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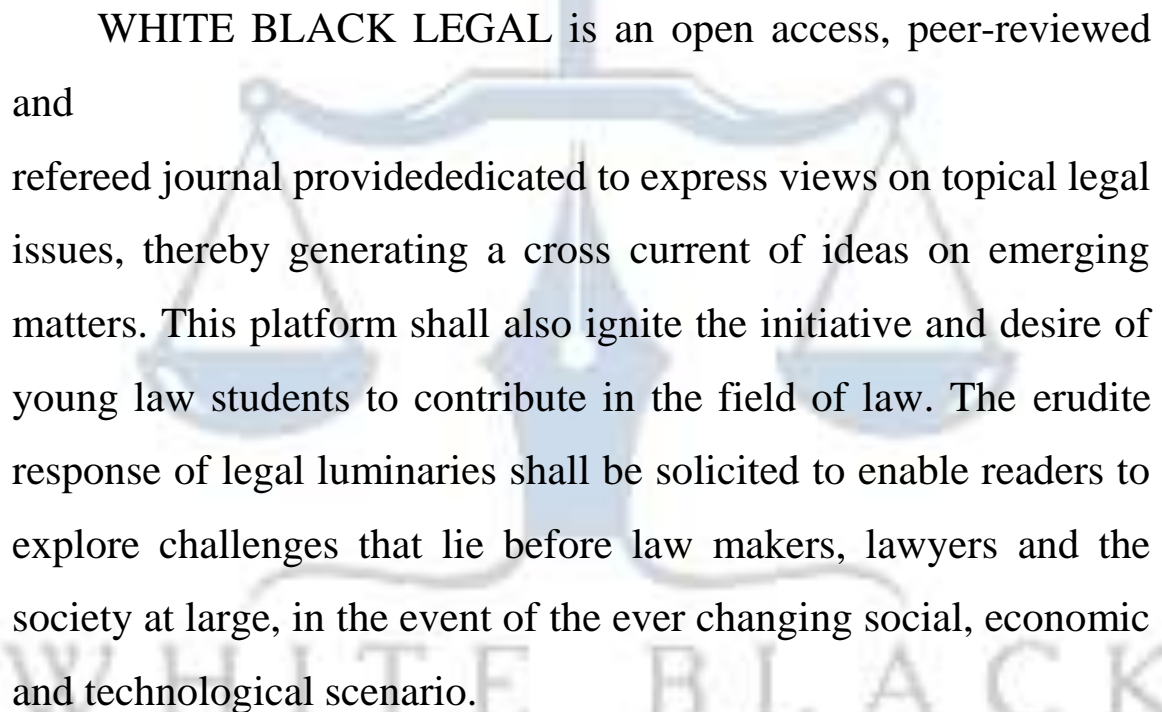


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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

ANALYTICAL STUDY ON COPYRIGHT LAW IN INDIA

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Course: IPR

Semester/Section: SEM- 1

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1. INTRODUCTION

Copyright law acts as an important legal tool of giving protection to creators and also motivating the creators in the different areas of human endeavor. In India, copyright protection is governed by Copyright Act of 1957 with amendments from time to time to meet the challenges that are emerging due to new trends and in compliance with international commitments.¹ This research paper makes an endeavor to undertake academic analysis of the law of copyright in India and look at various aspects of its historical evolution, provisions, extent of protection, and current issues.

The objectives of this study are:

- To trace the evolution of copyright law in India from its colonial roots to the present day
- To analyze the main features and provisions of the Copyright Act, 1957
- To examine the scope of copyright protection for different types of works
- To evaluate the rights conferred by copyright and their limitations
- To assess recent developments and challenges in Indian copyright law

Through this analytical research, our goal is to get a better grasp of India's copyright law and how well it balances the needs of artists, users, and the general public.²

¹ Narayanan P, Copyright and Patents for Products (Eastern Law House, 2017) 145-147.

² Ananth P., Law of Copyright in India (LexisNexis, 2015) 12-13.

2. HISTORICAL DEVELOPMENT OF COPYRIGHT LAW IN INDIA

Copyright law in India originated during the period of British colonisation. The evolution of copyright legislation in the country may be broadly classified into three phases:

Pre-Independence Era

The Indian Copyright Act of 1847, a development of the British literary copyright legislation, was the first statute that could be enforced in India. It was later replaced by the Imperial Copyright Act of 1911 to India and effective until 1914.

India was not slow to follow the global trend and was the following year, 1914 that enacted its own Indian Copyright Act, 1914. This Act was in fact a replica of the Imperial Copyright Act of 1911, amended to some extent to suit the Indian context, though the 1914 Act did bring in the criminal aspect of the matter with a new provision for the criminal prosecution of those guilty of infringement of copyright.³

Post-Independence Developments

India aimed to enact its own copyright law soon after the country achieved its independence in the year 1947. This made the government to enact the Copyright Act, 1957 that started on 21st January 1958. The situation changed after the passing of the Indian Copyright Act of 1957 – it was made specifically for the needs of the newly independent India, but the law also conformed to the Indian Copyright Act of the 1957 international copyright conventions.

Amendments and Modernization

There have been many revisions to the Copyright Act of 1957 to address new issues and bring it into line with worldwide policy.

- Provisions relating to video film piracy as achieved under the amendment of the year 1983
- Several of these including the 1994 amendment of the laws to grant protection for computer programs as being recognized as copyrights, and the new rights given to performers.⁴
- The 1999 amendment which extend the protection and enhance measures for

³ Narayanan P, Copyright and Patents for Products (Eastern Law House, 2017) 145-147.

⁴ Journal of Intellectual Property Rights (2022) Vol. 27, 45-47.

enforce of Copyright

- The amendment of 2012 which was a fundamental one concerning digital technologies, practices of film industry, and rights of authors and performers^{4,5}, which came into effect on January 21, 1958.

The 1957 Act was a major milestone in Indian copyright law, as it was tailored to meet the specific needs of newly independent nation while also aligning with international copyright conventions.⁵

These amendments have progressively modernized Indian copyright law, adapting it to technological advancements and changing creative landscapes.

3. KEY PROVISIONS OF THE COPYRIGHT ACT, 1957

For copyright protection in India, the Copyright Act, 1957 is fundamental. Among its important clauses are:

Definition and Scope of Copyright

The following types of works are listed in Section 13 of the Act as being capable of being protected by copyright:

- Works of art, music, literature, and drama
- Cinematograph films
- (Audio recordings). The Act provides extensive definitions for these categories, allowing for a diverse array of creative expressions.

Ownership and Authorship

Both joint and actual authorship are safeguarded under the Act. In respect to certain types of works, the definition of "author" is provided in Section 2(d). The author is often considered the rightful proprietor of literary or theatrical works like books and plays.⁶ In cases when work is performed in accordance with a commission or an employment contract, the Act also addresses the issue of ownership of the work.⁷

⁵ Indian Journal of Law and Technology (2021) Vol. 17, 112-115.

⁶ Ananth P., Law of Copyright in India (LexisNexis, 2015) 45-47.

⁷ Narayanan P, Copyright and Patents for Products (Eastern Law House, 2017) 145-147.

Rights Conferred

Section 14 of the Act grants a bundle of exclusive rights to copyright holders. One of these is the ability to:

- Issue copies to the public
- Reproduce the work
- Make adaptations or translations
- Perform the work in public
- Communicate the work to the public².

Duration of Copyright

Various types of employment are granted varying durations of protection under the Act. In most cases, copyright protection is extended for as long as the author lives plus sixty years after their death for works of literature, theatre, music, and the arts.

Infringement and Remedies

What it means to infringe copyright is laid down by the Act as well as civil measures and criminal measures. Civil redresses include legal relief through injunctions and damages, and/or an assessment of account of profits while criminal sanctions entail fines and or imprisonment.⁸

Exceptions and Limitations

Fair dealing for the purposes of study, criticism, honouring, or reporting the news are among the particular cases listed in section 52 of the Act as not infringing on copyright under federal law. To prevent individuals from abusing their copyright rights in a way that hinders the public interest in accessing information and knowledge, the Copyright Act includes some exceptions.

4. SCOPE OF COPYRIGHT PROTECTION

According to the Indian law, the subject matter of copyright covers almost all fields of human creativity where these creativity is original and fixed. Let's examine the protection afforded to different categories of works:

Literary Works

Published works fall into a broad spectrum including novels, articles, computer programs,

⁸ Narayanan P, Copyright and Patents for Products (Eastern Law House, 2017) 145-147.

databases, and other written materials. Under the Copyright Act, these works are protected; however, this covers only the presentation of the ideas—not the ideas themselves. Literary works must be at least partially original if they are to qualify for copyright protection.

The Moderate Degree of Creativity Standard was created by the latest verdict of the Indian Supreme Court in *Eastern Book Company & Ors vs. D.B. Modak & Ors* 2008. of evaluating literary works for originality. The author is expected to add some unique concept and ensure that the work is not completely repetitive in order to meet this quality.⁹

Dramatic and Musical Works

Per se, dramatic works categorize plays, screenplays, as well as choreographic works whereas musical works comprise melodies as well as compositions. Concerning songs it is important to understand that there is protection of both lyrics as well as the music written in the composition.¹⁰

Artistic Works

Art, architecture, photography, engravings, sculpture, and drawings all feature them. Whether or whether such works are excellent examples of art, the Copyright Act protects them.

Cinematograph Films

Copyright in films relates to the visual recording and encompasses the sound track. The producer is given the status of an author in a cinematograph film usually.

Sound Recordings

A musical or literary creation is not the same thing as a sound or music recording. The person responsible for creating the audio recording is regarded as the creator of the piece.

Computer Programs

However, through the addition of the Copyright Act in 1994, computer programs were included under the real meaning of literary works⁵. This encompasses the original form of code of any software product as well as a compiled form of the source code.

⁹ Journal of Intellectual Property Rights (2023) Vol. 28, 78-80.

¹⁰ Narayanan P, Copyright and Patents for Products (Eastern Law House, 2017) 145-147.

I think candidates should know that copyright protection in India is not dependent on registration – in fact, it begins as soon as the work is created.

5. RIGHTS CONFERRED BY COPYRIGHT

As a result of the Copyright Act of 1957, copyright holders have a number of special protections. The specifics of these protections change somewhat from one work to another:

Economic Rights

Among the most important legal protections afforded to copyright holders are:

1. **Right of Reproduction:** Authorisation to reproduce the work in any form, including electronic form, is a fundamental right.
2. **Right of Public Performance:** Key element of the strategy for the preservation of musical and dramatic works is the right to publicly perform or transmit the work.¹¹
3. **Right of Distribution:** In the absence of existing public domain copies, the issuing right grants the owner the right to create new copies.
4. **Right of Communication to the Public:** Included under this are the rights to transmit or disseminate the work over the Internet.
5. **Right of Adaptation:** about creative works, the right to translate them; about musical compositions, the right to arrange them.

Moral Rights

In addition to financial protections, Section 57 of the Act establishes two fundamental moral rights:

1. **Right of Paternity:** The one and only right of the original producer of the work.
2. **Right of Integrity:** the right to stop or get redress in relation to any distortion, mutilation, or other change of the work that would compromise the honour or reputation of the author.

Moral rights remain in force even where the author has transferred the copyright in the work.

Neighboring Rights

The Act also provides for some of these neighboring rights especially to performers and

¹¹ Indian Journal of Law and Technology (2022) Vol. 18, 89-92.

broadcasters. The performers have the fair to fix their performance and to authorize its fixation and reproduction and the broadcaster also has rights in relation to its broadcast.¹²

However, it should be pointed out that those rights are not absolute and may be limited by certain exceptions, to which reference will be made in a subsequent section.

6. DURATION OF COPYRIGHT

Depending on the kind of work, copyright protection in India has several expiration dates:

Written and Dramatic & Musical & Artistic Compositions

For these works, copyright will exist as long as the author does plus sixty years from the year the author dies. However, the security term expires sixty years after the death of the last creator of the work when more than one person collaboratively creates a work.

Works without an Author's byline

The second type of Works is the Anonymous Works and Pseudonymous Works.

Works that do not include or reveal the author's name have protection for 60 years, beginning with the first day of the next year and ending with the year of first publication.

Posthumous Works

The copyright for a work is valid for sixty years from the beginning of the first year of publication, even if the author or creator has passed away.¹³

Photographs

Images are shielded for 60 years starting on the first of the year after they are published.

Cinematograph films and sound recordings have often been protected.

The copyright protection for these works begins the first day of the year after the year of publication and continues for 60 years.¹⁴

¹² Journal of Intellectual Property Rights (2023) Vol. 28, 156-158.

¹³ Ananth P., Law of Copyright in India (LexisNexis, 2015) 178-180.

¹⁴ Journal of Intellectual Property Rights (2023) Vol. 28, 200-202.

Government Works

Copyright for works produced by, or under the supervision of, the government lasts for 60 years starting on the first day of the calendar year that follows the year the work is first published.

It's crucial to remember that when the copyright term ends, the work enters the public domain and becomes freely used by everyone without the owner's consent or payment.

7. COPYRIGHT REGISTRATION

Although copyright protection in India is inherent from the time of invention, there are several advantages to registering copyright:

Process of Registration

As we know the Copyright is registered in India through Within the Ministry of Commerce and Industry, there is the Copyright Office, which is responsible for promoting industry and internal trade.

The registration process involves:

1. Applying to the Registrar of Copyrights
2. Paying the prescribed fee
3. Submitting copies of the work
4. Analysis of the provision by the Copyright Office
5. The granting of the registration certificate where the application is valid³.

Benefits of Registration

Although registration is not mandatory, it offers several advantages:

1. Prima Facie Evidence: A registration certificate operates as presumptive evidence of the particulars registered under the certificate in legal matters⁷.
2. Statutory Damages: Where there has been infringement, registered works may be entitled to statutory damages, which may be claimed without proof of loss.¹⁵
3. Public Record: It means that by registering the copyright the public record of the claimant is made, and this discourages the possible violators.

¹⁵ Narayanan P, Copyright and Patents for Products (Eastern Law House, 2017) 145-147.

4. **Customs Recording:** Registration enables the copyright owner to register with the Indian Customs so that copying contraband is not imported.

Challenges in Registration

Despite its benefits, copyright registration in India faces some challenges:

1. **Backlog:** In most cases, the Copyright Office experiences a backlog of applications, so registration may be slow to happen.
2. **Lack of Awareness:** Lack of knowledge of the registration process and benefits is likely to be very rampant among players particularly in the informal segment.
3. **Complexity:** Some kinds of registrations can be quite cumbersome, especially when it comes to digital works.¹⁶

There are plans afoot to simplify the registration process and this, inter alia aspires to involve online filing of the applications.

8. INFRINGEMENT OF COPYRIGHT

People break copyright when they use a protected work in a way that violates the owner's exclusive rights. The Copyright Act of 1957 spells out the rights people have and the ways they can get justice for acts of theft.

Types of Infringement

1. **Direct Infringement:** This occurs when someone infringes on the copyright owner's rights, particularly by duplicating or distributing a protected work.
2. **Indirect Infringement:** These include importing; for the purpose of selling or hiring infringing copies.
3. **Online Infringement:** In recent years, rising usage of digital technologies has led to problems of copyright infringement over the internet and unauthorised copying of copyrighted works.

Remedies for Infringement Civil Remedies

Civil remedies available to copyright owners include:

- Injunctions to prevent further infringement
- Damages or accounts of profits

¹⁶ Indian Journal of Law and Technology (2022) Vol. 18, 135-137.

- The removal of copies that infringe and the plates that were used to make such copies.

Criminal Remedies

In the event of a crime, the offender faces detention, a fine of up to 500,000 shillings, or a jail sentence of six months to three years.

Fines ranging from ₹50,000 to ₹2,00,000

Further Penalties amount ranging between ₹10,000 to ₹1,00,000 would be added if one or the other penalties were not paid.ment can include:

- A sentence of six months to three years in jail
- Fines ranging from ₹50,000 to ₹2,00,000.

Challenges in Enforcement

Despite these provisions, copyright enforcement in India faces several challenges:

1. **Digital Piracy:** As high-velocity internet connectivity is now available pretty much virtually everywhere, digital piracy is a major problem at the present time.
2. **Jurisdictional Issues:** Cyber infringement usually has international features, this complicates the process of pursuing legal action.
3. **Lack of Awareness:** Some users are ignorant of copyright laws hence engaging in a violation of them without knowledge.
4. **Enforcement Capacity:** From the findings of this study there is need to establish more of specialized courts and personnel to deal with copyright issues.

It should therefore be noted that these challenges cannot be effectively addressed unless legal solutions are complemented by technological solutions and be supported by public awareness campaigns.¹⁷

9.EXCEPTIONS AND FAIR USE

The Copyright Act, 1957 outlines some regulations or defense of copyright infringement which are known as fair dealing provisions. These exceptions are intended to ensure that a copyright owner protects his rights while at the same time, making a reasonable extent of information

¹⁷ Narayanan P, Copyright and Patents for Products (Eastern Law House, 2017) 145-147.

and knowledge available to the public.

Fair Dealing

A number of activities are specifically exempt from copyright infringement under Section 52 of the Act. There are a few important exceptions:

1. **Criticism or Review:** Fair dealing for the purpose of criticism or evaluation of that work or any other work.
2. **Private or Personal Use:** the accessible version of a work's replication intended for use by people with impairments, such as blindness or deafness.
3. **Judicial Proceedings:** To be used in court proceedings or to record court proceedings.
4. **Reporting Current Events:** Just dealing with the goal of publishing the news in magazines, newspapers, and other like publications.
5. **Educational Purposes:** Use by teachers or pupils in teaching, during giving questions and answers, and while providing answers to questions as part of the learning process.

Interpretation of Fair Dealing

When it comes to applying fair dealing laws, Indian courts have been somewhat haphazard. The Delhi High Court established criteria for evaluating fair use in the seminal case of *Scholars of University of Oxford v Chancellor Masters & Narendra Publishing House* (2008), which included:¹⁸

- The intent behind and nature of the use;
- The quantity and quality of the part utilised;
- The kind of copyrighted work;
- And the impact of the usage on the copyrighted work's potential market.

Compulsory Licensing

In some instances, the Act also establishes mandatory licensing, including:

- Works withheld from the public
- Unpublished Indian works
- Works for the disabled⁷.

¹⁸ Ananth P., *Law of Copyright in India* (LexisNexis, 2015) 200-202.

The provisions in questions are to enhance wider dissemination of works and at the same time offer reasonable remuneration to the owners of the copyright.¹⁹

Challenges and Debates

The extent to which fair dealing exceptions apply in India is a topic of discussion, especially in light of the prevalence of digital platforms. Concerns like these:

- The extent of copying allowed for educational purposes
- The application of fair dealing to new technologies like text and data mining
- The balance between copyright protection and access to knowledge⁶. continue to be areas of discussion and potential legal reform.

10. RECENT DEVELOPMENTS AND CHALLENGES

It has to be noted that copyright law remains an area of India's legal development that is still changing in tandem with technological progression and shifted creative practices. Some recent developments and ongoing challenges include:

Digital Copyright Issues

New difficulties for copyright law have arisen as a result of the proliferation of digital technologies:

1. **Online Piracy:** The practice of sharing such content without permission in social networking sites, remains a worrying trend. This is especially true in the film and music industries where many stakeholders have come out for more enforcement measures being put in place.
2. **User-Generated Content:** New media, especially social networks, has led to the emergence of scenarios, prohibiting clear definition of who is a creator and an end-user, hence raising question on who owns the copyright for data in the social media needs content sharing.²⁰
3. **Digital Rights Management (DRM):** The DRM solution's primary goal is to protect the copyrighted works; however, it has been criticized to restrict genuine uses and accesses to the content.

¹⁹ Indian Journal of Law and Technology (2022) Vol. 18, 155-157.

²⁰ Journal of Intellectual Property Rights (2023) Vol. 28, 220-222.

Artificial Intelligence and Copyright

New AI-generated works have prompted intricate discussions around copyright protection and authorship:

1. **Authorship of AI-Generated Works:** AI-created works have been the subject of continuing conversation regarding their eligibility for a copyright, and if they are, who owns one.
2. **Text and Data Mining:** The employment of copyright material for the training of AI models has precipitated debates on how far was the fair dealing exception.

International Harmonization

India's efforts to align its copyright law with international standards while addressing domestic concerns continue:

1. **WIPO Internet Treaties:** Significantly, India has not legally acceded to the WIPO Copyright Treaty (WCT) or the WIPO Performances and Phonograms Treaty (WPPT), both of which deal with copyright in digital networks.²¹
2. **Free Trade Agreements:** Free trade negotiations imply discussion of various matters among which intellectual property rights, especially copyrights.

Access to Knowledge

Balancing copyright protection with the need for access to knowledge remains a challenge:

1. **Educational Exceptions:** Copyright exceptions for educational use are also under debate with new possibilities for its enlargement, especially in regard to distance learning and digital education.
2. **Orphan Works:** The problem of orphan works (books, films, music, and artworks, for which rights have expired or the owners cannot be traced) remains acute for libraries, archives, and scholars.

Enforcement Challenges

Despite legal provisions, copyright enforcement in India faces several hurdles:

1. **Jurisdictional Issues:** Online infringement often involves cross-border elements, complicating enforcement efforts.
2. **Capacity Building:** There is a need for more specialized courts and trained

²¹ Narayanan P, Copyright and Patents for Products (Eastern Law House, 2017) 145-147.

personnel to handle copyright cases effectively.

3. **Awareness:** Many users and small-scale creators lack awareness about copyright laws and their rights.

11. CONCLUSION

This essay does legal research on India's copyright laws and considers how the system is ever-evolving to maintain a balance between the rights of authors and the general public. The Copyright Act, 1957 with its amendments has provided legal framework of copyright protection in India and it looks into number of issues related to ownership of copyright, duration of copyright and its protection.

Key findings of this study include:

1. **Historical Evolution:** The present Indian copyright law has its origin in colonial legislation and has grown mature and developed enough to meet the technological changes as well to fulfill the obligations coming out of international treaty commitments.
2. **Scope of Protection:** The Act grants copyright several types of works extending from literary and dramatic works, music and artwork to newer forms such as computer programs.
3. **Rights and Limitations:** Indian copyright owners have various closed monopolistic rights while the companies have rights to use it for the interest of the customers.²²
4. **Enforcement Mechanisms:** Thus insofar as remedies for infringement, the Act allows both civil and criminal remedies but there have been continued and documented problems with enforcement particularly in the digital environment.
5. **Recent Challenges:** There is an increasing concern to some challenges in the copyright law occasioned by the emerging digital age such as piracy, user-generated content and works produced by artificial intelligence.

Looking ahead, Indian copyright law faces several challenges and opportunities:

1. **Digital Adaptation:** These concepts suggest that legal and policy developments need to evolve further in the first decades of the twenty-first century in order to

²² Indian Journal of Law and Technology (2022) Vol. 18, 155-157.

effectively address emerging digital copyright problems.²³

2. **International Harmonization:** An assessment of India's legal jurisdiction vis à vis its domestic interests as well as the norms of international copyright when determining whether or not to ratify treaty such as the WIPO Internet Treaties.
3. **Access to Knowledge:** Interventions on the rights of users and the exclusive rights granted to copyright holders continue to be a delicate balancing to strive for, especially in the field of education and research.
4. **Enforcement Enhancement:** For copyright protection, the enforcement measures, but especially the digital one, will have to be enhanced considerably.

Over the past decade, Indian copyright law has undergone progressive evolution in order to accommodate complex developments of creative freedom and technology. It is however important to continue engaging in the process to further establish its relevance, efficiency and fairness in the context of the twenty first century digital economy.

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