



# Civil and Criminal Liability for the Infringement of Copyright in India

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## Abstract

The Legal System of India having the Common Law background developed on more or less the same lines in regard to various matters as the law developed in England. The principles of civil and criminal liability in most of the matters in India therefore are similar to those in England. Even in regard to matters of protection to intellectual property rights, the law in India has developed on the same pattern as it has developed in English legal system. The causes for procedure for processing the issues are almost the same as they are in the system in England. In other words, the methods for the enforcement of law bear a similarity. The kind of liability and the form of remedies are almost the same. Like the system obtained in England, the principles of civil and criminal liability and the kinds of remedies are like those in England. While the principles of civil liability have their origin in the Common Law of England the principles of criminal liability are based on statute law and in regard to both the segments of Indian Legal System rules are interpreted by the Courts as and when the cases have appeared before the courts.

**Keywords:** human rights, civil and political rights, economic, social and cultural rights, right to health, intellectual property, TRIPS agreement, authors' rights, copyright, patent, pharmaceuticals, indigenous peoples, WTO.

## المسئولية المدنية والجزائية عن التعدي على حق المؤلف في الهند

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### الملخص

النظام القانوني في الهند والذي يجد أصوله في المبادئ العامة تطور بشكل أو بآخر فيما يتعلق بالقضايا المختلفة بذات الإسلوب الذي تطور به القانون في إنكلترا. إن مبادئ المسئولية المدنية والجزائية في أغلب القضايا في الهند تشبه تلك التي تحصل في إنكلترا. حتى يمكن القول أنها فيما يتعلق بحماية الملكية الفكرية في الهند أن القواعد القانونية قد تطورت على النحو الذي تطورت به في النظام القانوني الإنكليزي. والإجراءات المتبعة في القضايا تكاد تكون ذاتها. بعبارة أخرى إن الوسائل الجبرية المتبعة في فرض القانون هي ذاتها. ومن هنا فإن شكل وأثر المسئولية ونوعها هو في الغالب ذاته في إنكلترا. مع ذلك فإن مبادئ المسئولية المدنية تجد أساسها في المبادئ العامة بينما المسئولية الجنائية تحدد على وفق النصوص، على أن كلا المسئوليتين في إطار النظام القانوني الهندي فسرت قواعدهما من قبل المحاكم وبمناسبة كل قضية عرضت عليها.

**الكلمات المفتاحية:** المسئولية المدنية، الجزائية، حق المؤلف.



# Civil and Criminal Liability for the Infringement of Copyright in India

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The Legal System of India having the Common Law background developed on more or less the same lines in regard to various matters as the law developed in England. The principles of civil and criminal liability in most of the matters in India therefore are similar to those obtaining in England.<sup>1</sup> Even in regard to matters of protection of intellectual property rights, the law in India has developed on the same pattern as it has developed in the English legal system.<sup>2</sup> The causes for the emergence of legal provisions on this subject, the principles of liability, the procedure for processing the issues are almost the same as they are in the system implemented in England. In other words, the methods for the enforcement of law bear a similarity. The kind of liability and the form of remedies are almost the same. Like the system implemented in

England, the principles of civil and criminal liability and the kinds of remedies are like those in England. While the principles of civil liability have their origin in the Common Law of England the principles of criminal liability are based on statute law and in regard to both the segments of Indian Legal System rules have been interpreted by the Courts as and when the cases have appeared before the courts.<sup>3</sup>

This article discusses the provisions of law on the civil and criminal liability in the case of infringement of copyrights. The methodology followed in presenting the discussion on this subject is to give first the elements of intellectual property of which copyright is an aspect, then there is a description of the background of the law in India dealing with the subject of copyright, the principles of

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1- Sharma, S. P., "Indian Legal System", published by K.M Rai Mittal, New Delhi, India, 1st edition, 1991. Raj Kumar (editor), "Essays on Legal Systems in India", Discover Publishing House, New Delhi, 2003.

2- Sreenivasulu N.S, "Law Relating to Intellectual Property", Parradige Publishing, India, 2013, pp. 306- 485.

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3- Karla C. Shippey, "A Short Course in International Intellectual Property Rights: Protecting Your Brands, Marks, Copyrights, Patents, Designs, and Related *Rights* Worldwide", World Trade Press, Oakland & California, USA, 2003, p. 120 et seq.



civil and criminal liability with regard to matters of infringement.<sup>4</sup>

### 1. Meaning & definition of Intellectual Property:

Legal Rights are considered to be of two kinds, one tangible and the other intangible. A tangible rights is a right in respect of a material thing; and an intangible right is a right which is recognized by law which mostly is the product of human skill and labour.<sup>5</sup> In modern law, every man owns that which he creates, a thing which he produces is his and he has an exclusive right of the use and benefit of it. The immaterial product of a man's brain may be as valuable as his land or his good. The law therefore gives him a proprietary right in it and the unauthorised use of it by others is a violation of his ownership. In recent days, the importance of things produced by the intellect of man have gained greater significance. The immaterial products of a man's intellect may be as valuable as his land or his good, The law, therefore gives him a proprietary right in it and any unauthorised use of it by other persons is considered to be a violation of his

ownership, no less than a theft or trespass.<sup>6</sup>

According to the International Convention 'intellectual property'<sup>7</sup> shall include the right relating to:

- Literary, artistic and scientific works.
- Performances of performing artists, phonograms and broadcasts.
- Inventions in all fields of human endeavor.
- Scientific discoveries.
- Industrial discoveries.
- Industrial designs<sup>8</sup>.

The subject matter of copyright is the literary, dramatic and musical or artistic work, a cinematograph film and a sound recording. Literary work includes computer programmes, tables and compilations including computer databases. The subject matter of literary copyright is the literary expression of facts or thoughts.

According to the World Trade Organization (WTO)<sup>9</sup>, the intellectual property rights are:

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- 6- Richard A. Posner & William M Landes, "The Economic Structure of Intellectual Property Law" Harverd College, USA, 2003, p. 85 et seq.
- 7- See a comprehensive study of this convention in World Intellectual Property Organization, "Introduction to Intellectual Property: Theory and Practice", published by Kluwer Law International Ltd, London (UK) & Martinis Nijhoff (Netherlands), 1997, p.
- 8- Article 2 (vii) of the Convention Establishing the World Intellectual Property Organization (WIPO).
- 9- The World Trade Organization (WTO) is an organization that intends to supervise and liberalize international trade. The organization officially commenced on 1 January 1995 under the Marrakech Agreement, replacing the General Agreement on Tariffs and Trade

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4- For more advanced reading, see: Sreenivasulu N.S, "Law Relating to Intellectual Property", op.cit.

5- Bruce E Alschuler & Celia Sgroi, "Understanding law in a changing society", published by Prentice Hall, Michigan, USA, 1992, p. 147 et seq.



1. Copyright and Related Rights
2. Rights of traders in their trademarks
3. Rights of manufacturers and producers on geographical indication
4. Right of designers for their distinctive design striking to the eye
5. Patents.
6. Right of computer technologists for their layout design
7. Right of businessmen for protection of their undisclosed information on technology and management<sup>10</sup>.

## II. Background to the emergence of Copyright Law in England:

The idea of copyright protection only began to emerge with the invention of printing, which made it possible for literary works to be duplicated by mechanical processes instead of being copied by hand. This led to the appearance of a new trade - that of printers and booksellers in England called "Stationers"<sup>11</sup>. These

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(GATT), which commenced in 1948. The organization deals with regulation of trade between participating countries; it provides a framework for negotiating and formalizing trade agreements, and a dispute resolution process aimed at enforcing participant's adherence to WTO agreements, which are signed by representatives of member governments<sup>1</sup> and ratified by their parliaments. Most of the issues that the WTO focuses on derive from previous trade negotiations, especially from the Uruguay Round (1986–1994).

[http://en.wikipedia.org/wiki/World\\_Trade\\_Organization](http://en.wikipedia.org/wiki/World_Trade_Organization).

- 10- Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement of World Trade Organization (WTO).
- 11- stationer, Originally from the term *stationery* referred to all products sold by a stationer, whose name indicates that his book shop was on a fixed spot, usually near a university, and

entrepreneurs invested considerable sum in the purchase of paper, in buying or building press, and in the employment of labour involving an outlay which could be recouped with a reasonable return over a period of time.<sup>12</sup>

By the end of the Seventeenth Century the system of privileges i.e. the grant of monopoly rights by the Crown was being more and more criticized and the voice of authors ascertaining their rights began increasingly to be heard. This led in England in 1709 to what is acknowledged to be the first Copyright Statute - "The Statute of Anne".<sup>13</sup>

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permanent, while medieval trading was mainly peddlers (including chapmen, who sold books) and others (such as farmers and craftsmen) at non-permanent markets such as fairs. It was a special term used between the 13th and 15th centuries in the manuscript culture. The Stationers' Company formerly held a monopoly over the publishing industry in England and was responsible for copyright regulations.

<http://en.wikipedia.org/wiki/Stationery>.

- 12- World Intellectual Property Organization, "Introduction to Intellectual Property: Theory and Practice", published by Kluwer Law International Ltd, op.cit, p. 23. World Intellectual Property Organization "Background reading material on intellectual property", published by WIPO, Issue 659, 1988, p. 23.

- 13- Although *the Statute of Anne* was enacted in 1709, it was in 1774 before it finally reached the House of Lords for a definitive construction. Events and circumstances of the sixty-five years since its enactment had obscured both the background of the legislation and its antecedents". See Lyman Ray Patterson, "Copyright in Historical Perspective", Vanderbilt University Press, Nashville, USA, 1968, p. 144. Ronan Deazley, Martin Kretschmer & Lionel Bently (editors), "Privilege and Property: Essays on the History of Copyright" Cambridge Open Book Publishers, Cambridge UK. 2010. Pp 51 et seq. World Intellectual Property Organization "Background reading material on intellectual



In the 18th Century there was continuous dispute and litigation over relationship between Copyright subsisting at Common Law and Copyright under the Statute of Anne<sup>14</sup> This was finally settled by the House of Lords in the case of Donaldson Vs. Beckett in 1774,<sup>15</sup> which ruled that at Common Law the author had sole rights of printing and publishing his books, but that once a book was published the rights in it were exclusively regulated by the Statute.<sup>16</sup>

### III. The Procedure for Registration of Copyright in India:

There is kept at the Copyright Office a register in the prescribed form to be called the Register of Copyrights in which may be entered the names or titles of works and the names and address of authors, publishers and owners of copyright and such other particulars as may be prescribed.<sup>17</sup> According to Rule 15 of the Copyright Rules, 1958<sup>18</sup> the

Register of Copyrights shall be kept in six parts as follows:

Part I: Literary works other than computer programmes, tables and compilations including computer data bases and dramatic works, Part II: Musical Works; Part III Artistic works; Part IV Cinematograph films; Part V; Sound Recordings; Part VI Computer Programmes, tables and compilations including computer data bases.<sup>19</sup>

### IV. Infringement of Copyright:

(a) Essential Elements of Infringement:

According to the Copyright Act, 1957 the essential elements of copyright, depending upon the kind of copyright work, involves one or more of the following acts:

- i) Reproduction of the work in a material form.
- ii) Publication of the work.
- iii) Communication of the work to the public.
- iv) Performance of the work in public.
- v) Making adaptations and translations of the work and doing any of the acts in relation to a substantial part of the work.<sup>20</sup>

property”, published by WIPO, Issue 659, op.cit, p. 27.

14- World Intellectual Property Organization, “Introduction to Intellectual Property: Theory and Practice”, op.cit, p. 24.

15- Donaldson v Beckett (1774) 2 Brown's Parl. Cases 129, 1 Eng. Rep. 837; 4 Burr. 2408, 98 Eng.

16- Article of Manisha Singh on Intellectual Property Practice published in LEX ORBIS.

17- Section 44 of the Copyright Act.

18-Year of current version: **1958**. Date of entry into force of original text: January 21, **1958**. Type of Text: Implementing **Rules/Regulations**. The Copyright Act, 1957: Along with the Copyright Rules, 1958 Together with International Copyright Order, 1999, Specimens of Author--publisher Copyright Agreements, with Short Notes, Universal Law Publishing Company, India

2004, See: Akhil Prasad, Aditi Agarwala & Akhil Prasad, "Copyright Law Desk Book: Knowledge, Access & Development", Universal Publishing PVT, Company, New Delhi, 2009, p. 213 et seq.

19- Geet S. D & Deshpande A.a., "For more details: Legal Aspects of Business", published by Nerali Prakashan, 13<sup>th</sup> edition, Indea, 2008, p.p. 9-36.

20- Paul Goldstein, "Goldstein on Copyright", Wolters Kluwer Law & Business, 3<sup>rd</sup> edition, 2008 Volume 2; p. 11 Volume 4, p. 45. Laura Lee Stapleton, "E-copyright Law Handbook", Aspen Law & Business, New York, 2002, pp. 12-19. Jennifer Davis, "Intellectual Property Law",



(b) When a copyright is deemed to be infringed:

According to the Copyright Act, copyright in a work shall be deemed to be infringed:

(a) When any person, without a licence granted by the owner of the Copyright or the registrar of Copyrights or in contravention of the conditions of a licence so granted or of any condition imposed by a competent authority under this act does anything, the exclusive right to do which is by this Act conferred upon the owner of the Copyright or permits for profit any place to be used for the communication of the work to the public where such communication constitutes an infringement of the copyright in the work, unless he was not aware and had no reasonable ground for believing that such a communication to the public would be an infringement of copyright<sup>21</sup>, or

(b) When any person makes for sale or hire, or sells or lets for hire, or by way of trade displays or offers for sale or hire, or distributes either for the purpose of trade or to such an extent as to affect prejudicially the owner of the copyright, or by way of trade exhibits in public or imports into India any infringed copies of the work except one copy of any work, for the private and domestic use

of the importer.<sup>22</sup> The reproduction of a literary, dramatic, musical or artistic work in the form of a cinematograph film will be deemed to be an infringing copy.<sup>23</sup>

V. Principles of Civil and Criminal Liability for the Infringement of copyrights<sup>24</sup>

The principles of civil and criminal liability for the infringement of copyright may be presented in two separate sections thus:

Section A – Principles of Civil Liability

While at present there are different statutes on different kinds of copyrights basically the principles of civil liability in India have their origin in the system of Common Law of England. These remedies were usually the remedy of damages under the principles of civil law and the remedy of injunction. A description of the kinds of remedies and the principles relating to them may be presented as follows:-

Where copyright in any work has been infringed, the owner of the copyright shall, except as otherwise provided by this Act, be entitled to all such remedies by way of injunction, damages, accounts and otherwise as are or may be conferred by law for infringement of a

4<sup>th</sup> edition, Oxford University Press, Oxford, UK, 2012, p. 123.

21- Radhakrishnan, R. and S. Balasubramanian, "Intellectual Property Rights: Text and Cases", Anurage Jain for Excel Books, New Delhi, 2008, p. 160. Dennis Campbell, Susan Cotter, (editors), "Copyright Infringement", Kluwer Law International, UK, 1998, p. 61.

22- Ibid.

23- Section 51 of the Copyright Act.

24- Roger Miller, "Cengage Advantage Books: Modern Principles of Business Law: Contracts, the UCC and Business Organizations", Published by South-Western Cengage Learning, USA, 2012, pp. 122- 137. Akhileshwar Pathak, "Legal Aspects of Business", Mc Graw Hill education, 5<sup>th</sup> edition, India, 2013, p. 654.



right. However,<sup>25</sup> if the defendant proves that at the date of the infringement he was not aware and had no reasonable grounds for believing that copyright subsisted in the work, the plaintiff shall not be entitled to any remedy other than an injunction in respect of the infringement, and a decree for the whole or part of the profits made by the defendant by the sale of the infringing copies as the court may in the circumstance deem reasonable.<sup>26</sup>

Where, in the case of a literary, dramatic, musical or artistic work, a name purporting to be that of the author or the publisher, as the case may be appears on copies of the work as published, or in the case of an artistic work, when it was made, the person whose name so appears or appeared shall, in any proceeding in respect of infringement of copyright in such work, be presumed, unless the contrary is proved to be the author or the publisher of the work, as the case may be.<sup>27</sup>

Where the several rights comprising the copyright in any work are owned by different persons, the owner of any such right shall, to the extent of that right, be entitled to the remedies provided by this Act and may individually enforce such by means of any suit, action, or proceeding.<sup>28</sup>

An author of a copyright work has the following special rights:

- (a) To claim authorship of the work;
- (b) To restrain or claim damages in respect of any distortion, mutilation, modification or other act in relation to the said work which is done before the expiration of the term of copyright if such distortion, mutilation or other act would be prejudicial to his house or reputation.<sup>29</sup>

Where any person claiming to be owner of copyright in any work, by circulars, advertisements otherwise, threatens any other person with any legal proceedings or liability in respect of an alleged infringement of the copyright any person aggrieved thereby may institute a declaratory suit that the alleged infringement to which the threat as related was not in fact an infringement to which the threats related was not in fact an infringement of any legal rights of the person making such

25- Raman Mittal, "Licensing Intellectual Property: Law & Management", Satish Upadhyay & Satyam Law International, India, 2011, p. 191. Universal's, New Delhi, India, "The Copyright Act, 1957", Bari Act with notes", Universal Law Publishing, 2011, p. 43.

26- Raman Mittal, "Licensing Intellectual Property: Law & Management", op. cit, p. 191. Aditi Agarwala, & Akhil Prasad, "Copyright Law Desk Book: Knowledge, Access & Development", Universal Law Publishing, India, 2009, p. 389.

27- "The Copyright Act, 1957", Bari Act with notes", op.cit, p. 43. Aditi Agarwala, & Akhil Prasad, "Copyright Law Desk Book: Knowledge, Access & Development", op.cit, p. 389.

28- Section 56 of the Copyright Act. Compare: Sayeed Raas Maswod, "Intellectual Property Law of Bangladesh in a Nutshell", p. 333 [books.google.com/bh/books?id=CwOeAgAAQB-AJ&lpg=PP1&pg=PA10#v=onepage&q&f=false](http://books.google.com/bh/books?id=CwOeAgAAQB-AJ&lpg=PP1&pg=PA10#v=onepage&q&f=false)

29- Paul Goldstein, Peter Ganeva, Tanuja (editors), "Intellectual Property in Asia: Law, Economics, History and Politics", published by Springer, Germany, 2009, p. 72 et seq.



threats and may be in any such suit obtain an injunction against the continuance of such threats and recover such damages, if any, as he has sustained by reason of such threats<sup>30</sup>.

### **Section B – Principles of Criminal Liability:**

Under the Statute in force in India penal liability for the infringement of copyright arises in respect of the following offences:-

#### **VI. Offences of infringement of copyright or other rights conferred by the Act:<sup>31</sup>**

##### **1. Knowingly infringing or abetting the copyrights:<sup>32</sup>**

Any person who knowingly infringes or abets the infringement of the copyright in a work, or any other right conferred by the Copyright Act, except the resale share right in original copies shall be punished with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees.<sup>33</sup>

30-Aditi Agarwala, & Akhil Prasad, "Copyright Law Desk Book: Knowledge, Access & Development", op.cit, p. 390. Raman Mittal, "Licensing Intellectual Property: Law & Management", op. cit, p. 192. Compare: International Business Publications Ibp USA: "Middle East and Arabic Countries Copyright Law Handbook", 2007, p. 27 et seq.

31- "The Copyright Act, 1957", op.cit, p. iii. Vikas Vashishth, "Bharat's Law & Practice of Intellectual Property in India", Bharat Law House, India 1999, p. 39.

32- Paul Goldstein, Peter Ganea, Tanuja, op.cit, p. 57.

33- Section 63 of the Copyright Ac. See Raman Mittal, "Licensing Intellectual Property: Law & Management", op. cit, p. 192.

##### **2. Enhanced Penalty on second and subsequent conviction:**

Whoever having already been convicted of an offence is again convicted of any such offence shall be punishable for the second and for every subsequent offence, with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend two lakh rupees...<sup>34</sup>

##### **3. Knowing use of Infringing copy of computer programme to be an offence:**

Any person who knowingly makes use on a computer of an infringing copy of a computer programme shall be punishable with imprisonment for a term which shall not be less than seven days but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees....<sup>35</sup>

##### **4. Power of Police to seize infringing copies:**

A police officer of the rank of sub-inspector and above may seize without warrant, all infringing copies of the work and all plates used for the purpose of making infringing copies of the work

34- Section 63A. Compare: Rod Broadhurst & Peter Grabosky, "Cyber-Crime: The Challenge in Asia", Hong Kong University Press, pp. 179- 207 et seq.

35-Section 63B: Vikas Vashisht h, "Encyclopaedia of intellectual property rights", Volume 3, published by Anmol Publications, India, 2006, p. 879.



wherever found, to be produced before a Magistrate...<sup>36</sup>

**5. Possession of Plates for purpose of making infringing copies:**

Any person who knowingly makes, or has in his possession, any plate for the purpose of making infringing copies of any work in which Copyright subsists be punishable with imprisonment which may extend to two years and shall also be liable to fine....<sup>37</sup>

**6. Disposal of infringing copies or plates for purpose of making infringing copies:**

The court trying any offence under this Act may, whether the alleged offender is convicted or not, order that all copies of the work or all plates in the possession of the alleged offender, which appear to be infringing copies or plates for the purpose of making infringing copies, be delivered up to the owner of the Copyright....<sup>38</sup>

**7. Penalty for making false entries in register etc. for producing or tendering false entries:**

Any person who makes or causes to be made a false entry in the register of Copyrights kept under this act, or makes or causes to be made a writing falsely purporting to be a copy of any entry in such register, or produces or tenders or

causes to be produced or tendered as evidence any such entry or writing, knowing the same to be false, shall be punishable with imprisonment which may extend to one year, or with fine or with both. ...<sup>39</sup>

**8. Penalty for making false statement for the purpose of deceiving or influencing any authority or officer:**

Any person who, with a view to deceiving any authority or officer in the execution of the provisions of this act, or with a view to procuring or influencing the doing or omission of anything in relation to this act or any matter there under, makes a false statement or representation knowing the same to be false, shall be punishable with imprisonment which may extend to one year, or with fine or with both....<sup>40</sup>

**9. Penalty for contravention of particulars to be included in sound recording and video films:**

Any person who publishes a sound recording or a video film in contravention of the provisions of Section 52A shall be punishable with imprisonment which may extend to three years and shall also be liable to fine....<sup>41</sup>

36- Section 64 of the Copyright Act.

37- Section 65 of the Copyright Act. Compare: Copyright Laws and Treaties of the World, "Copyright Laws and Treaties of the World", (Volume 2), Unesco & the Bureau of National Affairs, Washington, USA, 1998, p. p. 32

38- Section 66 of the Copyright Act. See: Um Gupta, "Encyclopedia of Journalism And Mass Communication", (5 Vols.), Isha Books, New Delhi, India, 2006, p. 212.

39- Section 67 of the Copyright Act. All India Report, Viol 1, D.V Chitale, 1957, p.152.

40- Section 68 of the Copyright Act. Venkat Lyer, "Mass Media Laws and Regulations", published by Bahri Sons (India Research Press), Contributed by Asian Media Information and Communication Centre. 2000, p. 251

41- Section 68A of the Copyright Act. Compare: Om Gupta: "Encyclopedia of Journalism and Mass Communication, VOI (5), op.cit, p. 231. Vikas Vashishth,; Bharat's Law & Practice of



An illustration of the judicial interpretation of these principles may be the judgment of the Kerala High Court in *Cherian P. Joseph v. K. Prabhakaran Nair* decided on the 14th October, 1966<sup>42</sup> The facts of the case and the principle laid down by the Court were the following:-

This appeal by special leave was against the Judgment of the Additional First Class Magistrate, Trivandrum, acquitting the respondent (accused) who was prosecuted for an offence under Section 63 of the Copyright Act, 1957. According to the complainant, he was the author of the books marked as Exts. P-1 to P-10 and published by the Educational Publications Syndicate, Trivandrum. It is alleged by the complainant that Exts. P-11 to P-20 books in Malayalam taken into custody from the accused are translations of his books that they were translated and kept for sale without his permission or knowledge and the accused by so doing has infringed his copyright in those books thereby committing an offence punishable under Section 63 of the Act.<sup>43</sup>

Beside the complainant, three other witnesses were examined. Pws. 2 and 4 are two of the authors of the Malayalam books Exts. P-11 to P-20. They would say that these books were not the

translations of Exts. P-1 to P-10. According to them prior to their writing these books there was joint deliberation among the various authors at the instance of the complainant and the accused and it was decided to prepare books both in Malayalam and English and the general ideas about the contents of the books were discussed and it was in pursuance of the decision taken there that they have prepared and published the Malayalam Books. Probably they were trying to justify their action. The complainant denied that there was any such discussion or agreed merit and stated that the accused was his sales agent and as they had fallen out he had got at Pws. 2, 4 and some others to translate his books into Malayalam.<sup>44</sup>

The accused when questioned in Court merely denied the commission of the offence. On the evidence produced before him, the learned First Class Magistrate found that the offence was not made out.<sup>45</sup> I will quote his finding in his own words: "In these circumstances. I find it is rather difficult to hold that the copyright was vested with the complainant unreservedly and more so, to find that the accused has infringed the copyright of the complainant." I am unable to understand what the learned Magistrate actually means by this. Learned Magistrate also found that the Malayalam books were not true translations of the English

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Intellectual Property in India", published by Bharat Law House, India, 1999, p. 654.

42- *Cherian P. Joseph vs K. Prabhakaran Nair* on 14 October, 1966. Equivalent citations: 1967 CriLJ 1517 a.

<http://indiankanoon.org/doc/560532/>. Last retrieved 17/2/2014.

43 -Ibid.

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44- Ibid.

45- The Criminal Law Journal: a monthly legal publication containing full reports of all reported criminal cases of the high courts, etc., in india, volume 73, issue (2) op.cit, 1518.



Books. In short, the finding is that there is no infringement of the copyright. The correctness of these findings is challenged in this appeal.<sup>46</sup>

Under Section 17 of the Act the author of a work shall be the first owner of the copyright therein. Here in Exts. P-1 to P-10 the complainant is shown as the author of the literary works. This fact is not disputed. He is, therefore, the author of the books.<sup>47</sup>

5. What is copyright is stated in Section 14 (1) of the Act. It says:

"(1) For the purposes of this Act, 'copyright' means the exclusive right,<sup>48</sup> by virtue of, find subject to the provision of this Act,

(a) in the case of a literary, dramatic or musical work, to do and authorise the doing of any of the following acts, namely,

(i) to reproduce the work in any material form.

(ii) to publish the work

(iii) to perform the work in public

(iv) to produce, reproduce, perform or publish any translation of the work

6. So Pw. 1 as the author has the exclusive right to publish, the translation and no other person has the right to translate the complainant's works

7. Then we come to Section 51 of the Act which deals with the question as to

when a copyright shall be deemed to be infringed. Section 51 reads:

"Copyright in a work shall be deemed to be infringed

(a) when any person, without a licence granted by the owner of the copyright or the Register of copyrights under this Act or in contravention of the conditions of a licence so granted or of any condition imposed by a competent authority under this Act:

(i) does anything, the exclusive right to do which is by this Act conferred upon the owner of the copyright,<sup>49</sup> or

(b) when any person:

(1) makes for sale or hire or sells or lets for hire or by way of trade displays or offers for sale or hire, or "

Section 63 is the penal section which says:

"Any person who knowingly infringes or abets the infringement of

(a) the copyright in a work, or

(b) any other right conferred by this Act shall be punishable with imprisonment which may extend to one year or with fine or with both."<sup>50</sup>. In the light of these provisions, the court had to see whether Exts P-11 to P-20 are translations and a pirated reproduction of the complainant's books, Exts P-1 to P-10.

49- Kafaltiya A.B, "Textbook on Pleadings, Drafting & Convincing", Universal Law publication, New Delhi, 2010 India p. 91

50- Compare: International Business Publications Ibp USA: "Middle East and Arabic Countries Copyright Law Handbook", 2007, p. 27 et seq. Raman Mittal, "Licensing Intellectual Property: Law & Management", op. cit, p. 192. Sanjay Mohapatra, "E-Commerce Strategy: Text and Cases", Springer, New York, 2012, p.69.

46- Ibid.

47- Ibid.

48- Compare: Salem A. Ghumidh,; Introduction To Bahraini Law. Theory of Law & Theory of Right According to the Bahraini Law", University of Bahrain, College of Law, 2012, p. 360 et seq.



As stated by Copinger 51 on Copyright at page 118, "what is protected is not original thought or information but expression of thought or information in some concrete form. Consequently, it is only an infringement if the defendant has made unlawful use of the form in which the thought or information is expressed. The defendant must, to be liable, have made substantial use of this form, he is not liable if he has taken from the work the essential idea, however, original, and expressed the idea in his own form or used the idea for his own purpose"<sup>52</sup>

On a comparison of Exts. P-10 to P-20 with the complainant's books prim a

facie it appears to me that they are substantially translations of Pw 1's books. It is a matter for the court to compare them and find out whether they are translations. But what the Learned Magistrate has done is to rely on the evidence of Pws. 2 and 4 who were the persons who had actually translated the complainant's books. Learned Magistrate says even according to the prosecution witnesses, there is no consistent evidence to show that they were true translations of the complainant's books and so there is no conclusive proof that they were translations. I am informed that a civil suit is pending in respect of this very same matter where on a detailed scrutiny the Court will find out whether Exts. P-10 to P-20 were the translations of the complainant's books. So I do not want to say anything more at this stage.

The further question was whether the prosecution has brought home the offence under Section 63 of the Act against the accused. Section 63 of the Act postulates knowledge on the part of the accused that the Malayalam translations were really pirated reproductions of the complainant's books. It is true that the possibilities are that he must have known but in a case of an appeal against acquittal, unless there is clear and conclusive proof of the knowledge the accused cannot be found guilty of the offence.

As already stated it has come out in evidence that Pw 1 has filed a civil suit in which these identical questions are being agitated and the suit is pending

51- Copinger, Walter Arthur (1847-1910), professor of law, antiquary and bibliographer, born on 14 April 1847 at Clapham, was second son of Charles Louis George Emanuel Copinger and his wife Mary, relict of George James, and daughter of Thomas Pearson of Shepperton, Surrey. Educated at the private school of John Andrews at Wellesley House, Brighton, passed to University College, Durham, but left Durham without completing his course to enter the office of a relative who was a solicitor in London. He did not remain there long. In 1866 he was admitted a student of the Middle Temple, and after spending a short time in the chambers of T. Bourdillon, a well-known conveyancing counsel, he was called to the bar on 26 Jan. 1869. He had mastered the principal treatises of law, and especially the law of real property. After his call he turned his attention to the law of copyright, and in 1870 he published a work on the 'Law of Copyright in Works of Literature and Art' (4th ed. 1904).

Henry Guppy, "Copinger Walter Arther", Dictionary of National Biography, 1912, supplement

52- Walter Arthur Copinger: "The Law of Copyright, in Works of Literature and Art: including that of the. "Stevens and Haynes Law publishers, London, 1870.



and if he succeeds he would be entitled to damages. So all things considered the learned Judge said, I do not think it is necessary in the interests of justice to interfere with the order of acquittal. The appeal was dismissed.<sup>53</sup>

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53- P.V. Muhammed v. Collector of Palaghat (K. Luer T.), The Criminal Law Journal (Criminal Casses of the Higher Courts ETC) India, Vol 73, Issue 2, p. 1519.



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