

# Subject Matter of Copyright Under Indian Copyright Act, A Study on Judicial Documents in India

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## ABSTRACT

This study delves into the intricate fabric of copyright law in India, exploring the legal nuances and evolving jurisprudence surrounding intellectual property rights. Focused on the Indian Copyright Act, the research scrutinizes landmark and latest judicial decisions to unravel the complexities and trends shaping the realm of copyright protection.

The analysis begins with an overview of the foundational principles enshrined in the Indian Copyright Act, providing a comprehensive understanding of the statutory framework. Subsequently, the study examines key judicial pronouncements that have significantly influenced the interpretation and application of copyright law in India. These decisions span various facets, including the scope of protection, infringement, fair use, and the interplay between copyright and emerging technologies.

The research sheds light on the evolving nature of copyright law, as courts grapple with the challenges posed by advancements in digital technology and the internet. Noteworthy cases involving the digital exploitation of copyrighted works, peer-to-peer sharing, and online platforms are scrutinized to illustrate the judiciary's responses to the evolving landscape of creative expression.

Moreover, the study explores the delicate balance between protecting the rights of creators and fostering innovation and public access to knowledge. Landmark decisions on fair dealing, transformative use, and the public domain are examined to discern how Indian courts navigate these complex considerations.

**KEYWORDS:** Subject matter of copyright, literary work, cinematographic work, dramatic work, musical work, sound recording

## INTRODUCTION

Intellectual property rights are statutory rights. The rights are granted to the creator of an intellectual property. The intellectual property rights granted are different for different intellectual properties. For an invention the right granted is a “patent”, For a cinematographic film the right issued is a “copyright” and there are other intellectual property rights like “Trademark”, “Trade secret” etc. Not every intellectual creation deserves a statutory protection. Only to those items which are specifically identified and recognised by the law as the subject matter of protection. “Subject Matter” can be defined as the “property” that qualifies for protection under the statute. The note discusses the subject matter of copyright. Subject Matter is the first criteria to check whether a work is eligible for copyright protection or not. If the work is excluded from the subject matter, then it fails to attain copyright even though the work musters the minimum requirement stipulated by law, like originality.

Copyright is granted for an original work that is recognised in the law. Originality is a requirement for the grant of rights. The right granted vest with the author of the created work. So, there is a requirement to understand what constitutes a work. If there is ten pages in a book, does copyright subsist on all ten pages individually or the copyright subsist only in the book as a whole. In the book '*Copinger and Skone James on Copyright*' the author tries to give an idea on 'work':

"A "work" is a thing which satisfies the statutory description of a literary, dramatic, etc., work. At the end of the particular process of creation, one must look at what has been created and assess whether it is a literary, etc. work and then whether it is an original work. The creation of a work may of course extend over a period of time, and be the subject to revisions. At each interval in the process of creation there is likely to have been created a new copyright work, even though as yet incomplete in the mind of the author. Assuming this is so, it is, however, generally not appropriate to say of the final product of creation that it is composed of a number of separate works, each corresponding to a stage in the creative process. It is a single work".<sup>1</sup>

Here it can be observed that copyright subsist in work as a whole. Even though at each interval a new "work" is generated but the end product cannot be called as a composition of separate works. The copyright is granted for work as a whole.

### **Subject matter of copyright in India**

Section 13 of the Indian copyright act, 1957 mentions the works in which copyright subsist:

"Section 13 -Works in which copyright subsists— 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) [sound recording]."<sup>2</sup>

The following are the subject matter for copyright protection under the act. Section 13(a) of the act contains the word 'original' in it, originality is a requirement for copyright protection. There is no statutory definition for a 'originality' but there are court's interpretations and different tests for a work to be called 'original'. So, every original literary, dramatic, musical and artistic work qualifies for copyright protection. Section 13(b) and 13(c) mentions about cinematographic films and sound recordings. The word 'original' is not used, this may be because the works mentioned in section 13(b) and (c) are compilations of the work in section 13(a). Thus, the works mentioned 13(b) and 13(c) naturally become an 'original' work.

The Copyright Act, 1957 completely replicates the Berne Convention for Protection of Literary and Artistic Works, 1886 and the Universal Copyrights Convention after the amendments in 1999, 2002 and 2012 (India is a party to both the conventions).

India has signed the Geneva Convention for the Protection of Rights of Producers of Phonograms and is an active member of the World Intellectual Property Organization (WIPO) and United Nations Educational, Scientific and Cultural Organization (UNESCO).

Thus the copyright act specifies that a copyright shall subsist throughout India in case of original literary, dramatic, musical or artistic works, cinematographic films, sound recording, provided the work is first published in India, or the author is a citizen of India if published outside India, or if it is an unpublished

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<sup>1</sup>*Copinger and Skone James on Copyright*

<sup>2</sup> Section 13, Indian copyright act, 1957

work then on date of making of the work is a citizen of India or domiciled in India and in case of an architectural work, it is located in India subject to provisions of section 40 and 41 of the act.

### **What is originality**

The Indian Copyright Act seeks to protect 'original' literary, dramatic, musical and artistic works. The question that arises here is- what is meant by originality?

The word 'original' does not mean that the work must be the expression of original and inventive thought. Originality with respect to the expression of the thought does not require novelty of the expression. The Act only requires that the work should not be copied from another work. This means that the work should originate solely from the author. Therefore, it can be said:

1. It must be expressed
2. That expression must be new
3. That expression must not be copied from another

Though this seems difficult to comprehend, several judicial decisions have laid down the parameters of what would be deemed to be original, especially with regard to literary works.

So while discussing the subject matter of copyright under Indian law, we can go through the wordings of section 13 of the copyright act.

### **Literary works**

Literary works are protected from the beginning of the concept of the copyright, in Berne Convention (1886) it is mentioned,

*“Every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression, such as books, pamphlets and other writings; lectures, addresses, sermons and other works of same nature”.*<sup>3</sup>

What Constitutes a Literary Work? Literary works encompass a broad spectrum, including but not limited to:

- Novels, short stories, and poems
- Plays and scripts
- Articles, essays, and journalistic pieces
- Technical manuals, textbooks, and reference works
- Databases and compilations
- Emails and letters

What Constitutes a Literary Work in India? Under the Indian Copyright Act, a literary work includes not only written novels, poems, and plays but also tables, compilations, and computer programs.

- Essentially, any work which is written, irrespective of its quality or literary merit, can be considered a literary work.

Section 2(o) of the Indian copyright act, 1957 defines “literary works”, the definition does not provide clarity on what is a literary work but gives an idea of what all comes under it.

“Section 2(o)- “Literary works” includes computer programs, tables and compilation including computer databases.”<sup>4</sup>

Under the Indian act, a literary work includes computer programs, tables and compilation. The word “literary” sometimes create confusion as it is equated with literature but the word ‘literary’ only amounts

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<sup>3</sup> berne

<sup>4</sup> Section 2(o), Indian copyright act, 1957

to the work that are written, spoken or sung, there is no requirement for a work to have quality as demanded in linguistic literature to be qualified for copyright protection and this is evident in the case *Agarwala Publishing House vs Board of High School And intermediate education*.<sup>5</sup>

#### **Agarwala Publishing House vs Board of High School And intermediate education<sup>6</sup>**

In the case, a firm of publishers challenged an amendment by the Regulations of the Board of High School and Intermediate Examination, U. P. In the order it was declared that the copyright of the question papers set at examinations conducted by the Board shall vest in the Board and forbidding the publication of such question papers without the Board's permission. The petitioners made an argument that 'No copyright can be claimed in question papers set for examinations because they are not "original literary, dramatic, musical or artistic works", and therefore do not come within the purview of Section 13 of the Indian Copyright Act, 1957.' The argument by the publishers was heard by the court and the court formulated the judgment.

The court after hearing the argument opined that:

*"The 'literary works' referred to in Section 13 of the Indian Copyright Act 1957, are not confined to works of literature in the commonly understood sense, but must be taken to include all works expressed in writing, whether they have any literary merit or not."*

The judgement of the court give light on what amounts to be 'literary works',. The court to support the decision quoted the UK case, *University of London Press Ltd. v. University Tutorial Press Ltd.*<sup>7</sup>

*"In University of London Press Ltd. v. University Tutorial Press Ltd., it was held that question papers set for examinations were 'literary works' because they were "work which is expressed in print or writing, irrespective of the question whether the quality or style is high."*

The meaning of 'literary work' was clearly understood from the judgment and the court rejected the argument by the petitioners that question papers doesn't constitute as 'original literary, dramatic, musical or artistic work'. For a work to be qualified for 'copyright' protection the requirement is minimum amount of 'originality' and that amount is clearly identified in the case.

#### **Eastern Book Company & Ors. v. D. B. Modak and Anr<sup>8</sup>.**

Facts:

The Petitioners, Eastern Book Company, a partnership firm, and EBC Publishing Private Limited were engaged in the business of printing and publishing various legal books together. One such publication was titled 'Supreme Court Cases' or SCC. This publication has existed since 1969 and consisted of all non-reportable, reportable and short judgements, orders, records of proceedings and directions of the Supreme Court. They published copy-edited versions of these judgments along with certain additions such as formatting, numbering, cross-referring, and other contributions that rendered it user-friendly. It also incorporated headnotes, footnotes, and long notes.

In 2004, the Respondents, Spectrum Business Support Limited, (also called Respondent-1) and Regent Datatech Private Limited (Respondent-2) put out a software titled 'Grand Jurix' and 'The Laws' respectively. These companies were alleged to have copied the entire module from SCC onto CD-ROMs, thereby infringing the appellants' IP rights.

Issues:

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<sup>5</sup> AIR 1967 All 91.

<sup>6</sup> AIR 1967 All 91.

<sup>7</sup> [1916] 2 Ch. 601

<sup>8</sup> Civil Appeal No. 6472 of 2004

Whether the Petitioners' work is eligible for protection under Copyright Law?

Whether the Defendants infringed the Petitioners' copyrights?

Whether individual elements added by the Petitioners suffice to receive copyright protection over the entire work?

Laws:

Section 13, 14 and 52 (1) (iv) (q) of the Indian Copyright Act, 1957.

Analysis:

The Petitioners contended that they have copyright in their version of the judgements compiled in SCC, which is a product of their skills, ability, labour and capital. They did not intend to claim monopoly over the judgement, but the specific format in which they publish them. The Petitioners further claimed that their work was infringed by the Respondents because all the modules contained in the CD-ROM were similar to their work and they had replicated the Petitioners' way of publishing the legal reports with the exact arrangements, sequences, and choices of cases. It was further alleged that the Respondents copied the entire judgement as put forth in the Petitioners' law report with the same formatting, paragraph numbers, copy-editing and footnotes.

The Respondents, however, presented that the Petitioners' product is not eligible for protection under copyright law as it is merely a derivative work of Supreme Court's judgments. Since it does not portray independent creation, it is not an original work. It was argued that the additions made by the Petitioners were not sufficient enough to render it protection under the Copyright Act. Further, they applied the merger doctrine and stated that the idea intended to be expressed by the Petitioners and the form in which they express the idea are inseparable, therefore leaving no room for a possible alternative expression.

The Court held that for a derivative work to receive copyright protection, it must be demonstrated that the derivative work is more than just a copy of the original. It must contain the author's independent skill apart from capital and labor. The court wanted to identify whether the petitioner's work was original. For doing so, they determined that the modicum of creativity was too high of a standard whereas sweat of the brow test was too low of a standard. Hence, they decided to apply the Canadian test of "skill and judgement". According to the court, skill meant those which are not trivial and are substantial and judgement meant the use of resources that went beyond the mere expenditure of labour and capital. The Respondents were ordered to refrain from copying the paragraphs made by the Petitioners for internal referencing and to stop using the Petitioners' views on dissent and concurring opinions of the cases. The final judgement was in favour of the Petitioners, giving them an exclusive right over their content, prohibiting the utilisation of the same.

**“Program’s structure includes its non-literal components such as general flow charts as well as the more specific organization of inter-modular relationships, parameter lists, and macros.”**

“The logic that follows from the foregoing premises is, if the non-literal structures of literary works are protected by copyright; and if computer programs are literary works, as we are told by the legislature; then the non-literal structures of computer programs are protected by copyright.”

So, in the case of computer program not only the literal matters are protected but the non-literal matters too are also protected. The reason why the non-literal elements are protected because the non-literal parts of the computer program are integral part of the work and the outcome depends on it too. Thus, from the light of the above case the subject matter for copyright protection in case of computer program can be identified



**BIKRAMJEET SING BHULLUR V. YASH RAJ FILM PVT, LTD<sup>9</sup>**

Para 32 – the word literary work cover work which is expressed in print or writing irrespective of the question whether the quality or style is high.

This was mentioned in UNIVERSITY OF LONDON PRESS LTD. V. UNIVERSITY TUTORIAL PRESS LTD.

In **M.Viyan Aarman v Eteceetra entertainment<sup>10</sup>** the court held that the appellant cannot claim copyright over the title as it is not a literary work. The court in this case refer to **Krishika lulla and others v. shyam vithalrao devkatta and anr<sup>11</sup>** and in that case the court point out that the title of a literary work being insufficient by itself cannot be considered as a work and is only used to refer to the literary to the literary work that follows. The court acknowledging the purpose for protection a literary work, stated that the protection cannot possibly be given to merely a single word, but some words that collectively form a literary work. Example A volume of a magazine or a part of such volume, which is then communicated to the public, from which the public derive some benefits and the author is rearded in return by way of copyright protection.

**Godfrey Phillips India Ltd. vs Dharampal Satyapal Ltd. & Anr.<sup>12</sup>**

In this case the question is whether the slogans and/or phrases are copyrightable or not

The court is in the view that the slogan "Shauq Badi Cheez Hai", being combination of common words, would not fall within the scope of "Artistic/litrary work" under the Act. Slogan "Shauq Badi Cheez Hai" does not appear to be an outcome of great skill, inasmuch as, it uses the short stereo type combination of words. In fact, both the slogans, that is, "Shauq Badi Cheez Hai" as well as "Swad Badi Cheez Hai" are commonly spoken in Hindi language in day to day life. That apart, **the slogans, are not copyrightable.**

**ZEE TELEFILM V. SUNDAIL COMMUNICATION<sup>13</sup>**

In this case A had prepared concept notes for the purpose of television film which consist of characters, plots, notes and sketches etc. in this case whether those concept note is considered as literary work.

So in this case the court held that the concept not is considered as a literary work under the copyright act.

**T N Raghunathan v. All India reporter Ltd<sup>14</sup>**

Here the issue is whether the headnote in law reports have posed problems in India as elsewhere; but Indian courts have held them to be copyrightable, even though in many cases the substance of the headnotes does no more than verbatim reproduce certain passages from the texts of judicial decisions. thus the court considered headnote as a literary work.

*For a literary work to be protected under the Copyright law, it must qualify certain necessary requirements which are discussed below:*

**1) Originality:** Originality is the necessary condition of copyright. A work that merely reflects an “age-old practise, firmly rooted in tradition and so commonplace that it has come to be expected as a matter of course” is not remotely creative. Folklores are also exempted in this sense. Exercise of efforts on the part of the author should not be trivial in nature and thus should not be a mere exercise of the mechanical

<sup>9</sup> (20TH OCTOBER 2023)

<sup>10</sup> 10<sup>th</sup> October 2023

<sup>11</sup> On 15<sup>th</sup> October 2015 supreme court decision

<sup>12</sup> on 2 July, 2012

<sup>13</sup> 2003 (5) BomCR 404, 2003 (3) MhLj 695, 2003 (27) PTC 457 Bom (BOMBAY HIGH COURT)

<sup>14</sup> 1957 AIR 1613 1979 SCR (1) 218 1978 SCC (4) 118

function of copying the work of another. The variation must be substantial in nature than merely trivial. A literary work is entitled to copyright protection, if it is an “original literary” work. The word original does not demand original or inventive thought, but only that the work should not be copied but 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 practised 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”.

The Indian copyright law mandates that not every effort or industry, or expending of skill, results in copyrightable work, but only those, which create works that are somewhat different in character, involve some intellectual effort, and involve a minimum degree of creativity. The authorship involved in the creation of work should be a result of substantial or distinguishable variation and not a result of the trivial variation. The Copyright Office will examine the work for determining whether it satisfies the originality requirement and this should not be interpreted in a manner that the work should be novel, distinctive, innovative or unique. Each case would be scrutinized on its individual merits to establish originality as per the current approach.

2) **Copyrightable Authorship and Subject Matter:** For a work to qualify as a copyrightable subject matter under literary class, it must have de minimis literary expression in the form of text, notes or symbols. It can be expressed in the form of a book, novel, magazine, etc. Copyright office examines the work to determine whether it constitutes copyrightable subject matter and examine the information provided in the application and also the work enclosed with the application, to ascertain whether the work qualifies as literary work.

3) **Publication:** A Literary Work (except in the case of Foreign Literary Works) to qualify for copyright protection the work in India, apart from the requisites discussed above, should also have to qualify the following conditions:

- a) The work is first published in India.
- b) Where the work is first published outside India, the author is at the date of such publication must be a citizen of India.
- c) Where the work is first published outside India and the author was dead at the date of such publication, the author at the time of his death must be a citizen of India.
- d) In the case of an unpublished work, the author is at the date of making of the work a citizen of India or domiciled in India.

Acquisition of copyright of a literary work is automatic and it does not require any formality.

### 1.. Gleeson v deene

Facts: “X” works hard enough walking down the streets, taking down the names of the people who live at houses and makes a street directory as a result of that labour.

Issue: whether X was entitled to copyright of the street directory what he made?

Held: yes, as it's a result of his hard work X is entitled for copyright

### 2. University of London v. University of Tutorial press

The examination question paper is set by a here whether ‘A’ is entitled to copyright?

And in this case the court held that since A invest labour and skill in preparing the examination question paper and the copyright would vest in him.

The Act includes compilations as a form of literary work. Therefore, arrangement of broadcasting programmes, a telephone directory, a list of registered bills of sale, deeds of arrangement extracted from

official sources, biographical notes of prominent golfers published in a golf manual, a manual of the classified information for the use of motor car insurers, football coupons and a chemist's catalogue of drugs for sale are all copyrightable subject matter.

New editions of books: Where a copyright work is edited, there may be two copyrights existing simultaneously. The copyright in the original text vests in the original author and the copyright in the additions and re-arrangements of the text, vests in the person who makes the new edition.

Law reports and judicial decisions: A law reporter may have a copyright in his/her work, if such report qualifies as being an original work. However, the copyright in the judgments delivered by the courts vests in the government.

According to Section 2(n) lectures would include addresses, speeches and sermons. copyright can subsist in a lecture only if it is in a written form. Previously extempore speeches were not copyrightable subject matter, however since the Copyright Amendment Act 1994, a person delivering a lecture is defined as a 'performer' under Section 2 (qq) of the Indian Copyright Act, 1957. Letters qualify as the kind of literature which is protected by copyright law, wherein copyright in the letters vests in the writer and not to the addressee. Titles, names, short phrases, and slogans are not considered literary work, therefore no copyright subsists in such. Essentially such phrases or words are part of the public domain and if they were copyrighted then the owner of such copyright would enjoy a limited monopoly right over them thereby excluding or controlling the public from using such phrases or words during the term of the copyright. Copyright law does not aim at holding the public ransom for what is essentially in the public domain.

Copyright of literary work can be in form of

1. Adaptation
2. Abridgement
3. Translation

Related case laws-

**Macmillan and Co vs. K.J Cooper** – in this case plaintiff book consisted of selected passages by Plutarch's life of Alexander the great, joined together by few words to give a different appearance. The book also contained introduction and notes useful for education. A similar book was published by defendants with notes. The original work contained 40000 words while the defendants had copied 20,000 words and 7000 words in notes. In such a case the issue arises is whether the defendants work infringed the copyright in the plaintiff's work and the court held that defendants work infringed the copyright.

**Blackwood vs. Parasurama** – it was held that translation in any literary work is entitled to copyright protection if sufficient skill and labour has been invested in it.

### Copyright on Lecture

A lecture includes address, speech and sermon. Delivery in relation to a lecture includes delivery by means of any mechanical instrument or by broadcast. Copyright will subsist in a lecture only if it is reduced to writing before it was delivered. A lecture delivered extempore which has not been reduced to writing can be protected only by an action for breach of confidence or by showing that the lecture was delivered under an express or implied contract that those admitted to listen to the lecture should not publish it.

### *The Copyright (Amendment) Act 1994, s. 38*

Section 38, has conferred on performers certain special rights called 'Performer's Rights'.

A person who delivers a lecture is a performer under s. 2(qq) and is therefore entitled to the performer's rights conferred under s. 38 of the Act



### **Copyright on Letters**

Copyright subsists in private letters, commercial letters, and Government letters as they are original literary works.

- The author of the letter is the owner of copyright in the case of private letters.
- In the case of commercial or Government letters written by employees in the course of employment the copyright in the letter belongs to the employer.
- Where a person sends a letter to a newspaper the newspaper gets an implied licence to publish it and also a right to edit or alter it so long as it does not affect the literary reputation of the writer.

Letters addressed by one person to another are original literary works entitled to copyright.

When a letter is sent by one person to another the latter becomes the owner of the letter but not that of the copyright therein which belongs to the writer. Thus the recipient of a letter has no right to reproduce the letter without the consent of the writer.

When a letter is dictated to a stenographer or typist the copyright in the letter belongs to the person who has dictated the letter.

Although a recipient of a letter is not entitled to publish the letter, when the letter casts aspersions on his reputation he may publish it to refute the allegations.

The recipient may also communicate the information to others where they are not private or confidential. It may, therefore, be said that the law of copyright is not only the concern of authors and creative artists, but also that of the man in the street.

### **New edition of Existing Historical Book**

New edition of an existing work is made by making additions, alterations and deletions. If the changes made are material which has made the new edition original when taken as a whole, it will be protected as a new work, whether changes made from a substantial part of the work or not. If the existing edition is still under copyright protection and the alterations constitute original work there may be two copyrights subsisting in the new editions, one relating to the old and the other in the new alterations made.

### **Copyright on Historical Books and Historical Facts**

Historical works Historical facts are not copyrightable per se. A book on history is designed to convey information to the readers. There is no copyright in this information as such. But the manner in which it is presented makes it an original literary work.

Any person is free to read it and acquire from it such information as he could. A book of history may not only contain bare facts but also inferences drawn by the author's own efforts on the facts narrated and their relationship.

A historical work is not to be judged by precisely the same standards as a work of fiction. The purpose of novel is usually to interest the reader and to contribute to his enjoyment of his leisure.

Whereas historical work may properly be assumed by his readers to have another purpose as well, namely to add to the knowledge possessed by the reader and perhaps in the process to increase the sum total of human experience and understanding.

The author of a historical work must have attributed to him an intention that the information thereby imparted may be used by the reader, because knowledge would become sterile if it could not be applied. Therefore, it is reasonable to suppose that the law of copyright will allow a wider use to be made of a historical work than of a novel so that knowledge can be built upon knowledge.

### **Dramatic works**

Section 2(h) of the Indian copyright act defines Dramatic works,

“Section 2(h) - “dramatic work” includes any piece for recitation, choreographic work or entertainment in dumb show, the scenic arrangement or acting, form of which is fixed in writing or otherwise but does not include a cinematograph film .”

The word ‘fixed’ can be seen in the definition which means that the work should have fixation only then the ‘copyright’ can be granted. It can also be seen as that the work should either ‘fixed in writing’ or ‘otherwise’. The word ‘fixed’ only applies to writing. Both interpretation can be applied.

A “dramatic work” typically refers to a work of action, with or without words or music, which is capable of being performed before an audience.

Dramatic works refer to the portrayal or dramatic enactment of a specific plot. A drama, recitation, acting based on a book, coordinated movements, etc. may be among them

Difference between literary and dramatic work

Literary work

The term “literary works” refers to a work of fiction, technical books or papers, biography, dramatics, thesis, screenplay, research work, compilation, tables, and computer programmes, including computer databases that are original or unique creations of literature. It can be asserted regardless of the work’s style, quality, or literary merit.

Copyright protects original literary works and the expression of ideas, although the expression does not have to be original or novel.

- The work must not be copied from another work but must originate from the author.
- Two authors independently producing an identical work will be entitled to copyright in their respective works.
- The emphasis is more on the labour, skill judgment and capital expended in producing the work. It includes tables, compilations and computer programs.

### **Dramatic work**

A dramatic work is a sort of literary work as well. Any arrangement of acting a play, or a part for recitation, or choreographing work or dumb show entertainment, a visual arrangement, or acting work based on a fixed literary work is included in the Dramatic Works. Dramatic works, on the other hand, does not include any type of cinematograph films.

Original theatrical work and its adaptations are protected by copyright.

- Entertainment in a dumb movie.
- Any piece or recitation, choreographic performance in which the scenic arrangement or acting form is fixed in writing otherwise.

However, a cinematograph film is not included on this list.

Essential requisites of a dramatic work

A dramatic work is something that can be written, printed, or reduced to a permanent form, provided that it can be reduced to the point where it reveals a plot or story and suggests how it should be conveyed, such as through dialogue or action. Dramatic performance is the name given to this type of work. As a result, for any work to qualify as dramatic work, it must meet three criteria:

- (i) It must be reduced to a permanent form,
- (ii) It must disclose a plot or story, and it must be performed in front of an audience.
- (iii) It should be ready to be performed via dialogue, action, or a combination of the two.

***Fortune Films International vs Dev Anand*<sup>15</sup>**

The plaintiff is a cine artiste and the appellants are the producers of the motion picture "DARLING DARLING". An agreement was formed between the producer and the cine artiste stating that the work of the artiste in the picture on completion will belong to him absolutely and the copyright therein shall vest in you and they will not be entitled to exhibit the said picture until full payments are settled. However, upon settlement copyright shall vest in the producers automatically. Also, shall not release the said picture not exhibit or distribute or exploit or part with any prints of the said picture to any party directly or indirectly for the purpose of exhibition, distribution and exploitation in the territories specified. The agreement was violated by the producer. Dev Anand filed a case for the violation of contract and infringement of his copyright in the movie. He argued that his work in the movie comes under the definition of 'Dramatic works' and there exist a copyright for his work. The court after hearing the arguments observed that,

“It must be observed that the concluding portion of the definition of "dramatic work" in the Sub-section, which excludes a cinematograph film, would seem to clearly shut out any contention that the dramatic performance of a cine artiste which is fixed or recorded in the film negative will be "dramatic work" within the meaning of this definition and therefore protected by the Copyright Act.”

“The definition is an inclusive definition; but it would not be permissible to extend it to cover all cases where the work can be popularly described as exertions or efforts of a dramatic nature. In this connection it may be clarified that we are not concerned with the work on a stage or performance in a drama (which may be of several types) which may or may not be covered by the definition of "dramatic work”.”

The court rejected the claim of the actor on the grounds that his work is not something which comes under the definition of 'Dramatic works'. The protection of work under the definition doesn't extent to cinematographic film and there is absolute clarity in this in the act.

***Academy of genral education, manipal v. B. Malini mallya*<sup>16</sup>**

Court intention to provide protection to a dramatic performance, say stage performance of a play, whose expression, i.e. script, has been fixed in writing.

The court observed that the difference between the two rests on the fact that a literary work allows itself to be read while a dramatic work “forms the text upon which the performance of the play rests”. The court went on to say that the copyright act.1957 makes a distinction between a literary work and a dramatic work. A dance performance will not be covered under literary work but will be covered under dramatic work.

The court in *Neha Bhasin v. Anand Raj Anand*<sup>17</sup> resolved the subject of what comprises a live exhibition, holding that whether the presentation is recorded in a studio or before a group of people, both are viewed as live exhibitions in the primary occasion, and on the off chance that anybody uses such an exhibition without the entertainer's assent, the entertainer's privileges are supposed to be encroached

In *creation record v. new group newspaper*, it was held that a photograph which involves no movement or action cannot be treated as dramatic work

Copyright of dramatic work can in form of :

1.adaptation of dramatic work: adaptation work means modification of that work in some other form.

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<sup>15</sup> AIR 1979

<sup>16</sup> 2008 CASE

<sup>17</sup> 132 (2006) DLT 196, 2006 (32) PTC 779 Del

### Artistic works

The artistic works are granted copyright protection and artistic works include painting, sculpture, works of architecture etc. Section 2(o) of the copyright act defines ‘artistic works’.

“Section 2(C)- “artistic work” means,-

- (i) a painting, a sculpture, a drawing (including a diagram, map, chart or plan), an engraving or a photograph, whether or not any such work possesses artistic quality;
- (ii) a [work of architecture]; and
- (iii) any other work of artistic craftsmanship;”

So, in the first part it is mentioned that there is no requirement for artistic quality, which means the only consideration for granting copyright for an artistic work is ‘originality’. But, when it comes to the third part there mentions a requirement of ‘artistic craftsmanship’, which means that there should be some amount of skill. Both parts are contradictory to each other. To evaluate what qualifies for artistic protection the case, *Ananda Expanded Italics (Reg)*, gives light.

#### **Ananda Expanded Italics (Reg) In re, (2002)24 PTC427<sup>18</sup>**

ABP Ltd. submitted four applications in the copyright office for registration of copyright under Section 45(1) of the Copyright Act, 1957 under the category of artistic works. The works submitted for registration are reproduction of a series of fonts comprising of alphabets in Bengali language and some other symbols - Ananda Expanded Italic, Ananda Expanded Bold, Ananda Expanded with x/xx Expanded, Ananda Expanded Bold Italics- Each of these comprised of letters and characters, comprising of all the Bengali vowels and consonants, conjoined characters and commonly used symbols. It was claimed that some conjuncts discovered during the process minimized the space between letters, enhanced the reading space, reduced the reading time and aesthetic quality of Bengali print get substantially increase. Significant amount of labor and skill is claimed to have applied in developing these fonts. The originality of these fonts is claimed on their unique and angular calligraphic strokes, diagonal strokes, and angular joineries with strong calligraphic stress, which could be produced through digital process to meet the demand of modern printing technology. Initially the registrar of copyright rejected the claim in opinion that the matter under consideration doesn’t come under the ‘subject-matter’ of the copyright protection. ABP Ltd went to the court and the court directed the ‘Registrar’ to hear them. The company pointed that their ‘work’ comes under ‘works of artistic craftsmanship’.

The copyright registrar observed that:

“What is submitted for registration in each of the four applications is a printout of the design of the entire alphabets and not depiction of single alphabet as such. Even if we grant registration to the work applied for copyright, copyright may subsist only in this entire work and it does not subsist on the single alphabets.”

“Despite having a specific category of ‘a work of artistic craftsmanship’, the typographical arrangements are expressly protected. The 1988 Copyright Law introduced an express provision to protect typefaces, The term of protection of typefaces are different from artistic works and are limited to 25 years in British Law.”

“The meaning of ‘any other work of artistic craftsmanship’ gets restricted by the specific definitions given in 2 c (i) and 2 c (ii). A typeface design does not get integrated into the concept of artistic work due to restrictions of ‘Doctrine of ejusdem generis’ and English law had to intervene and define it separately.”

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<sup>18</sup> ,(2002)24 PTC427

“The basic international convention in the field of copyright is Berne Convention, 1881, Rome Convention 1961. The basic principles in these two international conventions got integrated into the copyright part of 'Agreement on Trade Related Aspects of Intellectual Property' (TRIPS). None of these international conventions on copyright mentions about protection of typefaces or regarding protection of fonts. There exists a separate international agreement on protection of typefaces, Vienna Agreement on the Protection of Typefaces 1973. If the intention of international communities is to bring typefaces as copyright issue then it would be brought under any copyright conventions.”

“There are artistic works which are beyond protection of copyright as artistic works. Fonts/Typefaces are clearly works of applied art. Hence, application rejected.”

The decision from the copyright registrar is absolutely in harmony with the copyright law. The explanation provided can be considered irrelevant the simple logic that if typefaces are provided with copyright protection any other person would be restricted from using the calligraphic style of the font. There is always a chance that someone could have the same 'handwriting' and this would arise a serious issue. Also, the claim of the company that their work comes under 'work is of artistic craftsmanship' raises a question what is 'work of artistic craftsmanship'. The question remains unanswered.

**Associated Publishers v. Bashyam**<sup>19</sup> ( picture of mahatma Ghandi)

A portrait was made by compounding from two photographs of mahatma Gandhi, the body was taken from one and the head from other. Labour and skill required by the plaintiff to make the combination, was enough to call his portrait as original. Result of compounding was different from previous one, so original. It is held that the portrait based on photograph will be entitled to copyright protection if it produced a result from the photograph and portrait itself is original.

If a building similar to the lotus temple in Delhi is made by any other architect, it would be infringement of copyright of the architect who made the plan for the lotus temple.

**M/S Serveshwar Food Products Pvt. ... vs Shani Food Products**<sup>20</sup>

The court held that the label qualifies to be an original artistic work under provisions of Copyright Act, 1957.

**M/S Suman International & Anr. vs Mahendra Gulwani & Anr.**<sup>21</sup>

They claim to be selling the rose shaped lollipops under the trademark of 'Rose Pop' along with its house mark 'MADHUR' with the word 'ROSE' appearing in a red colour font and word 'POP' appearing in a green colour font in a distinct style with the word 'LOLLIPOPS' appearing after the words 'Rose Pop' with each letter in a different colour.

The Court observed that comparison of the packaging shows that the appellants have copied many features of the respondents' label, including the artistic work rose, and the same cannot be a co-incidence or an honest adoption.

In regard to the contention that the respondents have obtained the registration in respect of a rose shape illegally, the Court held that the same is pending consideration before the Trademark Registry, and no observations could be made by the Court at that stage.

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<sup>19</sup> AIR 961 MADRAS 114

<sup>20</sup> on 19 December, 2023

<sup>21</sup> on 14 December, 2023



### **Musical works**

Section 2(p) of the act defines ‘musical works’ –

“Section 2(p)- *“musical work” means a work consisting of music and includes any graphical notation of such work but does not include any words or any action intended to be sung, spoken or performed with the music.*”

The protection granted to ‘musical works’ doesn’t extent to words, actions to be sung, spoken or performed with the music. Which means that the protection only extends to the musical part and this part is considered as the work in which copyright subsist.

### **The Gramophone Company Of India v. Super Cassette Industries Ltd.**

The Gramophone Company of India Ltd. which is the plaintiff had produced audio records titled "Hum Aapke Hain Kaun" under rights alleged to have been assigned to it by Rajshree Productions Pvt. Ltd. who happen to be the copyright owners of the cinematograph work. The plaintiff’s claim is that the Defendant has launched a series of audio cassettes containing version recordings(remixed versions of the sound recordings) which violate the copyrights of the Plaintiff. The Plaintiff had not granted any right, permission or license to the Defendant to make version recordings of the works in which it has copyrights. The defendants have launched an audio cassette by adopting "Hum Aapke Hain Kaun" as its title with its design, color scheme, get-up and layout deceptively and confusingly similar to that of the plaintiff and have even used a photograph of Salman Khan and Madhuri Dixit on the inlay cards. The suit of the plaintiff was for permanent injunction restraining the defendants from manufacturing, selling, or passing of audio cassettes under the said title or from using a carton or inlay card identical or deceptively or confusingly similar in design, color scheme, layout and get-up, to the packaging used by the plaintiff. The court after hearing the arguments observed that,

“Musical work is not merely combination of melody and harmony or either of them. It must necessarily also have been "printed, reduced to writing or otherwise graphically produced or reproduced. The words "printed, reduced to writing or otherwise graphically produced or reproduced" are not an empty formality.”

“The defendants have nowhere claimed that the combination of melody and harmony, which one finds in the records, made by the plaintiff as well as the defendants, had ever been printed, reduced to writing or otherwise graphically produced or reproduced.”

“The plaintiff, too, nowhere pleads the record made by it as being a combination of such melody and harmony or either of them which had been printed, reduced to writing or graphically produced or reproduced. The result is that the record made by the plaintiff cannot be claimed to be a "musical work" both by the plaintiff as well as the defendant.”

The decision was made in accordance with the earlier definition of ‘musical works’ which states that - “Musical works” means any combination of melody and harmony or either of them, printed. Reduced to writing or otherwise graphically produced or reproduced – under which there is the requirement of ‘printed, reduced to writing or otherwise graphically produced or reproduced’ which was not met by both the parties thus the court decided that there exist no copyright on the musical works.

### **COPYRIGHT ISSUES OF REMIX CULTURE**

Section 51 of the Copyright Act, 1957 states that "if any person without a license from the owner or the registrar, performs an act which violates the right conferred upon the owner of the copyright, it shall be considered as an infringement

### **Cinematographic films and sound recording**

Section 2(f) and section 2(xx) of the Indian copyright act defines ‘cinematograph films’ and ‘sound recording’ respectively and in this case the word ‘original’ is not used, this may be because the works mentioned in section 13(b) and (c) are compilations of the work in section 13(a). Thus, the works mentioned in 13(b) and 13(c) naturally become an ‘original’ work.

“cinematograph film means any work of visual recording and includes a sound recording accompanying such visual recording and “cinematograph” shall be construed as including any work produced by any process analogous to cinematography including video films”

‘Visual recording’ includes any recordings from which moving images may be obtained, it also includes storing the recording in any electronic medium. Therefore, the recorded work with moving visuals/images is considered as a cinematograph film.

Cinematographic films, often called films or movies in general language, are a form of visual storytelling and entertainment that combines moving images, audio, and sometimes text to narrate or convey the story. Therefore, cinematographic films can be defined as visual work in any medium created through a method by which moving images can be created. Cinematograph includes any work that involves moving images or visuals.

#### **Star India Private Limited v. Leo Burnett (India) Pvt. Ltd<sup>22</sup>**

the court is on the understanding that cinema is the visual recording of the content and therefore it is only the recording which belongs to the producer and not the content. The content is generated by the content creators and thus in favour of the producer the protection only extends to medium i.e. the fact of recording.

#### **Shree Venkatesh Films Pvt. Ltd. v. Vipul Amrutlal Shah & Ors<sup>23</sup>**

The decision issued by the Bombay High Court. It was held that *a cinematographic film is a "collection or collage or ensemble of various works like story, screenplay, dialogue, sound track, video images, lyrics, etc.* Each of these works may also enjoy copyright protection. By operation of law or by contract or assignment the producer of the film may be vested copyrights in the above works... Now when all these works are put together However, not each and every work is entitled to copyright protection. In order to claim copyright there must be some originality in the work. The author of the work may obtain raw materials for the work from any or many sources but will only be entitled to copyright if these raw materials are converted, by use of his labour skill, capital and intelligence to create another material or work which is something different from the raw materials and has an element of novelty.”

#### **Indian Performing Rights Society v. Eastern Indian Motion Pictures Association & Others<sup>24</sup>,**

The court held that a cinematograph film is to be taken to include the sounds embodied in any sound track associated with the film. The expression ‘sound track associated with a cinematograph film’ means any record of sounds which is incorporated in any print, negative, tape or other article on which the film or part of it, in so far as it consists of visual images, is recorded, or which is issued by the maker of the film for use in conjunction with such an article.” (emphasis supplied)

#### **R. Radhakrishna v. Mr. A.R.Murugadoss<sup>25</sup>**

**cinematograph film that is to say visual recording, including sound recording produced by process of analogous to cinematography including video film.**

<sup>22</sup> . (2003) 27 PTC 81 (Bom).

<sup>23</sup> Decided On: 1.09.2009

<sup>24</sup> cited AIR 1977 SC 1443 : (1977) 2 SCC 820

<sup>25</sup> On 25 september 2013

a producer of a cinematograph film has the right over the soundtrack of the film and dismissed the appeal from the judgment of the Division Bench of this Hon'ble Court which held the same view in Eastern India Motion Picture Association v. Indian Performing Rights Society Ltd.

**Dcit new delhi v. M/S ess Distribution (Mauritius)<sup>26</sup>**

Referring to the definition of cinematograph film under section 2(f) of the Copyright Act, the court observed that **it includes any work of visual recording on any medium produced through a process from which a moving image may be produced by any means and includes a sound recording accompanying such visual recording and cinematograph shall be construed as including any work produced by any process analogous to cinematography,**

“sound recording means a recording of sounds from which such sounds may be produced regardless of the medium on which such recording is made or the method by which the sounds are produced”

As per Copyrights Act section 2 (XX) “sound recording” means a recording of sounds from which such sounds may be produced regardless of the medium on which such recording is made or the method by which the sounds are produced.

A sound recording’s copyright is only valid if the work has been first released in India. For works that haven’t been published, the creator should be an Indian citizen when the work was produced.

**Gramophone Company of India Ltd. v. Birendra Bahadur Pandey<sup>27</sup>**

The Supreme Court held that a "sound recording" under Section 2(XX) refers to the fixation of sounds by any means and includes both traditional records and modern electronic recordings.

**PPL v. UOI & Ors. (2015):**

The Copyright Board held that Section 2(XX) includes underlying musical works forming part of sound recordings, thereby granting separate copyright protection to both the sound recording and the underlying musical composition.

**Indian Performing Right Society Ltd. vs Aditya Pandey & Ors.<sup>28</sup>**

Section 5A(1) of UK CDP Act defines „sound recording“ to mean, (a) a recording of sounds, from which the sounds may be reproduced, or (b) a recording of the whole or any part of a literary, dramatic or musical work, from which sounds reproducing the work or part may be produced.

Section 2(xx) of the Copyright Act, 1957 defines „sound recording“ to mean a recording of sounds from which such sounds may be produced regardless of the medium on which such recording is the method by which the sounds are produced

**Ilaiyaraja vs B.Narsimhasn on 3 March, 2015**

As per Section 2(f), cinematograph includes sound recording and musical works. The entire plaint allegations pertain only film/cinema songs. The plaintiff has suppressed the distinction between two rights under Section 2(xx) for sound recording and Section 2(p) of the Copyright Act for musical work. **These two rights would clearly show that the rights are vested in different persons. Sound recording means recording of sounds, whereas "musical work" consists of music.** In common parlance, the tunes, musical notes etc., belong to the composer/music director, whereas the recordings belong to the producers. The plaintiff does not sell any audio cassettes/compact discs/DVDs., etc., of songs of the movies which would be sound recordings. In fact, the plaintiff has also been paid remuneration by the producers of the movies for composing music for the films, which shows that the plaintiff as an author of musical work has

<sup>26</sup> On 21<sup>st</sup> November 2022

<sup>27</sup> (AIR 1984 SC 667):

<sup>28</sup> on 8 May, 2012

composed music only based on the contract. So far as sound recording is concerned, the producer of the film is the author and in relation to musical work, the composer is the author.

Cinematograph films and sound recording have copyright and the rights the owner have is different from the rights of the owner of the work mentioned in section 13(a).

## CONCLUSION

The subject matter of copyright encompasses various forms of creative expression, including literary works, artistic works, sound recordings, motion pictures, architectural designs, and industrial designs.

It is important to note that copyright protection does not depend on the literary merit of a work; rather, it focuses on the originality and expression captured in tangible form.

Ownership in copyright may be subject to limitations and exceptions, such as fair use.

The scope of copyright protection varies depending on the medium of expression and the applicable intellectual property laws. The term of copyright varies as well, providing rights to authors for a specified period.

Overall, copyright serves to safeguard the rights of creators and encourages the creation of new and innovative works in various artistic forms, adapting to the evolving landscape of creative expression from time to time.

Section 13 of the Indian Copyright Act provides that only original literary, dramatic, musical or artistic work; Cinematographic films and sound recordings qualify as Copyrightable subject matter. Titles, names, short phrases, slogans and facts are not copyrightable. The prerequisites for any work to qualify for copyright protection, is that the work must be original and also expressed in some form in a medium.

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