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Dr. R. K. Upadhyay is Registrar, University of Kota (Raj.), Dr Upadhyay obtained LLB, LLM degrees from Banaras Hindu University & Phd from university of Kota. He has successfully completed UGC sponsored M.R.P for the work in the area of the various prisoners reforms in the state of Rajasthan.



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Subhrajit Chanda



BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

LANDMARK JUDGMENTS IN THE COPYRIGHT **LANDSCAPE: AN OVERVIEW**

AUTHORED BY - DR. RAJU NARAYANA SWAMY IAS

1. Amar Nath Sehgal Vs Union of India and Anr (2005) 117 DLT 717:2005(30) **PTC 253(Del) (Case No.CS(OS) 2074 of 1992)**

The Delhi High Court through this case set a precedent by aiming towards expanding the scope and ambit of moral rights existing under Section 57 of the Copyright Act, 1957.

The facts of the case were as follows: - The plaintiff, a well-renowned sculptor, was commissioned by the Government of India to create a bronze mural sculpture for the lobby of Vigyan Bhawan. The sculpture took five years to finish and was placed on the wall of the lobby. The cause of action arose when the Government of India arbitrarily took down the sculpture in 1979 and consigned it to the store room. Though the plaintiff made representations, they were left unheard. As a last recourse, he moved the Delhi High Court. The suit was filed in 1992 and an interim injunction was issued. However the case was heard for 13 years before a single bench decision on February 21, 2005 put an end to the proceedings.

The defendant argued that on being given assignment of the mural, the defendant was at liberty to decide the fate of the mural. The defendant had obtained assignment of the mural in exchange of a consideration which had divested the plaintiff of his rights over the same. The plaintiff on the other hand argued that he had the right to preserve the mutilated work as well and sought for a decree to direct the defendant to return the mural to him as well as bear the cost of restoration of the same.

It needs to be observed in this regard that Section 57 of the Act defines two basic moral rights -right of paternity and right of integrity. While discussing moral rights the Court made a deliberate attempt to widen the scope of these rights and included protection of cultural heritage within its ambit. The Court acknowledged the author's work of art as a part of the national culture. While widening the scope of moral rights and author's special rights, the Court relied upon international conventions such

as the Berne convention and The convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer on Ownership of Cultural Property to bridge the gap between international obligations and domestic laws. To promote this consistency, the Court relied upon Vishaha and Ors Vs State of Rajasthan and Ors¹ which observed that in the absence of domestic law, international conventions can be read into domestic laws provided that they are not inconsistent with domestic laws. The plaintiff has the right to recreate his work and therefore has the right to receive the broken down mural. As a result of this the Court passed a mandatory injunction against the defendant directing it to return the mural to the plaintiff. The court also granted damages worth INR 5 lakhs. It was also ordered that prior permission should always be taken before taking any such action.

Thus the decision recognizes moral rights as the heart of copyright law. It demonstrates that the status of moral rights is unrivalled and unavoidable. However, it needs to be mentioned that as against the remedy of INR 50 lakhs claimed by the plaintiff, the Court awarded him a remedy of only INR 5 lakhs. This begs the question of how monetary damages for moral rights are determined. In fact, there is a need to formulate a set of guidelines for computing the damages in case of infringement of moral rights. This is all the more relevant as the question essentially is 'How can you quantify something which does not exist objectively?'

2. Raj Rewal Vs Union of India & Ors (2019 VI AD(Del)267)

This case decided by the Delhi High Court on May 28, 2019 examines the differences in how copyright law applies to architectural works. The dispute arose from the overlap between the landowner's right to free use of his property and the architect's copyright over his creation. To be specific, Mr. Raj Rewal, the appellant, was a well known Indian architect. Respondent no.2 the ITPO (Indian Trade Promotion Organization) had planned and received approval to demolish two buildings built by Mr. Rewal - the Hall of Nations and the Nehru Pavilion. The plaintiff filed a law suit against the respondents under Section 57 of the Copyright Act seeking a mandatory injunction and compensation by recreating the work of architecture in the Hall of Nations and the Nehru Pavilion at the same place or at any other equally significant location in Delhi. According to him, the demolition act violated the claimant's exclusive rights u/s 57. He alluded to the dicta of Amar Nath Sehgal Vs Union of India. The author's right against distortion, mutilation or modification is safeguarded if his reputation or honour is jeopardized. It was argued that the author's right to maintain the integrity of

the work in respect of the nation's cultural heritage, included measures to protect the work's integrity. The plaintiff's counsel argued that an architectural work is an artistic work and that copyright does not distinguish between the media on which the work is created. Consequently the artistic work would exist even if the medium was another's land. Because a work of architecture is a practical design, it is not ineligible for copyright protectionⁱⁱ. By relying on *George Hensher Ltd Vs Restawile Upholstery (Lanes) Ltd 1974 AC 64* it was argued that copyright exists whether or not the work has artistic merit and quality. Moreover the architect owns the building's design.

The respondents argued that Section 57(b) of the Copyright Act only grants rights to the work's distortion, mutilation or modification and not to its utter destruction when the work ceases to subsist and is no longer perceptible. It was also argued that the *Amar Nath Sehgal* dictum does not apply in this case.

The Court came to a conclusion that the writer's right u/s 57 to prevent distortion does not extend to preventing his work from being destroyed. The plaintiff in this instance would not be able to stop the defendant from demolishing the property because it would be a violation of the defendant's right to govern his property and land under Article 300 A. Recognizing that the Copyright Act must be read in tandem, the Court ruled that Section 57 could not consider the right to object to a building's demolition. The case thus highlights the contrast between complete and partial annihilation of a work—a subject that has never been addressed before in the history of Indian Copyright Law.

3. Sanjeev Pillai Vs Venu Kunnappalli and Anr (FAO No 191 of 2019)

This is a case decided by the High Court of Kerala on December 11, 2019. The appellant had prepared a script for a film based on "Mamankam"—a magnificent festival celebrated once in 12 years on the banks of the Bharatapuzha between 14th to 19th centuries. He contacted the first respondent who was interested in making a film and they signed a MoU in 2017. It was found that the appellant's script was mutilated, distorted & modified throughout the film's production. He challenged the order passed by the Additional District Court of Ernakulam dismissing his request for an interim injunction against the respondents from releasing, publishing and distributing the film "Mamankam" by any mode of dissemination to public and issuing pre-release publicity without providing adequate authorship credit to the plaintiff. The respondents argued that the MoU is valid until deemed invalid by a Court of law. It was also stated that the appellant sold his authorship for Rs.3,00,000/- and so the appellant is not

entitled to get credit for the film's story, screenplay etc. Arguments were raised that as the appellant assigned the copyright for a substantial consideration, he is not permitted to claim authorship of his creation or to prevent distribution of such a high-budget film. No rights including those listed in Copyright Act belong to the petitioner.

The Court after a deep analysis of Section 57 of the Copyright Act, concluded that the author has legal right over his IP even after submission of the assignment. The screenplay was the original hard work of the appellant and he thus has legal protection mainly u/s 57(b) which consists of two components. The first part would entitle the author to restrain the opposite party from making any distortion, mutilation or modification or any other act prejudicial to his honour or reputation. The second part was that the author is entitled to claim damages in respect of any distortion.

With regard to the imminent date of release of the movie, the Court had a balanced attitude by permitting it if conditions that favoured the appellant such as no mention of screenwriter's name on any public display of the movie were agreed to.

4. Burrow-Giles Lithographic Co. Vs Sarony (Supreme Court of United States) 111 US 53(1884)

In this case, the Court recognized that photograph is an original work of art when it is a product of intellectual invention of which the photographer is the author. It is one of the earliest cases in which the Court firmly resolved the issue of extension given by the US congress to photographs under the Copyright Act of 1865.

The brief facts of the case were as follows: Sarony was America's most famous portrait photographer and had photographed Oscar Wilde. A retail store in New York City commissioned Burrow – Giles Lithographic Co to print an advertisement for hats, in which it used the photo. The publishers were sued by the photographer u/s 4952 of the Copyright Act of 1865 which extended copyright protection to photographs. He claimed that the picture was entirely from his original mental conception to which he gave visible form by posing with Oscar Wilde. He selected and arranged the costume, draperies and other accessories in the said photograph. It was an original work of art, the product of his intellectual invention and therefore he is the author. As section 4952 protected photographs, among other things, he had secured the sole privilege of reprinting, publishing, copying and vending the

same.

The company on the other side argued that in the language of Article 1 of the US Constitution, the photographer was not the “author” of the “writing” and thus the statute was constitutionally inadmissible. Burrow -Giles also argued that photography was merely a mechanical process rather than an art and could not embody an author's “idea” or artistic expression.

The Court disagreed with the company's narrow interpretation of the word 'writings'. The argument that photography was a mechanical process that showed no artistic expression was rejected. The Court accepted that this may be true of ordinary photographs, but this was not the case of Sarony's image of Oscar Wilde. The control that Sarony had exercised over the subject matter in the view of the Court showed that he was the author of an original work of art and thus written the class of things for which the Constitution intended Congress to grant him exclusive rights under the copyright laws.

The case has been used as a precedent to extend copyright protection to photographs in India.

5. Eastern Book Company and Others Vs. D.B.Modak and Another AIR 2008
SC 809:(2008) 1 SCC 1 (Civil Appeal No.6472 of 2004)

This case was decided on December 12, 2007 by the Supreme Court of India. The appellants- Eastern Book Company- are a publishing house involved in the publication of a compilation of various Supreme Court cases. It so happened that the defendants-Spectrum Business Support Ltd and Regent Datatech Pvt Ltd – launched a software package called “The Laws” via CD-ROMs that contained the same material.

The appellants contended that the judgments were given a different form all-together by them making it very different and unique from the original draft of the Supreme Court. The project was a result of hard labour and skills of trained professionals making it eligible to be copyrighted u/s 13 of the Copyright Act. The work is neither negligible nor trivial in its scope and nature and is an outcome of creativity of the author.

The defendant argued that as publication of judgments of the Supreme Court does not lead to copyright infringement u/s 52(1) (q) (iv) of the Copyright Act, the act of the defendant could not be

categorized as copyright infringement. The appellant's work was also claimed to be a law journal (listing judgments verbatim with some inputs) as opposed to a law report (author record of the judgments in his own words) and hence would fail to seek rights for copyright. It was also stated by the defendants that some minimum level of creativity is a pre-requisite for copyright which the appellant's content lacked.

The Court ruled in favour of the appealing party, giving them sole rights in their content and forbidding the defendants from using it. The judgment laid down the premise that derivative work should be considered more than just a copy of the original work. Inserting paragraph numbering and indicating the concurring and differing opinion of the judges in a case requires legal skills and acumen. This activity and production, according to the Court, exhibit a minimum level of inventiveness needed for the work to be subject to copyright.

6. Krishika Lulla and Ors Vs Shyam Vithalrao Devkatta and Ors 2016(157) AIC 56:(2016) 2SCC 521:(2015) 10 SCALE 718

The case dealt with claim of copyright in film titles. The petitioner contended that according to an agreement dated September 2009, Milap Zaveri wrote the story for the film 'Desi Boyz' and was duly compensated. He asserted that copyright does not exist in a film's title and that aside from that, the film's story had no resemblance to that of the respondent (Mr. Devkatta) in terms of characters, scenes and settings. Devkatta's counsel on the other hand contended that the title was protected by copyright as it was the soul of his story which took away everything from his story.

The Supreme Court examined Section 13 of the Copyright Act pursuant to which copyright is protected in original literary, dramatic, musical, and artistic works as well as cinematograph films and sound recordings. The Court then assessed whether the title of Devkatta's story qualified as 'original literary work'. Legal precedents that addressed this issue in depth were considered. For example in *Hogg Vs Maxwell* ⁱⁱⁱ, the question was whether the title of a monthly magazine called 'Belgravia' was copyrightable. In that instance the Court concluded that the "copyright intended by the Act must be in some terms in the shape of a volume or part of a volume which is conveyed to the public, by which the public is benefited and in exchange for which the author of the work is provided a certain

protection”. The Court also cited the Oxford English Dictionary which describes literary as “concerning the writing, study or content of literature especially the land valued for its form quality”. As a result, simply using every day terms does not qualify as “literary”. In Francis Day and Hunter Ltd Vs Twentieth century Fox Corporation Limited and Ors ^{iv} the Privy Council made a similar decision. When deciding whether using the title of a song as the name of a movie constitutes copyright infringement, they ruled that “a title normally does not include literary production and is not sufficiently substantial to sustain the claim to protection. “Moreover the Madras High Court in R. Radha Krishnan Vs Mr. A.R.Murugadoss and Ors ^v rejected copyright protection in the film’s title 'Raja Rani' ruling that the terms were used in everyday conversation.

The Supreme Court finally ruled that Mr. Devkatta lacked copyright in the term “Desi Boyz” and hence could not sue the film makers for copyright infringement. The mere use of every day words, such as these employed here, does not qualify as “literary”.

7.Star India Pvt.Ltd Vs Moviestrunk.Com & Ors (Cs(COMM) 408 of 2019, IA 10601 of 2019 & IA 13684 of 2019) (Delhi High Court)

The lawsuit involved the cinematographic film 'Mission Mangal' which was set to release on over 2500 screens across India on Aug 25, 2019. It was brought against the defendants who ran various internet streaming services for illegally streaming the plaintiff's film, which constituted copyright infringement. According to the plaintiff, the defendants are ‘rogue websites’ written the meaning of the judgment in UTV Software Communication Ltd & Ors Vs 1337x. to & Ors ^{vi} as their principal activity involves reproduction, publication and communication of infringing material through the internet. In fact, the anonymous nature of these websites makes it impossible to identify, them effectively. Photographs of the defendant's websites were included in the evidence provided to the Court confirming that the plaintiff's film was made accessible for download and streaming on defendant's websites before the official release date of the film. An affidavit of the plaintiff's investigator Mr. Gaurav Ray and electronic records of proof showing unlawful acts being performed by the defendants were among the evidence submitted by the plaintiff. Notices were sent to the defendant websites to take down infringing content from their pages, but no responses to the same were received.

The counsel for the plaintiff referred to the judgment in Satya Infrastructure Ltd &Ors Vs Satys Infra

& Estates Pvt Ltd ^{vii} where it was ruled that in an unopposed litigation of this sort, it is not required to compel the plaintiff to present proof. The Commercial Courts Act, 2015 provides appropriate assistance in the form of a statement of truth and declaration.

The Court held that the plaintiff has succeeded in showing that the defendants were primarily engaged in committing and facilitating copyright infringement. The plaintiff's right to exclusive exploitation and dissemination of the copyrighted content was likewise acknowledged by the Court under the Copyright Act of 1957. Defendant's refusal to respond to the plaintiff's notifications or to enter attendance according to the summons demonstrates a complete disregard for the plaintiff's IPRs. As a result, the Court issued an injunction as well as appropriate damages. The Court also directed the internet service providers that were providing service to the defendant's websites to block access and the appropriate authority to suspend the web addresses of the defendants.

8. Music Choice India (P) Ltd.Vs Phonographic Performance Ltd (2010(44) PTC 171(Bom):(2010)112(1) Bom LR 0470) (Bombay High Court)

The case deals with the question of jurisdiction and is concerned with the issue relating to broadcasting sound recording and non-grant of license. The plaintiff-a sound recording broadcaster – sought licensing from the defendant to broadcast as the latter was a holder of copyright in sound recordings. However the defendant rejected the offer of the plaintiff that came with particular conditions. The plaintiff's prayer to the Court sought a proclamation that the plaintiff was obligated to a license to telecast the defendant's sound recordings in return for money to the defendant subject to the terms and conditions set forth by the Copyright Board on the plaintiff's proposal for grant of compulsory license u/s 31(1) (b) of the Act which was filed in 2007. The plaintiff also sought an injunction against the defendant restricting them from meddling with the telecast of sound recordings.

The defendant claimed that the complaint could not be maintained in the Civil Court because of Section 9 of the Civil Procedure Code, 1908. If the parties are not in agreement regarding the amount of compensation, in compliance with the procedure laid down under Sec 31(1) (b), only the Copyright Board can determine it.

The Court ordered that Civil Court will not have any jurisdictional power to grant the final remedy in the suit as it is enforceable only before the Copyright Board. It also lacks the jurisdictionary power

to render injunctive relief to restrict meddling with the telecast by the plaintiff. When a copyright holder or his transferee refuses a broadcaster's offer to broadcast any sound recording intended for public communication on conditions that the broadcaster considers rational, the Copyright Board is mandated by law to investigate and assess after receiving a complaint brought before it. The case was dismissed on account of jurisdictional conundrum.

**9. Najma Heptulla Vs Orient Longman Ltd (AIR 1989 Del 63:1989(1) Crimes
597:36 (1988) DLT 31: 1988 (15) DRJ 22) (Delhi High Court)**

This case pertains to the concept of joint authorship in the backdrop of a copyrighted work. It is pertinent to mention in this context that Section 2(z) of the Copyright Act of 1957 defines “work of joint authorship” as “a work produced by the collaboration of two or more authors in which one author's contribution is not distinguishable from the contribution of the other author or authors”.

The brief facts of the case were as follows:- The release of the book 'India wins Freedom' by Maulana Abdul Kalam Azad was scheduled in November 1957. But due to a stroke, Maulana Azad – the author of the book – passed away before the text could be published. Professor Humayun Kabir, a close associate of the author, later signed a contract with Orient Longman Limited for the publication of the book (except the first 30 pages which it was stated expressly in the introduction to be locked and released after 30 years) and it was determined that the royalties would be split between the Indian Council of Cultural Relations and the author's legal heirs- Fatima Begum (grandmother of Najma Heptulla) and Nooruddin Ahmed. In the agreement, Professor Kabir was identified as the book's composer. It was also agreed that after the seals were broken on February 22, 1988, the publishing business would have rights to publish the entire book.

The plaintiff, Najma Heptulla, submitted a notification on February 13, 1988 claiming that she was not in favour of publishing the complete book. A complaint for “rendition of accounts” was brought and an order was issued against Orient Longman Limited preventing them from publishing the complete book. It was contended by the plaintiff that the book's publication rights belong only to Maulana's heirs and that Professor Kabir lacked the power to make such a deal. The defendant on the other hand argued that though Maulana possessed ownership in the work, he had consented to Professor Kabir's arrangement. Professor Kabir is thus the only author of the work and has authority to sign the contract.

The Court considered the word 'author' as defined by sections 2(d) and 55(2) of the Copyright Act, 1957. It is indisputable that the author of the book is Maulana, but the prologue implies that Professor Kabir is also a joint author. It was because Maulana only gave thoughts in Urdu and Professor Kabir took notes based on that which were later published as a book. The Court cited *Donoghue Vs Allied Newspapers Ltd* ^{viii} in which the racing secrets of Steve Donoghue were not copyrightable as the expression had been listed down by the journalist. In *Walter Vs Lane* ^{ix}, the Court decided that when a reporter publishes about a hearing, he not only writes down what will be published, but also organises it and therefore report preparation necessitates more than mechanical ability.

As a result, Professor Kabir was considered the only author because he did all of the translating and editing. However he stated in his agreement with the defendant that he would transfer 50% of the royalties to Maulana's legal heirs and therefore he did not consider himself the sole author. Thus both of them were joint authors. When there is joint authorship and one of them is no more, the consent of the legal representatives of the deceased is necessary. Here Fatima Begum ratified the agreement and the publication of book, according to evidence. The Court also discussed the Promissory and Equitable Estoppel Principle. In the present case, she was aware of the arrangement and receiving the royalty. As a result because the plaintiff had reaped the benefit of royalty, the rule of estoppel will apply. Furthermore the plaintiff suffered no irreversible loss or injury. Hence the injunction was denied. However the defendant was ordered to pay INR one lakh as security.

10. Delhi University Photocopy Case (The Chancellor, Master and Scholar of the University of Oxford & Ors Vs Rameshwari Photocopying Services and Anr)
233 (2016) DLT 279:(2017) 69 PTC 123 (Civil Appeal No.25 of 1995)

This case originated when a couple of publishers lodged a complaint against a photocopying shop on the campus of Delhi University. The point of contention was that the shop compiled the resource materials from their books into one 'course pack'. The plaintiffs claimed that this was a copyright infringement of their IP. Republishing sizable amounts of excerpts from their work and making a compendium makes them accountable under sections 14 & 51 of the Copyright Act. It was also maintained by the plaintiffs that the defendants ought to be issued a licence under the IRRO (Indian

Reprographic Rights Organisation). They asserted that the defendants ought not take defence u/s 52(1) (i) as there was no form of instruction by a teacher. It was also maintained that there was a commercial intent and that people will become more inclined to buy course packs at a lower price and out of convenience and that as a result actual publications will face deterrence in their worth.

The defence counsel took the defence of fair trade u/s 52(a) and (h). They claimed that their course packs had no major impact on the business and that this only helps the students. The defendants also contended that 'instruction' in Section 52 goes beyond classroom education. It was also maintained that since there is no copyright infringement, licensing under IRRO is immaterial. Arguments were put forth that 55 authors were cited, but 34 of them did not make any opposition to the suit. The number of excerpts borrowed were not in a sizable amount.

The Court was of the opinion that the claimants are in no competition with 'course packs'. Even if these compilations were not made, the students would borrow the books from the library at no cost. Hence there is no direct threat to the IP of the plaintiffs. It is immaterial if an act holds an exclusive right to copyright, if touched upon in Sec 52, it will not entail copyright infringement. While discussing Sec 52(1)(i), it was felt that reproduction is not only constricted to a stereotypical teacher-student discussion. The phrase 'in course of instruction' refers to the entire process rather than merely that carried out in the lecture. On IRRO licenses, the Court maintained that it is unnecessary as all acts of the defendants are in conformity with Section 52(1)(i). Since the student's action of photocopy of resource material does not amount to infringement, the act of photocopying by the university for their students also will not be considered infringement. Moreover it is immaterial if the machine is installed inside the library or outside or is done by a student or by a person employed or a contractor.

It is also worth mentioning that an appeal which surfaced before a Division Bench was later dropped and the case trial was restarted to establish if the course packs were truly adequate. The Court determined that expert testimony was needed. It was required of the photocopier to keep track of course packages copied, deliver it to pupils and then present the same in Court every six months.

A highlight of the judgment is that it ascertains that copyright law is not a natural law but a statutory law. Thus it has strayed away from the usual fair-trade test.

11. Academy of General Education, Manipal Vs B.Malini Mallya (AIR 2009 SC 1982:(2009) 4 SCC 256)(Civil Appeal No.389/2008)

This is a landmark case wherein the Supreme Court clarified the scope of fair use. The case decided on January 23, 2009 involved a conflict between the Academy of General Education, Manipal and Ms. Malini Mallya over violation of a copyright owned by the latter. The subject of copyright was the work of Jnanapeeth awardee Dr. Shivarma Karanth and the work in question was a derivative of Yakshagana called as Yaksharanga. It qualified as an 'original work' because Dr. Karanth had written seven poems (known as 'prasangas') for performing Yaksharanga and altered the traditional dance style. After his death, the rights over Yaksharanga were given to Ms.Malini Mallya as per a will signed by Dr. Karanth prior to his death (which occurred in 1997). In 2001 the Academy of General Education performed Yaksharanga without seeking permission from Ms.Malini. The District Court of Udupi ruled favourably for Ms. Malini & passed a decree in 2003 restraining the Academy from performing the seven prasangas. The High Court on appeal agreed with the verdict of the District Court. Following this, the Academy approached the Supreme Court submitting that the dance performance fell within the purview of “fair use” because the dance form was not exploited for commercial gain as no fees was charged from the audience. It was also contended that the injunction issued is not in accordance with the requirements of the Copyright Act 1957 as the appellant is allowed to utilise the same in accordance with Section 52(1) thereof.

The Court settled the fact that sub-categories of dance forms do indeed fall under the scope of “artistic works” u/s 2(c) and are hence copyrightable. It was also made clear that not all kinds of usages of copyrighted works qualify as copyright infringement. It was held that “in a case that involves fair use of a literary or theatrical work for private use (including research, criticism or review) the author or his legal successors cannot claim exclusive right under the Act.” So if a performance or dance is within the realm of fair use, no injunction can be issued. The Academy being an educational institution, any performance within the meaning of Section 52(1) (i) is subject to the fair use doctrine. As an amateur organisation or association, the Academy would also be immune from responsibility for any such performance before a non-paying audience.

12. ESPN Star Sports Vs Global Broadcast New Ltd & Ors (2008)38 PTC 477(Del) Delhi High Court (RFA(OS)No 25/2008)

This judgement differentiates between the broadcasters right and copyright and talks about the interpretation of the exception of fair dealing in the light of freedom of speech and expression – an oft claimed defense of news channels. The facts of the case were as follows:- CA(Cricket Australia) issued an exclusive license in favour of the appellant ESPN star sports for broadcasting rights of the India-Australia cricket series. The respondents are some parent companies of various news channels who ran shows on their new prime time which had short footages of the cricket match going on between the teams. The appellant alleged that the respondents commercially exploited the footage and ran them for more than the prescribed time on the pretext of broadcasting news prime time.

The appellant claimed that broadcasters right u/s 37 of the Act was distinct from copyright. The respondents on the other hand claimed that broadcasters right and copyright must be treated at par. Hence the appeal should be dismissed because of non-joinder of a necessary party (ie) the copyright owner (viz) CA. The respondents also argued that fair dealing cannot be pre-judged and can only be decided on a case -to-case basis. There is no law that lays down any limit on the length of footage that may be used by broadcasting organizations covering any sporting event. The respondents also pleaded that there is no basis for the plaintiff's argument that the respondent cannot utilize footage in excess of 30 seconds per bulletin and a total of 2 minutes per day.

The first Court of instance held that copyright and broadcast rights are to be considered at par and held that due to non joinder the suit is liable to be dismissed. After an appeal, the Court formed a two-judge bench and held that broadcasters right and copyright are two separate rights. Reasons given by the Court were:

- a) Inclusion of a separate definition of 'broadcast' in section 2(dd) of the Act and not including it within the definition of 'work' (defined under Section 2(y)) that would be the subject matter of copyright protection u/s 13 of the Act.
- b) Copyright infringement being dealt with u/s 51 whereas infringement of broadcasting rights being dealt with u/s 37(3).

The Court also held that there were separate rights held by the appellant in the telecast which can be classified into two parts.

1. Live matches broadcast by the appellant as exclusive licensee of CA can be considered

broadcasters exclusive right.

2. Post-match and pre-match show, commentary by famous cricketers etc. must be considered as copyright owned by the broadcasters. Hence the fact that the appellant broadcasters have filed for injunction and infringement against the respondents must be considered a case of violation of their own copyright and hence the suit is not barred by Section 61 (owner of copyright to be party to proceeding) as the copyright owner is the broadcaster itself in this case.

The Court however could not pass an order of injunction because the event had already finished, but made observations favourable to the appellant and held that the defense of fair pleading cannot be attributed to the respondents.

The Court referenced the conditions laid down in Media Works NZ Limited and Anr Vs. Sky Television Network Limited ^x wherein it was observed that “fair dealing meant that the extract must be brief and should be considered in light of the length of the recording.” Based on the above judgment the Court held that since the respondents overran the show multiple times and had advertisements placed on the special shows, the main intent was commercial exploitation and it cannot be done under the garb of freedom of speech and expression of news channels.

Conclusion

“In depths of soul, creativity blooms
A tapestry woven with passion looms
With words and brush, visions take flight
Imagination's spark, a beacon of light,
In each creation, a glimpse of our worth,
In each creation, a glimpse of our worth,
Humanity's art, an endless rebirth.”

The above lines have a deceptive similarity with Robert Frost's poems. But his die-hard fans can recognize that it is the creation of ChatGPT based on a one-line prompt. Despite the evolution of copyright law, it must be admitted that jurisprudence is still in its nascent stage when it comes to generative AI- be it ChatGPT or Bard. In the backdrop of this technological setting, this article has

attempted to outline a few landmark judgements in the field - the list being illustrative and by no means exhaustive. For instance, the seminal decision of the Apex Court in R.G.Anand Vs Delux films which laid down the basic principles of idea-expression dichotomy does not figure in the dozen judgements enlisted in the article. Such is the case also of the decision rendered by the Allahabad High Court in Gopal Das Vs Jagannath Prasad which considered two books written on the same theme and the judgement of the Kerala High Court in the Civic Chandran case (Civic Chandran Vs Ammani Amma) where an original drama was criticized by performing a counter drama.

Copyright law being the most versatile among all forms of IP law has been curated by the judiciary to suit the context- whether it be social, economic or cultural. From the test of originality and remedies for violations to fair dealing provisions, jurisprudence has struck a fine balance. Transformative use has been recognized and clear commercial use unprotected while it has been stipulated that fair dealing has to be within the four corners of bonafide use, reasonableness, noncommerciality and de minimis provisions. Criticism and review have to be genuine and not merely a charade. As Courts rise up to the challenges posed by technology, the multifaceted jurisprudence on copyrights is expected to evolve amalgamating hitherto unknown terrains in a manner befitting the Cinderella of the IP family.

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ⁱ AIR 1997 SC 3011: (1997) 5 SCALE 453
ⁱⁱ Lucas film Ltd Vs Ainsworth(2011)UKSC39
ⁱⁱⁱ (1866-67) LR2 Ch App 307
^{iv} AIR 1940 PC 55:1940 AC 112
^v AIR 2014 Mad 25: 2013 (5) LW 429
^{vi} 2019(78) PTC 375 (Del) [CS(COMM:) 724/2017]
^{vii} 2013 (54) PTC 419 (Del) (CS(OS) 1213 (2011))
^{viii} (1937)3 ALL ER 503
^{ix} (1900) AC 539
^x 74 IPR 205