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# The Evolution And Revolution Of Copyright

## Law:An Indian Perspective

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### Abstract

Human being is differed from all other species on the planet earth because of his ability of rationale. It is his ability to create things and make a judgement by the application of mind which creates a monetary value of homo-sapiens amongst others. Any art, literature, drama, music, cinema, inventions ,and innovations, counts as an 'intellectual property' of its maker, which is worthy of protection since it stimulates competition and creativity in the society. However, there can be numerous cases where one's property is misused by an unauthorized user to make wrongful gains and leaving the owner is abeyance. Often such offenders try to diverge traffic from the original source/product to its pirated versions. Thus to safeguard the exclusive rights of the owners and makers of such property, its violations are governed by statutes like Copyright Act, 1957; Patents Act, 1970 and Trademarks Act, 1999.

The idea behind providing such a protection to authors and owners of literary work and inventions is to promote the continuous improvements in the fields of science and art. Each such property is a resultant of an idea that pops up in a human mind, it's a journey from a plan to its execution. However, ideas per se cannot be protected, it is only the 'expression of the idea' which can be protected under the copyright law. A plan or a design or a scheme which remains to be put into a tangible form, incapable of being produced, copied, sold, etc. cannot itself be copyrighted. Section 13(1) of the Copyright Act<sup>1</sup> provides for the varieties of works which are capable of being protected, for instance; literature, drama, music, art, cinema, architectural designs, computer programs, etc. The general rule is that a copyright lasts for 60

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<sup>1</sup> **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) 1[sound recording]. 1[sound recording].

years from date of receipt of copyright registration however in case of original literary/artistic work, it lasts for the lifetime of the author and 60 years thereafter.

#### **KEYWORDS-**

CA 1957 (herein referred as “CA”), IPR, Copyright Infringement, RG Anand’s case, Fair use, International Copyright, Berne Convention.

## **Introduction**

*R.G. Anand v. M/s. Delux Films & Ors.*<sup>2</sup>, is a landmark judgement in the history of jurisprudential landscape of copyrights law in India. The factual matrix of the case revolves around an allegation put forth by Mr. R.G. Anand, who wrote the play called “Hum Hindustani”, against Mohan Sehgal’s movie “New Delhi”, to have copied the theme of his play and thus infringing his rights under Section 14 of the CA<sup>3</sup> (herein referred as “S.14”).

R.G. Anand’s play was one of the most renowned plays of the time, reperformed in 1954, 1955 and 1956. One of the defendants sought to meet him when R.G. Anand decided to film the play due to its growing popularity. The two sat together in January 1955 to discuss the themes, scenes and characters of the play. However, RG Anand did not hear from the defendant after that. A year later when “New Delhi” was released in September 1956, RG Anand realized that not only the scenes of the film were an exact replica of the play, but the protagonist’s character and themes of the movie were also similarly portrayed.

Justice Faizal Ali in a historic ruling, which marked the foundational stone of an all-encompassing test of copyright infringement, held that although both, the play and the film, is based on the common concept of “Provincialism” however, the film dealt with a wider scope of the theme, it varied in its backgrounds and culture as well and therefore the theme of these two forms of literature might be same but the execution was different, which made each of them stand apart. Accordingly, the plaint was rejected.

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<sup>2</sup> AIR 1978 SC 1613.

<sup>3</sup> <https://indiankanoon.org/doc/1129646/>.

The case laid down the 3 major findings, which are as follows:-

1. **Ideas and Expression Dichotomy**, the rule upon which majority of copyright law in India is based. It is based on the rule that subject matter/issue or argument of any two literary works can be the same, but it is the way of dialect/presentation which makes them unique, and it is this uniqueness which can be copyrighted. For instance, two authors might have the same issue to write about, but it is their way of narration which marks a difference.
2. **Point of similarities and dissimilarities**, according to this principle the degree and type of similarities between two works decides whether the latter is copied. If similarities are extensive and not coincidental, an inference of colorable imitation and a copyright infringement would follow.<sup>4</sup>
3. **Reasonable man's test**, provided the question of copyright infringement depends on identifiable manifestation of copied ideas. If an ordinary man would not consider the two works as same/ copied, then the same understanding should follow. This test have been the most instrumental in formulating the concept of copyright infringement in its modern incarnation.

### Contemporary Relevance-

The RG Anand case have led to provide a watershed event in reinventing the modern form of copyright law. Drawing inspiration from the substantial similarity criterium and uncopyrightability of mere ideas, the Indian judiciary have time and again held a strong ground against copyright infringers.

In *Shree Ventakesh Films v. Vipul Amrutlal Shah*<sup>5</sup>, the court in a case of infringement of copyright of a film called “Namaste London” by a Bengali film, defined the term “copying” as under S.14, held that a cinematographic film is a homogenous material, consisting of an amalgamation of varied contents/items like theme, plot, characters, dialects, dialogues, etc., each part is copyrightable. The court observed the term cannot and should not be given a strict meaning and covers within situations of ‘considerable similarity’ of works of literature.

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<sup>4</sup> Khushi Agrawal, *R.G Anand Vs M/S. Delux Films & Ors, 1978 Air 1613: Applicability In The Present Time*, 2 IJLLR, (2021).

<sup>5</sup> (2010) 1 CHN 818 (DB).

In *Maddock Films Pvt. Ltd. v. Shiboprasad Mukherjee*<sup>6</sup>, the court relied on the settled principle of RG Anand that copyright is concerned with the form/manner of presentation of an idea. The bench further took into account that ordinary man test is the ‘most safest and surest’ way of deciding an infringement, and held that any man would get an unmistakable impression that the two films are the same since not only the story line, but the plot, characters, scene setting, leads and behavior of leads of the movies was similarly portrayed. Thus applying the tests laid down in RG Anand, “Hindi Medium” seems to have violated the copyright law and so the injunction was upheld. The charge was however, later withdrew by the plaintiffs.<sup>7</sup>

In another case, *MRF Ltd. v. Metro Tyres Ltd.*<sup>8</sup>, the court differed from earlier judgement of Madras and Bombay HC, and held that a cinematographic film is blend of various individual items, like plots, characters, dialogues, etc. Thus although a work might not infringe copyrights of these underlying items but a lack of originality/creativity in composition will lead to a lack of uniqueness, thus making it non eligible of copyright protection as provided under Section 13(3)<sup>9</sup>. The court laid down two conditions to decide resemblance; (i) comparison between of the two works in substance, foundation and treatment and (ii) understanding of an ordinary average viewer.<sup>10</sup>

It can be seen from the above stated dictums of Indian jurisprudence that there have been rather two schools of understanding of copyright law in India, one which propagates for the right to protection of the ‘contents’ of a cinematographic film under S.14 and thus concerned with the ‘physical/actual copying’<sup>11</sup> of these contents while the other school contends a more wider interpretation of protections provided under S.14. The proponents of the latter propose that

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<sup>6</sup> 2017 (4) CHN (CAL) 614.

<sup>7</sup> Win for ‘Hindi Medium’ as Bengali film ‘Ramdhanu’ withdraws plagiarism charge, SCROLL (June 15, 2022, 7:18 PM), <https://scroll.in/reel/844880/win-for-hindi-medium-as-bengali-film-ramdhanu-withdraws-plagiarism-charge>.

<sup>8</sup> CS(COMM) 753/2017.

<sup>9</sup> **13. Works in which copyright subsists —**

(3) Copyright shall not subsist—

(a) in any cinematograph film if a substantial part of the film is an infringement of the copyright in any other work;

(b) in any 1[sound recording] made in respect of a literary, dramatic or musical work, if in making the 1[sound recording], copyright in such work has been infringed. 1[sound recording] made in respect of a literary, dramatic or musical work, if in making the 1[sound recording], copyright in such work has been infringed.

<sup>10</sup> Yash Raj Films Pvt Ltd v. Sri Sai Ganesh Productions, CS(COMM) 1329/2016.

<sup>11</sup> Star India Pvt. Ltd. v. Leo Burnett (India) Pvt., 2003 (2) BomCR 655; Zee Entertainment Enterprises v. Gajendra Singh & Ors., 2007 (6) BomCR 700.

such an artwork is a result of the creative authorship/ production/ direction of inputs. Justice Iyer through his verbatim judgement<sup>12</sup> have rightly declared that apart from the rights of the artists of individual items of a film; for instance, sound producer, musician, lyricist, actors, photographer; the producer also has the right to acquire copyright for his unique way of combining and presenting these separate items on the screen.<sup>13</sup> While the Indian jurisprudence have been reinventing in widening the ambit of the term ‘copy’, RG Anand’s case remains to provide the foundational determinative stone of copyright law in India.

## Role Of Intermediaries

Infringement of Copyright is not restricted to unauthorized consumers, often intermediaries like internet service providers, cyber cafes, websites, etc. can play a vital role in providing stimulus to the crime. However, their liability is limited to the amount of their involvement in such acts. For instance, if a cyber café is found to be mere internet service provider who was not aware of the infringement being taken place in his premises, he ought to be acquitted. On the other hand, websites which cost publication charges and consisting of a process of scrutiny of the work to be put in the public domain play a much wider involvement if the content published is found to be copied.

For Section 51(a)(ii)<sup>14</sup> of the CA, specifies two conditions for the provision of intermediary’s liability i.e. if the intermediary makes profit/ earns a revenue from such an act of infringement and if he had ‘sufficient knowledge’ of the act. A division bench in 2017<sup>15</sup> held that “knowledge” under the section refers to an actual awareness and not just mere suspicion or general knowledge. The bench also placed reliance to *R.K. Mohammed Ubaidullah v. Hajee C. Abdul Wahab*<sup>16</sup>, which held:-

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<sup>12</sup> Indian Performing Right Society Ltd. v. Eastern Indian Motion Pictures Association, AIR 1977 SC 1443.

<sup>13</sup> Aparthiba Debray, *Physical Copy Doctrine versus the “Substantiality” Dictum*, KHURANA & KHURANA, (Feb 12, 2020, 3:40 PM), [https://www.khuranaandkhurana.com/2020/02/12/physical-copy-doctrine-versus-the-substantiality-dictum/#\\_ftn8](https://www.khuranaandkhurana.com/2020/02/12/physical-copy-doctrine-versus-the-substantiality-dictum/#_ftn8).

<sup>14</sup> **51(a) (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] 1[(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].

<sup>15</sup> *My Space Inc. v. Super Cassettes Industries Ltd.*, (2017) 236 DLT 478 (DB).

<sup>16</sup> AIR 2001 SC 1658 (1).

“A person is said to have notice of a fact when he actually knows that fact, or when, but for wilful abstention from an inquiry or search which he ought to have made, or gross negligence, he would have known it.”<sup>17</sup>

## Essentials Of Copyright

1. *Fixation*- The copyright law protects the ideas put into a fixed forms, i.e. a matured/ ripened tangible expression of the idea and not a mere work draft. For instance, in the case of a picture, the specific physical manifestation of the image will be copyrighted. Moreover, such a fixed form of work must not be transitory in nature and rather be stored in a permanent tangible medium. Such a characteristic of the law fosters constant advancements, enhancements and scrutiny of literary works.

For instance, the scientific theories of gravity, condensation, refraction, etc., were devised a thousand years ago by scientists like Einstein, are presented in numerous creative ways by different authors due to its availability in the public domain, here the original developers of these theories cannot claim copyright on these ideas. The US courts first dealt with the Idea-Expression dichotomy in the case of *Baker v. Selden*<sup>18</sup>. The court held that while Seldon can copyright his book describing an effective accounting system devised by him but he cannot copyright the underlying system itself. In cases like these, of innovations or inventions, perhaps Patents law would provide a wider coverage of protection to owners.<sup>19</sup>

2. *Look and Feel*- With an era of digitalization, it has become all the more tedious to draw a line of demarcation between an idea and its expression. Often copyright infringement in cyberspace involves copying the ‘look and feel’ of the websites/ web pages i.e. the appearance/ designs of graphical interfaces (non-literary source), apart from the program codes (literary source), to divert concentration. In such cases, it is wise to

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<sup>17</sup> Saba, Section 79 & 81 of IT Act and Section 51 of Copyright Act have to be harmoniously construed, SCC ONLINE BLOG, (January 21, 2017), <https://www.sconline.com/blog/post/2017/01/21/sections-79-81-of-it-act-and-section-51-of-copyright-act-have-to-be-harmoniously-construed/>.

<sup>18</sup> 101 U.S. 99 (1879).

<sup>19</sup> *Unprotected “Ideas” vs. Copyrightable Tangible Expressions*, LAW SHELF, <https://lawshelf.com/videocoursesmoduleview/unprotected-ideas-vs-copyrightable-tangible-expressions-module-2-of-5>.

follow the ordinary man litmus test so as to conclude whether such similarities constitute an infringement.<sup>20</sup>

## **'Fair Use' Doctrine**

The dilemma of protecting copyright holder's rights on one hand and realizing the purpose of the copyright law have been a hot debate topic since long. The most important and necessary argument is that not all expressions of content/work can be restricted from being reproduced, there has to be a balance between the individual's right of protecting unauthorized usage of his work and society's thrust of knowledge. These discussions gave impetus to the 'fair use' doctrine, a judge made law in the US through the case of *Folsom v. Marsh*<sup>21</sup>. Later the doctrine was inserted via Section 107 in the US Copyright law, which provides for a 4-factor test in determining copyright infringement, namely;

- i. purpose and character of the use, which provides that if the work is used for a commercial purpose and not for a non-profit/educative motive, the use points to an infringement,
- ii. nature of the copyrighted work, denounces the fair use defence in cases where the essence/character of the work is replicated, for instance in case of a book, the idea may be same but the usage of words/representation must differ,
- iii. amount and substantiality taken, it postulates both quality and quantity of work copied/used,
- iv. effect on potential market for protected work, it aims to determine the consequences of such usage of the copyrighted work.<sup>22</sup>

Fair use is one which connotes to a 'normal exploitation' of the work, one which is not prejudice to the interests of the copyright holder. It is not a License to use copyrighted work rather a Privilege.<sup>23</sup> The doctrine is a product of the right to free speech. Earlier, the 'right' of the speaker to express the idea in his own creative way weighed over the rights of the copyright holder. However, the doctrine has been reinvented in the modern times with Copyright burring the remnants of free speech, redefining it as a pretext for piracy that aims to 'excuse' infringing

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<sup>20</sup> Supra note 12.

<sup>21</sup> 9. F.Cas. 342, (1841).

<sup>22</sup> *Fair Use In Copyright Law*, BITLAW, [https://www.bitlaw.com/copyright/fair\\_use.html](https://www.bitlaw.com/copyright/fair_use.html).

<sup>23</sup> Ishan Sambar, *Concept Of Fair Use And Fair Dealing In Copyright*, MONDAQ, (May 13, 2020), <https://www.mondaq.com/india/copyright/930556/concept-of-fair-use-and-fair-dealing-in-copyright>.

conduct.<sup>24</sup> Unlike earlier, today, fair use stands as a limitation to the exclusive rights of the owner.

## 'Fair Dealing' Doctrine

Unlike US, the common law jurisdictions like UK, India, Australia, Canada, Britain, etc. follow a more rigid version of a defence to copyright infringement called 'fair dealings'. The exception is governed by Section 52<sup>25</sup> and 39<sup>26</sup> of the CA, 1957. The two sections aims to provide an exhaustive list of fair dealings, unlike the US Copyright doctrine of fair use which is affected by judicial fluctuations on case to case basis. In the case of *K Murari v. Muppala Ranganayakamma*<sup>27</sup>, the court ruled that use of work which does not attract a direct pecuniary benefit to the renter of the works will favour the defence of fair dealing.

## International Copyright

With the growing age of digitalization, expressions of ideas is not restricted to pen and paper. The cyberspace, being borderless, often possess challenge of ownership and jurisdiction, it thus is necessary to ensure that literary, artistic work, cinematographic films, sound recording, videos, etc. which are original works of creativity of a national are protected round the globe. An international copyright is an epitome of such growing boundaries of IPR. There is no codified international copyright law, the practices are rather an amalgamation of domestic laws, customs and international treaties. An International Copyright aims to protect the work of authors/makers beyond their territorial/ geographical borders.

In India, entire realm of copyrights is governed by CA, 1957, International Copyright Order, 1999 and Copyright Rules, 2013. The Government of India under its power to extend copyright

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<sup>24</sup> Ned Snow, *The Forgotten Right of Fair Use*, 62 Case W. Res. L. Rev. 135 (2011).

<sup>25</sup> <https://indiankanoon.org/doc/1013176/>.

<sup>26</sup> **39. 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 other acts, with any necessary adaptations and modifications, which do not constitute infringement of copyright under section 52.

<sup>27</sup> 1987 (2) ALT 699 (718).

to foreign works as under Section 40 of the CA<sup>28</sup> had passed the International Copyright Order on 24th March 1999. The order enforces copyright protection to member countries of Berne Convention, Universal Copyright Convention, Phonographs Convention and WTO, as if such works are India, but only on a reciprocal basis. Moreover, Indian legislations provide a two tier redressal mechanism for copyright and related infringements namely; The Intellectual Property Appellate Board and the courts of law, i.e. both civil and criminal remedies are available to the aggrieved.

India is also a signatory of a number of such international conventions and treaties to promote copyright protection of its nationals in foreign countries. All major international copyright conventions and domestic laws like the Berne Convention of 1886, Universal Copyright Convention of 1952, Section 40 of the Copyright Law of India runs on the 3 major principles, namely:-

1. *National treatment*- This principle purports an equal treatment of signatories around all the member countries i.e. each member country must treat the work of the every member work with a protection equal to the treatment provided to its own nationals.
2. *Automatic protection*- The principle calls for an unconditional protection of works i.e. no country shall attach any preconditions for providing protection to the works of other country.
3. *Independence of protection*- The principle provides for protection of foreign works in member countries irrespective of the degree of protection given to the work in the country of origination.<sup>29</sup>

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<sup>28</sup> **40. Power to extend copyright to foreign works** —The Central Government may, by order published in the Official Gazette, direct that all or any provisions of this Act shall apply—

(a) to work first published in any 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.

<sup>29</sup>Soumya Bajpai, *Relevancy of International Copyright in India*, CORPBIZ, (Aug 31, 2020), [https://corpbiz.io/learning/relevancy-of-international-copyright-in-india/#Copyright law gives Protection to Foreign Works in India](https://corpbiz.io/learning/relevancy-of-international-copyright-in-india/#Copyright%20law%20gives%20Protection%20to%20Foreign%20Works%20in%20India).

## **Berne Convention**

The Convention provides for a guarantee to the nationals of member countries, an automatic protection, in as much as the rights that the other country grant to its own nationals. Generally the period provided for protection of literary works is 50 years from the death of the author, with the only exception in the case of photography and cinematography (added in the Brussels revision of 1948), where the protection period of a photograph is 25 years from date of publication and for a cinematographic film is 50 years from date of publication.

Apart from the common exclusive rights of authorization like right to reproduce, right to translate, recite in public, broadcast, etc., the convention also grants certain moral rights in the form of right to object to any mutilation, deformation or other modification of, or other derogatory action in relation to, the work that would be prejudicial to the author's reputation. Limitation to these economic rights is referred as 'free uses', for purposes like teaching, reporting, etc., is envisaged in Article 9(2), 10, 10bis, etc.

## **Conclusion**

The copyright law grants economic rights to makers/authors to exploit their creations by further productions, sale, rent, exhibition, etc. The differentiation between idea and its expression have played a pivotal role in ensuring that the true purpose of the law is upheld. Had such a classification not been made, it would have barred new creators from using already founded ideas/themes/concepts in a better, newer, and, developed manner and would have further led to an open space for monopolization of ideas themselves. It is indeed this differentiation between an 'idea' and an 'expression of idea' which pave the way of production of remixes of Bollywood songs and sequels of old films in Indian literature.

In the view of Justice P. Somarajan, copyright law does not prevent the world from using the same theme, if such an use includes application of a unique way on the creators part.<sup>30</sup>

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<sup>30</sup> Suryansh Broadcasting Pvt Ltd & Anr v. Zee Entertainment Enterprises Ltd & Anr., 2022 LiveLaw (Ker) 179.