



HISTORICAL DEVELOPMENT OF COPYRIGHT LAW IN INDIA

Charu Dureja*

Abstract: *The copyright law has traversed a long journey from the Guttenberg to Information age. A vast change could be seen in the copyright since its inception. The Statute of Anne was the first law, which has set the parameters and guidelines for the publication and exploitation of the work of an author for economic benefits. Since then, there was no looking back. India was then a colony of Britain and hence the law of UK was applicable here too. The first Copyright Act of India was enacted in the year of 1957 and since then it has been amended five times, to bring it in conformity with the changes times and technology. The most recent being in 2012, which was not only to bring the law in conformity with the Information age but as well to confirm to the WIPO copyright Treaty(WCT) and WIPO Phonograms Treaty (WPPT).*

Keywords: *Copyright, Statute of Anne, Guttenberg, Digital, Information Age, Ad-Ifinitum*

*Assistant Professor Law, Rayat College of Law, Railmajra, Pb. (India)



1. INTRODUCTION

In the contemporary age, the society has understood the value and need of the copyright law and because of this every nation, be it large or small, developed or developing has framed its own copyright law and are gradually amending it to bring it in conformity with the changing needs of the society. Due to the advancement of technology, the dissemination of the creative work has become boundryless and hence the need to make law in conformity with the changes. Thus, the nations are striving hard to make such copyright laws, which can cater to these changing needs. This paper is an attempt to trace the origin and development of the present Indian law. Copyright is a unique and interesting subject in itself. Like patents, copyright is also a kind of intellectual property right. It is a proprietary right of the artist, author or creator and comes into existence as soon as the work is created. It is the exclusive right to do or authorise others to do certain acts in relation to dramatic, musical and artistic works, literary works, cinematograph film, sound recordings, computer databases etc. i.e. it is the right to copy or reproduce the work in which copyright subsists¹.

2. ORIGIN AND DEVELOPMENT OF COPYRIGHT

The idea of copyright protection emerged with the invention of printing, which made the literary works to be duplicated by mechanical process. Prior, to that hand copying was the sole mean of reproduction. After, the invention of Guttenberg's printing press in Germany in 1436, a need to protect the printers and booksellers was recognised and thus certain privileges to printers, publishers and also authors were granted. The art of printing spread quickly in Europe. After 1483, England emerged as a major centre of printing trade in Europe. The spread of this technological innovation led to creation of a class of intermediaries, who made initial investment in bringing out the book, i.e., the printers, who doubled as booksellers as well. They were called the "stationer's" in England². In 1557, Queen Mary I, granted the privilege of regulating the book trade to the Stationer's company of London³. In 1662, the Licensing Act was passed in England, which prohibited the printing of any book which was not licensed and registered with the Stationers' Company⁴. This was the first clear law which was aimed at protecting literary copyright and checking piracy. The licence era was short lived. It was only with the passing of the Queen Anne's Statute of



1709, that, the rights of the authors over their work came to be legally recognised, and the concept of 'public domain' was established, though not explicitly⁵.

3. STATUTE OF ANNE

The first codified law came in existence with the passing of the statute of Anne, which came into force on 10th April 1710. It was the first legal articulation of real copyright. Queen Anne's statute conferred upon the authors for the first time, the statutory right to benefit from their literary works by conferring upon them the sole right to print their works, for a limited period of twenty-one years for works published before the date of enactment i.e. from 10th April 1710, those works which had not been transferred to the Stationer's Guild. Those works which were published subsequent to the enactment of the statute of Anne enjoyed a protection of fourteen years. Prior to the Statute of Anne, the common law of England recognised a perpetual right of property in the author's "copy" in the manuscript⁶. Statute of Anne 'was designed to destroy the bookseller's monopoly of the book trade and to prevent its recurrence⁷ and sought to divorce the evil of privileged censorship from free expression, thus facilitating an equilibrium between the rights of the authors and the rights of the public to have access to print material. It has been described that "The statute of Anne marked the end of autocracy in English Copyright and established a set of democratic principles: recognition of the author as the ultimate beneficiary and the fountainhead of protection and a guarantee of legal protection against unauthorised use for limited times, without any elements of prior restraint of censorship by government or its agents"⁸ because prior to the enactment of the statute, common law provided that the sole right of printing and publishing shall continue *ad- infinitum*.

The Statute of Anne, was a small statute comprising of just 11 parts.

- One, to promote learning.
- Second, to prevent any other person save the author to print or reprint the book/literary work for a limited duration of 21 years in its retroactive operation.

The Act was a respite to ameliorate the conditions of authors by securing them their just dues. The Act aimed at encouragement of learning and spread of knowledge and preservation of culture which can be inferred from the fact that the Book's title had to be registered with the Stationer's register and nine copies of the same was to be deposited in libraries of the listed universities with an express prohibition that such Universities shall not



have a right to print such books which have been deposited and the book were meant only for accessibility and advancement of knowledge. The statute had another positive angle as regards the economics of publishing involved in that it tilted the same in favour of the citizen and any person could now bring a complaint against the bookseller or the printer if they charged a price which such a person conceived to be too high and unreasonable. In order for such a complaint to be effectuated and redressed some of the highest ranks of the nobility, clergy, Vice-chancellors of University and the Judiciary were authorised and empowered to limit and settle the price of every such printed book according to the best of their judgments or judgment as the case may be, in their respective jurisdiction, with costs to the complainant to be borne by such defaulting bookseller or printer. Furthermore such defaulting party was to give a public notice in the Gazette of the settled price and enhanced punishment was prescribed for repeating this offence after the price was settled and the defaulting party was brought to book. This Act did not confer a monopolistic status to the authors but only secured them the right to be entitled to their legitimate dues. However the increase in the term of protection to the lifetime of the author was still due and took place subsequently. The Copyright Acts of 1814, and 1842 increased the duration of protection from fourteen, to twenty-eight, to forty-two years respectively. Thus, the phase after 1710 where books over which copyright had been secured were beginning to lapse, witnessed the real tensions in codified copyright law, as to whether there existed a common law copyright, independent of the statute. The booksellers tried their best to claim their copyright after expiration of 21 years in the pre-1710 works. For more than half a century, in what became known as the "Battle of the Booksellers," the lower courts sustained them in this view by granting injunctions after expiration of the statutory term⁹. Based on Lockean theory that 'every man has a natural right of property to the fruits of his labour'¹⁰, the Stationers, claimed their perpetual right to publish and sell acquired copies which were acquired from the authors who sold their manuscripts.¹¹ The case of *Millar v. Taylor*, brought triumph to the Stationer as their perpetual protection of common right was upheld. However, this decision could not stand the test of time and five years later, the House of Lords overruled Millar's decision that no perpetual copyright existed in copyright law. This principle of balancing the exclusive right of the author or publisher in the work came with the historic judgment of the House of Lords in the case of *Donaldson v. Beckett*.¹² Queen Anne's Statute



was the first statute, which opened the gates for the law of copyright in its true sense and afforded protection to the authors for their creative works, as its prime objective, rather than protecting the monopoly of publishers, who indulged in unjust enrichment of their pockets under the sanction of law at the expense of such 'men of letters'. The statute was indeed a turning point in the history of copyright laws¹³.

4. HISTORY OF COPYRIGHT LAW IN INDIA

Modern copyright law developed in India gradually, in a span of 150 years¹⁴. The first brush of India with copyright law happened in 1847 through an enactment during the East India Company's regime. The Act passed by Governor-General of India affirmed the applicability of English copyright law to India.¹⁵ According to the 1847 enactment, the term of copyright was for the lifetime of the author plus seven years post-mortem and could not exceed forty-two years on the whole. Though the author refused publication after his death, the Government had the authority to give licence for its publication. The act of infringement was inclusive of unauthorized printing of a copyright work for "sale, hire or export", or "for selling, publishing or exposing to sale or hire". The suit for infringement under this act could be instituted in the "highest local court exercising original civil jurisdiction". The Act also specifically provided that under a contract of service copyright in "any encyclopaedia, review, magazine, periodical work or work published in a series of books or parts" shall vest in the "proprietor, projector, publisher or conductor". It was deemed that the copies of the infringed work were the property of the proprietor of the copyrighted work for all purposes. Most importantly, the copyright in a work was not automatic unlike today. Registration of the work with Home Office was mandatory for the protection of rights under this enactment. However, the Act specifically reserved the subsistence of copyright in the author, and his right to sue for its infringement to the extent available in any other law except 1847 Act. At the time of its introduction in India, copyright law had already been in the developing stage in Britain for over a century and the provisions of the 1847 enactment were reflected in the later enactments¹⁶. The Copyright Act 1911, while repealing earlier statutes on the subject, was also made applicable to all the British colonies including India. In 1914, the Indian Copyright Act was enacted which modified some of the provisions of Copyright Act 1911 and added some new provisions to it to make it applicable in India. The



Indian Copyright Act 1914 remained applicable in India until it was replaced by the Copyright Act 1957.¹⁷

5. COPYRIGHT LAW IN INDIA

In India, the Copyright Act, 1957 (as amended in 1999), the Rules made there under and the International Copyright Order, 1999 govern Copyright and neighbouring rights. This Act has been amended five times i.e 1983,1984,1992,1999 and most recently in 2012.The Act is divided into 15 chapters with 79 sections. Moreover, the Central Government, by virtue of section 78 is empowered to make rules by notification in the Official Gazette, for carrying out the purposes of this Act.

Under the Act, a copyright office was established under the control of a registrar of copyright who was to act under the superintendence and direction of central government¹⁸. The principal function of this office was to maintain a register of copyright containing the names or titles of work, the names and addresses of authors, etc¹⁹. The registrar had certain powers like entertaining and disposing of applications for compulsory licenses and to inquire into complaints of importation of infringing copies. A Copyright Board²⁰ had been set up under the Act and the proceedings before it are deemed to be judicial proceedings²¹. The definition of copyright included the exclusive right to communicate works by radio diffusion; the cinematograph was given a separate copyright; the term of copyright protection was extended from 23 to 50 years which was again extended to 60 years in 1992²²; term of copyright for different categories of work was also specified²³. The right to produce a translation of a work was made coextensive with other rights arising out of copyright²⁴. Provisions relating to assignment²⁵ of ownership and licensing of copyright including compulsory licensing in certain circumstances²⁶, rights of broadcasting organisations²⁷, international copyright²⁸, definition of infringement of copyright²⁹, exceptions to the exclusive rights conferred upon the author or acts which do not constitute infringement³⁰, special rights of authors³¹, civil and criminal remedies against infringement and remedies against groundless threats or legal proceedings³² were also introduced.

6. THE INDIAN COPYRIGHT AMENDMENT ACT 2012

The Amendment Act 2012 has extended the rights of the performer's and broadcasting organisations, the major thrust of amendments was on eliminating unequal treatment meted out to lyricists and music composers of copyrighted works incorporated in



cinematograph film owing to the contractual practice in Indian entertainment industry. Under industry practice, lyricists and music composers were assigning all rights in the work to the producer of the film for a one time-lump sum payment. This meant that lyricist and music composers had no further right to any royalty accruing from their work even if the work was being utilized in mediums other than the cinematograph film. A proviso was added to Section 17, which provided that clauses (b) and (c) of the section will have no impact on the right of the author of the work incorporated in the cinematograph film, this was done to give rights to the lyricist and music composers. One of the major points of this amendment was to ensure that users of copyrighted material users of copyrighted materials have affirmative access to protected materials and their fair use rights are duly protected and enforced. For meeting this requirement, the Amendment Act broadened the scope of statutory and compulsory licensing provisions and also empowered the broadcasting organisations to broadcast any prior published literary, musical work and sound recording by giving a prior notice to the copyright owner and paying royalty at the rates prescribed by the Copyright Board³³. Further, amendments also recognised the need to ensure access to reading material for the differently abled people by way of introduction of Section 52(1)(zb), is broadly worded, and allows the conversion of any work in any accessible format by any person or organisation till such reproduction is for the benefit of persons with any disability and the converting organisation or person is working on a non-profit basis ensuring that such copies are not used for business. The Amendment Act has also tried to the Copyright Act in conformity with technological advances and concomitant international developments and so Section 65A and 65 B are added to promote digital rights management. The aim of these provisions is to protect the rights of the copyright owners in the digital domain. Further, to ensure that the digital advances are useful for the users and do not restrict access unreasonably and to protect the Internet Service Providers (ISPs) in section 52(b) and 52(c) are included. These provisions protect ISPs from liability of copyright infringement in case of transient and incidental storage of the work for the purpose of providing access³⁴.

7. CONCLUSION

The Copyright has traversed a great journey since the advent of printing press and from the passing of the first statute i.e. statute of Anne till the Copyright Act, 1957. This long journey has seen many developments such as the advancement of technology, which has not only



eased the dissemination of the work but also has made the sharing easy and without boundaries. The Indian Copyright Act has been amended time and again to bring it in conformity with the changing times, technology and the needs of the society. A few years back the knowledge about copyright was less but with the change in times the society is becoming aware of the need of protection of the creative works in any form, format and media.

REFERENCES:

- ¹ S.D. Geet & A. A. Deshpande, *Legal Aspects of Business*, Nirali Prakashan, 2008, at 9-22.
- ² Stephen M. Stewart, *International Copyright and Neighbouring Rights*, 1983, at 20.
- ³ Jacqueline M.B. Seignette, *Challenges to the Creator Doctrine – Authorship, Copyright Ownership and the Exploitation of Creative Works in the Netherlands, Germany and the United States*, 1994, at 13.
- ⁴ E.P. Skone James, et al, Copinger and Skone James on *Copyright*, 1991, para 1-24.
- ⁵ L.Ray Patterson & Stanley W. Lindberg, *The Nature of Copyright : A Law of User's Rights*, Athens University of Georgia Press (1991) ‘ the authors characterize the original Statue of Anne not as a major expansion in the protection of works, but as actually creating a public domain, by limiting the duration of protected works, by limiting the duration of protected works and by requiring formalities’ at Note 25, Edward Samuels, ‘The Public Domain in Copyright Law’, *41 Journal of the Copyright Society* 137 (1993) available at <http://www.edwardsamuels.com/copyright/beynd/articles/public.html#fn25> accessed on 12/01/2015.
- ⁶ This is often referred to as ‘common law copyright’, Akhil Prasad and Aditi Aggarwala, *Copyright Law Desk Book*, 2009 at 127.
- ⁷ L. Ray Patterson, ‘Understanding the Copyright Clause’, *47 J Copyright Society USA* 365, 379 (2000).
- ⁸ Barbara Ringer, ‘Bowker Memorial Lecture’, 1974, *Publisher's Weekly*, 18 Novemebr 1974, at 27 as referred in Stephan M. Stewart, *International Copyright & Neighbouring Rights*, 1983 at 12.
- ⁹ William F.Patry, *Copyright Law and Practice* available at <http://digital-law-online.info/patry/patry2.html> accessed on 13/01/2015. A similar situation was faced by France when it came to the renewal of a privilege of a Parisian publisher at the beginning of



the eighteenth century. For more see Stephen M. Stewart, *International Copyright & Neighboring Rights*, 1983, at 13.

¹⁰ Locke, *Second Treatise*, Chapter V, section 27.

¹¹ Jacqueline M.B. Seibnette, *Challenges to the Creator Doctrine – Authorship, Copyright Ownership and the Exploitation of Creative Works in the Netherlands, Germany and the United States*, at 15, 1994.

¹² 4 Burr (4th edn.) 2303, 98 Eng Rep 201 (KB 1769).

¹³ Akhil Prasad and Aditi Aggarwala, *Copyright Law Desk Book*, 2009 at 132-133.

¹⁴ There has been so far, no study on pre-modern copyright-type legislation that may have been in existence in India prior to the colonial period. As in Europe, the ‘arts’ in India had historically been supported through patronage, although the forms that this patronage took were diverse. To illustrate, the historian Romila Thapar lists three distinct kinds of patronage that were in vogue: ‘Embedded’ patronage where the patron and recipient are built into the system, for instance where particular literary/musical forms were ritually continued through generations as in the writing of royal biographies or ritual eulogizing of rulers; Secondly, patronage as a deliberate act of choice where a community decides to donate wealth and labour towards the building of a monument which encapsulates its religious values – here the patron is not a single person but a recognizable group; Lastly, the most common form of patronage where the recipient is either a retainer or is commissioned by a patron.

¹⁵ Kala Thairani, *How Copyright Works in Practice*, 1996, at 2.

¹⁶ Rajkumar S.Adukia, *Handbook on Intellectual Property Rights in India*, http://www.metastudio.org/Science%20and%20Ethics/file/readDoc/535a76367d9d331598f49e2d/34_Hb_on_IPR.pdf, accessed on 14/01/2015 at 10-11.

¹⁷ V.K Ahuja, *Law of Copyright and Neighbouring Rights: National and International Perspectives*, 2007, p.2-3

¹⁸ Section 9, Copyright Act, 1957.

¹⁹ Section 44 and 45, Copyright Act, 1957.

²⁰ Section 11, Copyright Act, 1957.

²¹ Section 12, Copyright Act, 1957.

²² Section 22, Copyright Act, 1957.

²³ Sections 22 to 29, Copyright Act, 1957. The works included literary, dramatic, musical and artistic works.



²⁴ Section 14, Copyright Act, 1957. According to the Act of 1914, the sole right to produce a translation of a work first published in India extinguished after 10 years of its first publication.

²⁵ Section 18 to 19A, Copyright Act, 1957.

²⁶ Section 30 to 32B, Copyright Act, 1957.

²⁷ Section 37, Copyright Act, 1957.

²⁸ Section 40, Copyright Act, 1957.

²⁹ Section 51, Copyright Act, 1957.

³⁰ Section 52, Copyright Act, 1957.

³¹ Section 57, Copyright Act, 1957.

³² Sections 54 to 70, Copyright Act, 1957.

³³ Section 31D, Copyright Act, 1957.

³⁴ Abhai Pandey, Inside Views: *The Indian Copyright (Amendment) Act, 2012 and its functioning so far*, at <http://www.ip-watch.org/2014/10/23/the-indian-copyright-amendment-act-2012-and-its-functioning-so-far/> accessed on 14/01/2015.