1886 provides for the principle of National Treatment which means that Members shall provide the same treatment to the citizens/residents of signatory countries as it provides to their own citizens. It means, if a work is infringed in a foreign land, the remedy as per the International Law is available as the owner can file a lawsuit in the country where infringement has taken place, provided there are reciprocal arrangements made between the countries. But imagine how unfeasible the remedy is for small players who would have to travel all the way to a foreign land, hire an attorney and file a lawsuit. Even if the owner could succeed in the lawsuit, it would become onerous on part of the owner to enforce the judgement. It is high time that some cooperative measure is evolved by WIPO to enable the owners to raise an online dispute and obtain remedy from one's own country.

Weak enforcement mechanism

Civil remedies as contained in the Copyright Act, 1957 have to be filed before the District Court, however if Commercial Courts are established, the lawsuit has to be filed therein. If the lawsuit is filed before the Commercial Court, then there is provision of pre-institution mediation which can resolve the case without much hassles. But if such mediation fails, the Commercial Court will be bound by the procedures laid down in Civil Procedure Code, 1908. The procedures therein are lengthy, expensive and complex which makes the remedy weaker, thereby discouraging the authors to pursue legal actions. For availing Criminal remedies, a police complaint has to be filed and subsequently the case has to be tried by either Metropolitan Magistrate or Judicial Magistrate First Class. In any case, these lower criminal courts are overburdened with a variety of cases and delay in adjudication remains an unwritten norm in a country like India. Hence, whether it is a civil or a criminal case, there are all the chances that the enforcements might be delayed. Further, copyright related matters pose much complexities to Judges at times, who may not have specialized knowledge about the law,

thereby causing further delays. In this context, having specialized IP Tribunals is the need of the hour to ensure the rights of intellectuals.

Lack of awareness and respect for IPR

India is the youngest country of the world with people who are immensely talented. Copyrightable subject matter including the works of literature is created by children to elders. Seldom do they know about the mechanisms for protecting their rights. There is a misconception in the society that Registration for copyright is a pre-requisite to claim rights, but it not so as per the existing legal framework. The Indian law nowhere states that for availing remedies under Copyright Act, registration of the work is mandatory. Having one's work registered under the law has its own benefits as registration is a prima facie proof of ownership and there is no requirement to prove the ownership rights over the claimed work before the courts of law. Further, not in all cases, filing a lawsuit or a police complaint is necessary, at times, even by sending a notice through an IPR Attorney would work. So, on one hand the creators themselves may not be aware about the legal measures to be taken and on the other hand we find people who do not have respect for IPRs. The rampant unauthorized dealings of the work of literature are because people do not admire IPRs, rather the entire focus is on to saving their labour and time. This aggravates the issue and poses challenges in protecting the rights of creators.

Inadequate Moral Rights jurisprudence

Moral Rights includes right to be named and right to integrity in Indian setup. When considering moral rights protection, it is pertinently to be noted that the Moral Rights framework is not covered within the purview of the TRIPS Agreement. At the same time, many Common Law countries have avoided moral rights obligations by a waiver clause. Consequently, there is no uniformity in adherence to moral rights globally. Accepting that the works of literature are tenuous in nature, the protection of moral rights has posed challenges. Further, actions for violation of right to integrity can be taken when the creator feels that the work has been distorted, mutilated or modified so as to cause a disrepute. This at times, creates vagueness in understanding to what extent a work being so modified can attract actions before the court of law. Here, the approach of the Court matters significantly as the court has to accept that such modification of the work has caused disrepute to the creator. The jurisprudence of moral rights framework in India is still unexplored as there only two cases are found in this respect. In case of *Manu Bhandari v. Kala Vikas Pictures*²¹, the author had assigned the rights to the defendant for her novel to be converted into a movie with certain modifications. However, it was alleged by the Appellant that such modifications have resulted into distortion of her work causing disrepute. Interestingly, there came a settlement between the parties before the judgement, but still the court gave its verdict as there were no precedent on the matter. The Court recognized the moral right to integrity and ordered to make changes in the film to the satisfaction of the Appellant. This case has been a beacon of hope for authors of literary works by stressing upon the relevance of moral rights to integrity. Another well-known case was of *Amarnath Sehgal v. Union of India*²², wherein again the Delhi High Court upheld the right of the Appellant and awarded damages upon mishandling of the work of sculpture by the Government of India. Though the courts have considered the moral rights in these two cases, it may be noted that the only remedy available is monetary compensation, which may not be sufficient to fully redress the harm caused to the author's reputation.

²¹ AIR 1987 Delhi 13

²² 2005 (30) PTC 253 (Del)

Issues relating to Plagiarism, Indirect copying and Paraphrasing

Plagiarism is also another issue that seriously is in rise due to adherence of unethical standards which terribly affects the works of literature. In comparison to copyright infringement, often plagiarism is looked as a narrower issue and is just limited to non-acknowledging an author. People are enticed these days to paraphrase the existing text or they resort to indirect copying wherein the idea is same but the form is changed. Online tools are available for free to reduce the percentage of plagiarism and also to paraphrase the existing texts. Resorting to these practices can attract legal consequences too. One thing found common between copyright infringement and these unethical practices is to save one's labour. Copyright infringement can be established when the substance of the work is copied rather than its quantity; this may be often misunderstood as plagiarism; but the Author can have remedies under Copyright Laws in such cases too. Further, there are delusions that paraphrasing and indirect copying can avoid plagiarism, and it is true to some extent as the software used to check plagiarism may fail to check indirect copying and paraphrased versions. Nevertheless, it does result in infringement of copyright. Furthermore, the Courts would also find it extremely difficult to establish infringement of copyright in such cases as direct references and causal connections could not be gathered if the work is paraphrased or if there is indirect copying. Hence, although copyright has more to do with the permissions from the creator and plagiarism has concerns respecting attributions, they do intersect and pose threats for the works of literature. With growing technologies, like ChatGPT, it is even more difficult to establish either plagiarism or copyright violations as these AI induced software can produce quirkier results in creating the works of literature. In short, the challenges do exist in recognizing and protecting the work of the creator and even in spotting the wrongdoer.

Issue of piracy and reproduction beyond control

The biggest challenge faced by the enforcement authorities is to tackle with the problem of piracy, which has gone beyond its control. Sale and easy availability of pirated books is a big problem in India as at times these are sold openly in markets and even on streets. Photocopy machines and xerox centres are found at the corner of each street in a country like India and especially around educational institutions. This is led to illegal reproductions of the entire works of literature, thereby causing infringement of rights. These shops keep the soft copies of the scanned books saved in their computers which exacerbates the issue. The magnitude of these instances is too high to be addressed by the enforcement authorities, posing a real time challenge before the creators of works of literature.

1.8 Conclusion

The IPR Offices in India are constantly evolving their systems to make it convenient to the creators. Currently, e-filing for registration of copyright is ongoing which makes it easy for the creators to obtain protection as 94% of total applications in 2021-22 were filed online. There has been two-fold rise in the copyright registration applications from 2017-18 to 2021-22 with a total of 30988 applications filed for obtaining copyrights in India. The applications received during the 2021-22 have been increased about 26.5% in comparison to the previous year. Out of 29106 applications that were examined in the year 2021-22, 12867 applications were pertaining to literary works; which depicts a reassuring trend.²³ This represents that the existing copyright law in India is working satisfactorily in recent years as more people are getting encouragement to move towards registration of copyright.

²³ Annual Report published by the Controller General of Patent, Designs, Trade mark and Geographical Indications, Government of India, 2021-22

However, there are practical challenges in protecting the works of literature, which cannot be ignored. To address the issues of copyright infringement in literature works, it requires strategic actions and consistent adherence to these actions. This is possible only with the joint efforts from government, enforcement authorities and copyright holders. Raising awareness to respect IPRs amongst the stakeholders can yield advantageous benefits to all creators. The law enforcement bodies need to be strengthened and should adopt effective solutions for protecting literature works in India. This can be done with the creation of Copyright Cells at all District Levels which can work in collaboration and co-ordination to each other to trap the infringer. However, before instituting any such systems, adequate orientation and training is required to be given to the Authorities so that the violators can be traced and quick actions can be taken against them within the purview of law.