



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2021 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

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Copyright Laws in content with Right to Education in India

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Received 27 August 2021; Accepted 24 September 2021; Published 27 September 2021

Copyright laws were initially brought by Europeans to promote research and analytics in the society which can help humankind in the future moreover to protect the rights of a creator, author from stealing their works. This law after the advent of Europeans during the 1600s in India was introduced, post-independence there was unanimity amongst the lawmakers of the country that budding India needs it, however, in recent times many incidents have revealed that the law is not able to protect and give relief to the author of literary works as of “doctrine of fair dealing” this article tries to analyze the provisions of copyright laws and is it hampering the rights of an author or is a necessity for a poverty-ridden country like India.

Keywords: *copyright, education, India.*

INTRODUCTION

Copyright from general meaning can be understood as rights of artistic creators for the originality of their content be it digital, literary, visual, or in any other artistic form. Copyright is originally a European invention wherein it tries to protect the works of an individual from any kind of infringement to boost creation and inventions, the basic argument for copyright stands at “if any work of the individual is not protected then what will be the incentive to produce a work”. Thus copyright is a form of intellectual property protection guaranteed

under the statute to content creators. Copyright protection boils down to the fact that it protects the expression of ideas which may be in form of writing, visuals, digital, etc. form.

COPYRIGHT LAWS WITH RESPECT TO LITERARY WORKS IN INDIA

In India Copyrights Act 1957 provides the right of owners to protect preserve and have full ownership with regard to their content produced. By the virtue of Copyright Act 1957 Section 2 in specific deals with certain definitions which need to be understood as to what contends to be an author of any material produced or what are the rights of the author. The relevant sections of the Copyright Act are as follows:

Definitions -

Section 2(D) enumerates as to what connotes an “author” the section specifically lays down that “author” means, –

- (i) *“in relation to a literary or dramatic work, the author of the work;*
- (ii) *in relation to a musical work, the composer;*
- (iii) *in relation to an artistic work other than a photograph, the artist;*
- (iv) *in relation to a photograph, the person taking the photograph;*
- (v) *2 [(v) in relation to a cinematograph film or sound recording, the producer;*
- (vi) *in relation to any literary, dramatic, musical, or artistic work which is computer-generated, the person who causes the work to be created”¹*

Thus Section 2(d)(i) states that an author can be a person who is in relation with the literary work which includes any literary work be it a book, publishing of papers, research works is an author. Further **Section 13(a)** defines as to works in which copyright shall subsist Section 13(a) specifically says Copyright shall subsist in “any original Literary, dramatic, artistic works” thus any original work that is an organic and expression of own ideas produced will be deemed to underpin in the Copyright by virtue of Section 13(a). Moving ahead in the Act section 14 lays down what defines copyright i.e., “an exclusive right of the producer of such

¹ Copyrights Act 1957

expression of an idea” Thus any original literary work will underpin the exclusive copyright of the author of such literary work.

PROTECTION OF LITERARY WORKS OF AN AUTHOR

It provides copyright protection in the following two forms:

Economic Rights of an Author: Section 14 of the Act enumerates the fact that every author shall have a vested right as to reproduce their work in any material form which further extends to the inclusion of storing of the work in any medium by electronic means² conclusively it gives the right to the author to have their work reproduced.

Moral Rights of an Author: Section 57 of the act provides for “Authors special Rights” i.e., it magnifies that the author has a special right “to claim the authorship of the work” and the author has vested right to “restrain, claim damages in respect to any distortion, mutilation, or other act in relation to said work if such distortion is prejudicial to his honour or reputation”

Thus Indian legislation aptly protects the author from any damages to his work however in recent times due to the precarious situation of economy and education in India many works of the authors are being reproduced by students and researchers under the pretext of “Fair Dealing Doctrine” on which Departmental Standing Committee On Review of Copyright Law in India has suggested some remarks.

FAIR DEALING DOCTRINE

Section 52 puts into safe place certain acts which are not to be constituted an infringement of copyright under which Section 52(1) specifically deals with what shall not constitute an infringement of copyright of literary work, it includes:

- (i) “private of personal use, including research”

² Copyrights Act 1957, s 14 (i)

Illustration- for instance, any student if uses a literary work to be an author for the research paper under the curriculum of their course will not be liable under infringement of copyright of the author of such literary work.

(ii) “criticism or review, whether of that work or any other work”;

Illustration-any work being used by a person to review it present their views on it will not come under the purview of copyright of such work.

(iii) The reporting of current events and current affairs, including the reporting of a lecture delivered in public.

Illustration - Many times speeches delivered by eminent personalities are reported and being reviewed or criticized such reporting does not intertwine with the copyright of the author.

Thus, even though an individual has copyright in India the work could be used in “Fair dealing” however it depends on different facts and circumstances of the use of such work, and in India, the Court applies basic common sense so that they can determine as to what can be considered as Fair Dealing on the case- to- case basis, for instance, the Doctrine of "Fair dealing" was challenged in Delhi Photocopy Case i.e., *The Chancellor, Masters & Scholars of the University of Oxford & Ors vs Rameshwari Photocopy Services & Anr*³, wherein the court adopted a wider interpretation in understanding the educational exception enumerated in the list of fair dealing provisions in the Copyright Act. It noted that Section 52(1)(i) allows the reproduction of any work by a teacher or a pupil in the course of instruction further the court held that ‘course of instruction’ mentioned in the section is not confined to the time and place of instruction & would include anything that could be justified for the purpose of instruction. This includes steps initiation at a time prior to lecturing and continuing till after it. It was also noted that apart from Section 52(1)(a), which provides for the right to a “fair dealing” of any copyrightable work, other rights/purposes enumerated under Section 52 would not have to meet the explicit requirement of fair dealing. Thus, Section 52(1)(i) was recognised as enumerating an acquiescence purpose exempt from infringement. The fairness of use under

³ *The Chancellor, Masters & Scholars of the University of Oxford & Ors v Rameshwari Photocopy Services & Anr* CS(OS) 2439/2012

these Sections can be considered to be presumed by the legislature as long as it is justified by the purpose enumerated. Along with this, the court also noted that there are no quantitative restrictions on the extent of the reproduction permitted as long as it is justified by a specific purpose under Section 5.

COPYRIGHT OF AN AUTHOR VS RIGHT TO EDUCATION

Although Right to Education was a revolutionary amendment brought by Parliament after the case of *Mohini Jain vs the State of Kerala*⁴ wherein the Apex court clearly contented that it is the duty of guardian and state to ensure free and compulsory education to all however it is connoted with compulsory education of children within 6-14 years of age limit but the recent adjudication by Supreme court of India in *Farzana Batool vs Union of India*⁵ the court interpreted the right to education in a broad way and relied upon the view that, while access to professional education is not a fundamental right, the state must take affirmative measures to secure the right to education at all levels being it elementary level or higher education level. Moreover Right to Education is a well recognized universal right Education as a fundamental human right finds its place at the core of UNESCO's mission and is enshrined in the Universal Declaration of Human Rights (1948) and many other international human rights instruments.⁶

“The right to education is one of the significant principles stimulating the Education 2030 Agenda and Sustainable Development Goal 4 (SDG4) adopted by the international community. SDG 4 is rights-based and seeks to ensure the full enjoyment of the right to education as fundamental to achieving sustainable development. Education in itself is an empowering right and one of the most powerful tools by which economically and socially marginalized children and adults can develop themselves and drive out poverty and participate fully in the development of the nation as a whole.” Moreover, as the state of education in India is underdeveloped, 66% of students in overall India are studying in the private universities which charge exorbitant fees after which students are left with little or no

⁴ *Miss Mohini Jain v State of Karnataka and Ors* 1992 AIR 1858, 1992 SCR (3) 658

⁵ *Farzana Batool v Union of India and Others* CWP No 364 of 2021

⁶ 'Right to Education - Legal Action' (UNESCO) <<https://en.unesco.org/themes/right-to-education/legal-action>> accessed 12 August 2021

money in their hands' provisions like "Fair dealing" proves to be boon for them as from such materials they can gain relevant knowledge and develop their own conscience moreover if we consider the side of author they also can gain significantly in the development of a nation as whole as through "Fair dealing" new ideas emerges on which they can work and gain royalties. Moreover, if we see education targets of India under SDG 4 it extends to

- *"By 2030, ensure that all girls and boys complete free, equitable, and quality primary and secondary education leading to relevant and Goal-4 effective learning outcomes.*
- *By 2030, ensure that all girls and boys have access to quality early childhood development, care, and pre-primary education so that they are ready for primary education.*
- *By 2030, ensure equal access for all women and men to affordable and quality technical, vocational and tertiary education, including university.*
- *By 2030, substantially increase the number of youth and adults who have relevant skills, including technical and vocational skills, for employment, decent jobs, and entrepreneurship."*⁷

It includes increasing the capacity of Indian youth to a relevant skill set which is required to sustain in today's world with emerging technologies and the advent of Industrial revolution 4 makes it more significant. If we go by facts and figures it suggests that India has in Patents and Publications score of 0.7% which is categorized in the poor moreover the articles which are being sent for Patent and Publications are not much impactful as they have a citation of only 1% overall it means India lags way behind developing countries in terms of research and development of Literary works. Moreover under Directive Principles of State Policy under Part IV of the constitution along with Fundamental Duties Under Article 51A state is obliged to make laws in order to increase the rationale and scientific temper of the citizens of India. Thus in order to survive in such a competitive world, India overall needs to embrace itself towards research which without relevant provisions such as "Fair dealing" makes almost impossible to achieve, moreover India is not the only country to have such doctrine to increase

⁷ United Nations, 'Quality Education in India | Women, Girl Child Education in India | SDG 4 - UN India' (*One United Nations*) <<https://in.one.un.org/page/sustainable-development-goals/quality-education-in-india-sdg-4/>> accessed 12 August 2021

literary research and works. For instance, U.S has such laws under the pretext of FAIR DEALING laws and the U.K has under the pretext of “Fair Dealing” consequently it must be noted that the doctrine of “fair dealing” does not hampers or infringes the right of an author but in realistic terms, it actually increases the citations of such work and overall development of a nation.

CONCLUSION

Although “Fair use” in some terms comes in conflict with the rights of content creator however in a state like India it must be noted that every coin has two faces if on one side it is hampering on the right of the content creator another side it is contributing in the overall development of a nation. Moreover, as India is moving towards “Atma-Nirbhar Bharat” wherein the nation is trying to develop itself with the full capacity it needs professional education but the precarious situation of India in terms of education might hamper such vision thus it must be noted that such laws which try to strike balance between rights of the content creator as held in abovesaid judgments and right to education as enumerated in Fundamental rights, directive principles of State Policy, Fundamental Duties must be protected and the big picture of overall development of nation should be visioned.