

Copyright Protection of literary and artistic works in India: An overview of legal framework and enforcement mechanisms

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Abstract

The protection of literary and artistic works by copyright is a crucial component of India's legal framework for intellectual property rights. The Copyright Act of 1957, which establishes the exclusive right of the copyright holder to reproduce, distribute, and perform the work, governs the legal foundation for copyright protection. In India, copyright protection is immediately conferred as soon as a work is produced; registration is not necessary. However, it is advised to register your copyright because it can be used as legal proof in court if there is ever a dispute. Exhaustive lists of works covered by copyright are usually not to be found in legislation. Nonetheless, broadly speaking, works commonly protected by copyright throughout the world include literary works such as novels, poems, plays, reference works, newspaper articles; computer programs, databases; films, musical compositions, and choreography; artistic works such as paintings, drawings, photographs, and sculpture; architecture; and advertisements, maps, and technical drawings. It is significant to understand the whether the works in question comes within the purview of the subject matter in order to figure out whether there is copyright infringement. Therefore, this article would analyse literary and artistic works and the extent to which it applies to the works in question, in the light of landmark judgments.

Keywords: Copyright, Intellectual Property, Literary Work, Artistic Work, Legal Framework

Introduction

The protection of literary and artistic works by copyright is a crucial component of India's legal framework for intellectual property rights. The Copyright Act of 1957, which establishes the exclusive right of the copyright holder to reproduce, distribute, and perform the work, governs the legal foundation for copyright protection.

In India, copyright protection is immediately conferred as soon as a work is produced; registration is not necessary. However, it is advised to register your copyright because it can be used as legal proof in court if there is ever a dispute.

Chapter III Section 13 deals with the 'Subject Matter of the Copyright'. The section mentions about the 'works in which Copyright Subsists'. Works has been defined under the copyright Act to mean any of the works² such as, a literary, dramatic, musical or artistic work³, cinematograph film⁴, a sound recording⁵. The section states that, the copyright subsists for the following works⁶

- Original literary, dramatic, musical and artistic works;
- Cinematograph films; and
- Sound recording.

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² Section 2(y) of the Copyright Act, 1957.

³ Section 2(y) (i) of the Copyright Act, 1957.

⁴ Section 2(y) (ii) of the Copyright Act, 1957.

⁵ Section 2(y) (iii) of the Copyright Act, 1957.

⁶ Section 13(1) of the Copyright Act, 1957.

It is significant to understand the whether the works in question comes within the purview of this section in order to figure out whether there is copyright infringement. Therefore, this article would analyse different works and the extent to which it applies to the works in question, in the light of landmark judgments.

Literary Work

According to the Copyright Act 1957, Copyright subsists for original literary works.⁷ The Act provides for the works which comes within the purview of literary work, to include, computer programs, tables and compilations including computer data bases. In *Excon Corporation v. Excon Insurance Consultants International Ltd*⁸, the Court opined that, irrespective of quality, style or literary merit, a work may be considered literary, if it is expressed in print or writing or in the form of notation or symbols. Literary work is something which is intended to afford either information or instruction, in the form of literary enjoyment. It was also opined by the Court in *University London Press Ltd v. University Tutorial Press Ltd*⁹, the term 'literary' should be used in a sense somewhat similar to the use of word literature in political or electioneering literature and refers to written or printed matter. Therefore, any work which is expressed in the form writing would be termed as a literary work, irrespective of the quality of such works.

Literary works, includes the following;

Computer program: According to the Copyright Act, 1957, Computer Program means a set of instructions expressed in words, codes, schemes or in any other form, including machine readable medium, capable of causing a computer to perform a particular task or achieve a particular result.

Tables and Compilations: Tables and Compilations have not been defined in the Copyright Act 1957; however, it has been considered as a subject matter of copyright under section 13(1) which comes within the, meaning of the literary work under section 2(o). In addition to it, the judiciary has given meaning to such term and have also considered the extent to which it is protectable under the Copyright Act.

Compilations has been often debated to be an original work or not, as it involves minimal level of creativity. This has been discussed in the case, *G.A. Cramp & Sons Ltd v. Frank Smythson*.¹⁰ In this case, the Court was of the view that, the selection of common place tables in a pocket diary does not involve exercise of any task or literary judgment and such a compilation does not constitute an original literary work. The Court also opined that, the notion of originality of content of work cannot be present in any kind of compilation. The Court however, pointed out that, as it is protected under the Copyright Act, to be within the purview of the protection of literary work, the originality in terms of compilation could be tested on the ground of selection and arrangement of the material used to compile the final work. The copyright protection would be provided for the new original literary work of authorship and not to the work as a whole, in case of tables and compilations.

⁷ Section 13(1)(a) of the Copyright Act,1957.

⁸ 1982 RPC 69.

⁹ (1916) 2 ChD 601.

¹⁰ (1944)A.C. 329.

However, in the case, Jeweller's Circular Publishing Co. v. Keystone Publishing Co¹¹, the Court applied the sweat and brow principle to state that, industry and effort is sufficient to establish originality even when such effort takes imagination or judgment. A different opinion of Modicum of creativity principle was taken by the Court in Fiest Publication case, which held that, there should be a minimal degree of creativity in selection and arrangement of compiled data. It does not invalidate copyright protection for compilation, and novelty is not required but minimal level of creativity.

For copyright to subsist in a literary work, it must be more than de minimis. Single words will not attract copyright protection. It has been highlighted in Macmillan v. Copper,¹² it was held that copyright could exist in notes to North's translation of plutarch's life of Alexander

In Lala Ramswaroop Ramnarayan and Sons versus Commr of C. Ex. & S.T., Bhopal,¹³ it was observed that a Panchang displays information regarding tithi, nakshatra etc., substantially rather than just providing general mentioned on a calendar. Further it was observed that Panchang cannot be categorized as 'calendars' because less than 50% of the page space displays the date sequence of the calendar month. In Khemraj Shrikrishandas vs Garg & Co. and Anr.,¹⁴ it was observed that copyright exists in panchang. In Rai Toys Industries V. Munir Printing Press,¹⁵ the ticket used in the game of tambola is entitled for copyright as it involves, a form of tables of numbers requiring investment of skill, labour and originality in preparation. In Aggarwala Publishing House V. Board of High School and Intermediate Education and Anr.,¹⁶ it was held that copyright subsist in question papers.

A single word cannot be provided copyright protection under literary work. The logic is that it involves no labour, skill and judgement. Also, if copyright is extended to a single word then it would eliminate the word from usual usage. In Associated electronics v. Sharp tools,¹⁷ a single word can't be registered under literary category but may be registered under artistic category if it is represented in an artistic manner.

Titles per se are not protected under copyright law. It was held by the Supreme Court in Krishika Lulla v. Shyam Vithalrao Devkatta,¹⁸ that title of the works cannot be protected under copyright.

Two or three sentences on their own do not afford sufficient information, instruction or literary enjoyment to qualify as a literary work. Hence, these are not protected under literary category.

Slogans are not literary works. In Pepsico Inc vs. Hindustan coca cola,¹⁹ the court held that advertising slogans were prima facie not protectable under the copyright act. They could be protected under the law of passing off in case the plaintiff has made out a case.

Certificates may be considered as a formal document or written assurance which states an official fact and are generally used as evidence for certain purposes. Certificates are usually

¹¹ (1922) 281 F. 83.

¹² AIR 1924, PC 75.

¹³ 1955 AIR 765, 1955 SCR (2) 483

¹⁴ AIR 1975 Delhi 130, ILR 1975 Delhi 251

¹⁵ 1982 PTC 85

¹⁶ AIR 1967 All 91

¹⁷ AIR 1991 Kant 406, ILR 1991 KAR 1916, 1991 (1) KarLJ 482

¹⁸ (2016) 2 SCC 521

¹⁹ 2003 (27) PTC 305 Del

monotonous as it contains mere common words or formats which are generic in nature. Certificates are not considered as copyrightable subject matter as it falls under the narrow category of works in which the creative spark is utterly lacking or so trivial as to be virtually non-existent. The presentation of such words or formats in the form of certificate does not qualify the de minimis quantum of 'creativity' or 'originality' under the copyright law.

Blank forms are not protected by copyright if they are designed for recording information but do not in themselves convey any information. The blank forms rule was first articulated in *Baker v. Selden*, (1982). Hence, blank forms are not a subject matter of copyright as there is not originality involved.

Website usually consists of different rudiments which may be copyrightable subject matter that falls within any one of the classes of works set forth in Section 13 of Copyright Act, 1957. The component parts of website can be in different form of digital files such as text, tables, computer programmes, compilations including computer databases ("literary works"); photographs, paintings, diagram, map, chart or plan ("artistic works"); works consisting of music and including graphical notation of such work ("musical works"); "sound recordings" and "cinematograph films". Website as a whole is not subject to copyright protection.

Mathematical formulas/algorithms does not qualify for copyright registration in literary category. In the case of a mathematical formula, it could be argued that since there is a standardized notation for expressing mathematical concepts, the idea and the expression are inseparable; therefore, copyright protection does not apply. There is no copyright in general layouts. In *Schove vs. Schmincke*,²⁰ it was held that layout of coupon is not the subject of copyright.

In *Deepak printers v. Forward stationery mart and others*,²¹ the court ruled that there is no copyright subsists in a calendar even though certain pictures of deities and public personalities and some decorative features were incorporated in the calendar when no such separate copyright in them was claimed. Pocket journals that contain, in addition to the usual pages, information of the type that appears in the calendars, postal information, and a selection of days and dates of the year are not considered literary works for the purposes of copyright.

In *M/s. Infoseek Solutions and another vs. Kerala Law Times and Others*²² it is held – The judiciary is a limb of the state, as constitutionally conceived and provided. The preamble to the Indian constitution is its part and it declares India to be a sovereign, socialist, secular, Democratic, Republic. The constitution has been 'given by the people to themselves'. This affirms the republican character of the polity and the sovereignty of the people. When the judiciary acts as the duly authorised societal agent of the state, it acts as the representative of the sovereign, namely, the people. The power to adjudicate, determine, apply the laws and to give the verdict is essentially the power of the Republic, being exercised through the judicial limb of the state and made available through the courts which are the institutions where the republic carries out its activities that it has to, through the judicial limb of the state. Hence, it is totally in conceivable that the judgments of the courts could be treated as documents over which there could be any copyright. The judgments belong to the state, to the sovereign Republic, to her people. There can be no copyright over them.

²⁰ (1886)33 Ch. D. 546

²¹ (1976) 17 GLR 338

²² AIR 2007, Ker. 1.

Artistic Work

According to Copyright Act, artistic work means²³, a painting, a sculpture, a drawing (including a diagram, map, chart or plan), an engraving or a photograph, of whether or not any such work that possess artistic quality. It also includes a work of architecture and any other work of artistic craftsmanship.

- Work of Architecture - It means any building or structure having an artistic character or design, or any model of such building or structure. In the case of such artistic works, for it to have the protection of copyright, such work has to be located in India²⁴. In case of work of architecture, copyright subsists only in the artistic character and design and shall not extend to processes or methods of construction.
- Photograph- Photograph includes photo-lithic and any work produced by any process and analogous to photography but does not include any part of a cinematograph film.²⁵
- Engravings. - Engravings include, etchings, lithographs, wood-cuts, prints and other similar works, not being photographs.²⁶
- Works of Sculpture - Works of sculpture includes casts and models.²⁷ Although what constitutes an artistic work have been expressly stated by in the section, there often arose issues with respect to the inclusiveness of the said definition, especially on the expression any other works of artistic craftsmanship', on which interpretation of the section as a whole is quintessential.

Word "artistic" is merely used as a generic term to include the different processes of creating works set out in the definition section and that provides that a work produced by one such processes, and that its creation involved some skill or labour on the part of the artist, it is protected [Associated Publishers (Madras) Ltd. v. K. Bashyam alias 'Arya' & Another²⁸].

In Ananda Expanded v. Unknown²⁹, issue was with respect to whether fonts/typefaces come within the purview of artistic work, to which the copyright subsists. The Applicant submitted that, the fonts/typefaces exhibit sufficient originality, artistic nature and sufficient skill and labour to create these fonts. Therefore, it has to be treated as an artistic work. Also, that it comes within the frame work of 'any other work of artistic craftsmanship'. However, the Court in this regard said that, fonts/typefaces cannot be classified as works in which copyright subsists. A work has to be clearly within the definition of the works protected in the Act. With respect to the inclusion of typefaces in 'any other work of artistic craftsmanship', the Court took into consideration the principle of 'ejusdem generis' and stated that, it limits the meaning of the aforesaid work. The Court also stated that, typefaces have not been protected as an artistic work, under the Berne Convention to which India is a party. It has been stated in the Berne Convention that, it shall be the matter of legislation in the countries of the Union to determine the extent of application of their laws to the work of applied art.³⁰ This implies that, unless

²³ Section 2(c) of Copyright Act, 1957.

²⁴ Section 13(2)(iii) of Copyright Act, 1957.

²⁵ Section 2(s) of Copyright Act, 1957.

²⁶ Section 2(i) of Copyright Act, 1957.

²⁷ Section 2(za) of Copyright Act, 1957.

²⁸ AIR 1961 Mad. 114 (1962) 1 Mad LJ 258

²⁹ 2002 (24) PTC 427 CB.

³⁰ Article 7(4) of the Berne Convention.

there is express legislation making the typefaces inclusive under the Artistic work, it cannot be included in the 'any other artistic work' framework.

There arises a narrow line of difference between the artistic work and design and often it is a debatable issue, as to whether work is protected under artistic work or design. This ambiguity has been rectified by the Court in *Microfibre Incorporation v. Giridhar & Co.*³¹ In this case the Court held that, the reproduction of original artistic work was conducted by employing an industrial process that constitutes 'design' within the purview of the Design Act. A design is qualified to be termed as artistic work under section 2(c), provided if it is original. The Court has also highlighted the fundamental difference between artistic work and design to be, applicability of design to some article. The Court has also clarified the ambiguity by stating that, original artistic work will fall under 'artistic work', however its derivatives will fall under the purview of designs. It was contended that, the artists' intention has to be taken into consideration in order to decide under which work should it fall. However, Court rejected the contention by rightly pointing out that, the artists' intention at the time of artistic work would be indecipherable and therefore, it would not be plausible to determine the nature of protection available to it. The Court also added that, the design which is a slight variant of original artistic work, was industrially applied to an article to produce a product, can only claim registration under the Design Act and not under the Copyright Act, irrespective of the intent of the creator.

Title of the works cannot be protected under copyright as held by the Supreme Court in *Krishika Lulla v. Shyam Vitalrao Devkatta*³².

In *Camlin Pvt. Ltd. v. National Pencil Industries*³³, the Division Bench of Delhi High Court held that a mechanically reproduced carton by printing process was capable of being subject matter of copyright. The Court held that 'labels' are copyrightable because label is an 'artistic work'.

Conclusion

Copyright law is supposed to strike a balance between protection of a work for incentives for the owner and overprotection resulting in monopoly. And for this very reason there is the concept of Originality keeping a check on what can be copyrighted and what cannot. Though the concept of originality is still not exponentially explained, it is upon the judiciary to interpret and use judicial precedents to decide on the copyright-ability of a work on a case by case basis.

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Copyright protection extends only to expressions, and not to ideas, procedures, methods of operation or mathematical concepts as such. Copyright may or may not be available for a number of objects such as titles, slogans, or logos, depending on whether they contain sufficient authorship.

³¹ (2009) 40 PTC 519.

³² (2016) 2 SCC 521

³³ (2002)24 PTC 34