

## CHALLENGES OF COPYRIGHT PROTECTION IN THE CONTEMPORARY AGE: THE INDIAN PERSPECTIVE

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### Abstract

*A product of Intellectual Property is a brainchild of a creator nourished with innovation and creativity with inherent moral rights to earn recognition or financial benefit from what they have invented or created. Copyright is an intellectual property associated with bolstering innovation and creativity while controlling the reproduction of work. It also grants IP rights to persons, groups of individuals, and organizing parties involved in presenting their work in the public domain such as broadcasters or performers. However, the legal system for the protection of Copyright has loose strings leading to challenges in the dynamic and inconsistent world. The development of networking and multimedia technologies has given producers of digital material new opportunities. However, since anyone can easily generate a perfect copy of a piece of digital content, abuse, illicit distribution, plagiarism, and misappropriation is made easier, resulting in copyright infringement. Additionally, one such example is, Internet “pirates” frequently employ well-known peer-to-peer software to illegitimately transmit digital copyrighted content, infringing on the legal rights of the copyright owners. The paper explores facets of existing and upcoming challenges in the Indian Copyrighted Legal system. It further analyses mechanisms like “fair use” and “privacy” which are frequently used by web users to protect the ownership and dissemination of sensitive material and to prevent copyright owners from having more exclusive control over their works than the copyright law permits. It concludes with a comparative discussion of trends keeping laws and society as variables in the digital era following the substantive opinions to resolve the same.*

**Keywords:** *Copyright infringement, fair use, piracy, Internet Service Providers, author, and moral rights*

### Introduction

Intellectual property as a discipline has advanced in its scope due to the contribution of various stakeholders at the national as well as international levels. The developing countries during the 1970s stood firm before the World Trade Organisation (WTO) and were stringent and gave a fight, about intellectual property rights being recognized as an economic issue, to developed

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countries.<sup>1</sup> India has further taken actions to protect its economy, culture, and heritage by imbibing intellectual property rights, from Trade-Related Aspects of Intellectual Property (TRIPs) to Indian laws and legislations since the year 2005. Copyright as a right has been protected by law in the interest of creators of “*literary work, dramatic, musical, artistic works, cinematographic films, and sound recordings*” as envisaged in the Indian Copyright Act 1957<sup>2</sup>. “*There can be no liberty unless there is economic liberty.*”<sup>3</sup> The artist must have liberty and protection towards their creation for art to be created, critiqued, and marketed. The copyright system and its lacunae regarding the protection of copyright have statutory loopholes ignorant of creations yet to be discovered.

As R Anthony Reese puts it, “*The articulations of copyrightable subject matter and of the standards for protection serve as the gatekeepers for copyright ability. The wider the gate is opened, the more – and more varied – will be the creations that are copyrightable.*”<sup>4</sup> The challenges in the copyright legal system concerning the protection and scope, of the rights and interests of copyright owners and of society as a whole are subsisting and in consonance with the development of technology, are constant.

The paper explores the contemporary framework of Copyright law prevalent in Indian legislation covering statutes regulating and overlapping copyrighted works, designs, expressions, counterfeit goods, etc. It further exhibits the methods of copyright infringement as observed in customary practices including emerging trends and copyright ability. It goes on to highlight the upcoming challenges and lacunae in the framework of the copyright legal system with the eyes of the author and alleged infringer. The paper is concluded by submitting recommendations and advanced techniques for wide preservation coverage under the umbrella of Intellectual Property Rights (IPR).

### **Laws for Protection of Copyright: Indian & International Approach**

*“If a creative person steals your idea, he’s killing his creative ability, if he steals your art, he’s killing his art, if he makes it available to the world, it won’t create the impact you could have created, because it wasn’t from the right source”- Michael Bassey Johnson*

Intellectual property is the product of one’s mind’s creation. When one employs his/her acumen and intellect and creates an intangible product/service such property is known as intellectual

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<sup>1</sup> Bansal, A. K., “PUBLIC INTEREST IN INTELLECTUAL PROPERTY LAWS” 55(4), *JILI*, 476–503 (2013).

<sup>2</sup> Copyright Act, 1957 (Act 14 of 1957).

<sup>3</sup> Margaret Thatcher, Former UK President.

<sup>4</sup> Reese, R. A. (2017). What should copyright protect? In R. GIBLIN & K. WEATHERALL (Eds.), *What if we could reimagine copyright?* (pp. 111–146). ANU Press. <http://www.jstor.org/stable/j.ctt1q1crjg.7>

property. Intellectual property rights i.e. rights over self-created property has recognition since ancient times. Copyright is both a personal as well as a right against society<sup>5</sup>. Copyright has been recognized by law as a negative right that guards the creator of the work against unauthorized duplication or exploitation of his creation<sup>6</sup>. The author of the work has three rights, namely "usus, abusus, and fructus<sup>7</sup>," the latter two of which refer to the author's freedom to "... freely authorize others by contract to exploit his works by assigning or licensing his rights (abusus) to them," subject to payment of compensation (i.e., fructus).

In Indian jurisprudence, laws and rights for the protection of one's intellectual property are envisaged and adopted from our scriptures and ancient texts. In ancient times, people were god-fearing, and knowledge propagation and sharing commonly known as "*vidya-daan*" was a key virtue<sup>8</sup>. In the Bhagavad Gita, the creation of Intellectual Property and decimation and propagation have been held to be the supreme virtue. As per Gita, it is important to create property however; it is also the duty to not have the feeling or ambition of owning the same<sup>9</sup>.

In Modern-Day India, the Copyright Act, of 1957 is the legislation that governs the registration, protection, and licensing of copyrights in India. Indian copyright has come a long way since it was first implemented under British control. India's copyright laws are governed by the Copyright Act, of 1957, as revised in 1999. The law becomes effective on January 15, 2000. To make copyright registration easier, it has established a copyright office under the direct supervision of the Registrar of Copyrights (Now Intellectual Property Board). The Copyright Act gives the author the commercial right to make translations of the work and to reproduce, issue copies, perform, or disseminate cinematographic film or sound recording, as well as any adaptations of the work to the public.

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<sup>5</sup> Baxi, U. (1986). COPYRIGHT LAW AND JUSTICE IN INDIA. Journal of the Indian Law Institute, 28(4), 497–540. <http://www.jstor.org/stable/43951048>.

<sup>6</sup> Lal's Commentary on, The Copyright Act, 1957 WITH THE COPYRIGHT (AMENDMENT) ACT, 2012, THE COPYRIGHT RULES, 2013, NEIGHBOURING RIGHTS, INTERNATIONAL COPYRIGHT ORDER, 1999 para 14 at 11 (DELHI LAW HOUSE 5th ed. 2015).

<sup>7</sup> SILKE VON LEWINSKI, REMUNERATION FOR THE USE OF WORKS, EXCLUSIVITY VS. OTHERS APPROACH at 85 (WALTER DE GRUYTER GMBH 2017). See Also, International Journal of Science and Research (IJSR) ISSN (Online): 2319-7064 Index Copernicus Value (2016): 79.57 | Impact Factor (2017): 7.296 Volume 7 Issue 4, April 2018 [www.ijsr.net](http://www.ijsr.net) Licensed Under Creative Commons Attribution CC BY An Analytical Study of Copyright Laws in India and England Divya Singh , Chetan Chauhan.

<sup>8</sup> Ayyar, P. V. J. (1982). South Indian Shrines: Illustrated. New Delhi: Asian Educational Services. See Also, Vrinda Singh & Vishal Singh Thakur, Biopiracy and the Eclipse of Traditional Knowledge in India, 6 *Supremo Amicus* 491 (2018).

<sup>9</sup> Easwaran, E. (2010). The End of Sorrow: The Bhagavad Gita for Daily Living. The Bhagavad Gita Living Series. California: Nilgiri Press. See Also, Intellectual Property in the Ancient Indian Texts, in Diversity in Intellectual Property: Identities, Interests, and Intersections, 232–246 (Prabha Sridevan).

Furthermore, provisions to cater to counterfeit books, software, films, etc have been vested in Chapter 18<sup>10</sup> of the Indian Penal Code from Section 479 to Section 489. Furthermore, special provisions pertaining to the protection of designs that involves color, shape, size of products, etc., also known as special copyright is protected under the Design Act, of 2000<sup>11</sup>.

The provisions with respect to the protection of copyright protection In India are both civil and criminal in nature. For instance, Section 63<sup>12</sup> of the copyright act states that any act or conduct which is responsible for copyright infringement is a criminal offence punishable by up to 3 years of imprisonment. Furthermore, there is a wide debate concerning the aforesaid section as various high courts have deemed the offence above to be of non-Bailable nature<sup>13</sup> whereas certain high courts are of the opinion that it is Bailable<sup>14</sup> in nature. However, it is unclear as to the nature of this offence as different high courts have different opinions<sup>15</sup>. It is pertinent to note that Section 63 not just criminalizes infringement but also piracy. According to the International Intellectual Property Alliance's (IIPA), 2007 study on India, copyright infringement cost the country's economy 496.3 million US dollars in lost commerce<sup>16</sup>.

### **Copyright Infringement**

Copyright infringement as strictly defined can be termed as unauthorized use of Copyrighted work or the work protected under copyright law. The work is the brainchild of the author and is deemed protected and affixed with the remedy in case of copyright infringement. The mechanisms of infringement present for a few decades, across the world, include:

1. Reproduction, Distribution, and Communication to the public without the consent of the author/ owner.
2. Selling, renting, or importing infringing copies of a copyrighted work without the consent of the author/ owner.
3. Creating a derivative work, also known as, piracy, based on a copyrighted work including the content available on the internet by unlawfully downloading or streaming the copyrighted work without the legal consent of the author/ owner.

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<sup>10</sup> Indian Penal Code, 1860.s.479-489.

<sup>11</sup> Design Act, 2000.s.11.

<sup>12</sup> Copyright Act, 1957.s.57.

<sup>13</sup> State of NCT of Delhi v. Naresh Kumar Garg, 2011 (46) PTC 114 (Del). See Also, Jitendra Prasad Singh v. State of Assam, 2002 (3) *GLT* 241.

<sup>14</sup> Amarnath Vyas v. State of Andhra Pradesh, [2007 CRI LJ 2025 (AP)].

<sup>15</sup> Journal of Intellectual Property Rights Vol 13, November 2008, pp 583-589 Insight into the Nature of Offence of Copyright Infringement Shivendra Singh and Aprajita.

<sup>16</sup> International Intellectual Property Alliance, 2007 Special 301 Report India, 12 February 2007, p. 49, 51, 53-54, 117, [www.iipa.com/rbc/2007/2007SPEC301INDIA.pdf](http://www.iipa.com/rbc/2007/2007SPEC301INDIA.pdf) (21 September 2008).

4. Performance of copyrighted work in public without the consent of the author/ owner.

The *Berne Convention*<sup>17</sup> was adopted in 1886, which set minimum uniform standards for copyright protection for creative and innovative works such as books, paintings, music, and films. It recognized the right to be protected against the unauthorized adaptation of intellectual property. More than 170 countries signed up for membership of the Convention and as administered by the World Intellectual Property Organization (WIPO), protecting the rights of artists holding the copyright. It is well-settled that in Indian and American systems of law, the protection of copyright is extended to the form, expression, and substance of the article or work is copyrightable and protectable and not the idea behind the work.<sup>18</sup>

### **Copyright Infringement: Section 51 of the Act**

The common methods in which copyright is infringed directly resonate with the vested and other neighboring rights available to the author according to the Copyright Act 1957<sup>19</sup>, defined in Section 51<sup>20</sup> of the act which refers to what amounts to copyright infringement.

Section 51 provides that in cases whereby a person without license of the copyrighted work given to him by the owner or the Registrar of Copyrights as permitted by the Act, does something through which the act is conferred upon him or for revenue, communicates the work to the public causing a breach in the copyright available to the true owner. Further, if *distribution, sale, rent, or exhibition in public by means of trade or imports into India the breaching copies*<sup>21</sup>, the copyright is said to be infringed. The provision further empowers the copyright owner to take legal action against the infringer and seek remedies such as an injunction (a court order to stop or prevent the infringing activity), damages (compensation for financial losses suffered because of the copyright infringement), and an account of profits (amount directed to the infringer to pay in account with any profits earned on the base of infringement).

Few methods of infringement in the contemporary world with the vertical advancement of technology are:

### **Fair Use as an Infringement Tool**

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<sup>17</sup> "The Protection of Literary Works under Article 2 of the Berne Convention and its Acceptability in EU Countries", SSRN, available at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3562239](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3562239) (last visited on December 31,2022)

<sup>18</sup> Promod Nair, Copyright Protection for Computer Software, 7 SCC J-31 (2004)

<sup>19</sup> Ibid.

<sup>20</sup> Copyright Act, 1957 (India) § 51

<sup>21</sup> Agrawal, Academic Research and Copyright Issues, 4 Asia Pac. L. & Pol'y Rev. 180 (2018), [asiapacific.ccinternational.in](http://asiapacific.ccinternational.in) (last visited on December 31,2022)

A recent trend of increased fair use in copyright was observed, particularly in relation to the *Google Books*<sup>22</sup> project, where the US's mass copying of books from around the world was deemed fair use despite the lack of consent from the copyright owner. One of the most well-established exceptions in copyright law is the fair use or fair dealing exception, which allows certain actions to be performed without the permission of the copyright owner.

Sr. No.	Description of acts	Relevant clauses of section (52)(1) of the Act
1.	Fair scholarly use	(a), (p)
2.	Educational uses	(g), (h), (i)
3.	Media reporting uses	(b), (m), (n)
4.	Uses of state produced materials	(c), (d), (e), (g), (r)
5.	Making of records of literary, dramatic, or musical works	(i)
6.	Performance of such works	(f), (k), (l)
7.	Use by public libraries	(o)
8.	Use of engraving, etc.	(s), (t), (x)
9.	Cinematograph films—uses by makers, and exhibitors	(u), (y)
10.	Uses relating to artistic works	(v), (w)

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*Table No. 1: The acts protected from copyright infringement under the ambit of Section 52 of the Copyright Act 1957 (Fair Use)*

The fair dealing doctrine in India is recognized under ‘Section 52 of the Copyright Act 1957’. This doctrine pertains to certain acts laid down under the statute, the commission of which does not attract any liability notwithstanding the acts being covered within the scope of copyright infringement.<sup>24</sup> In India, Section 52 sub-section (1) (a) exemplifies “fair use/ fair dealing” and allows the use of copyrighted work for different purposes, without any license, of research and private study with concerns to the academic regime. However, the landmark case of *Multinational publishers suing Delhi University* cited the exception to be in contravention of all in favour of ‘embracing rights’ of publishers like *Oxford University Press, Cambridge University Press etc.*<sup>25</sup> In this case, recommended readings were being collected by photocopy

<sup>22</sup> Authors Guild v. Google, Inc., 721 F.3d 132 (2d Cir. 2015)

<sup>23</sup> Upendra Baxi, Copyright Law and Justice in India, 28 J. Indian L. Inst. 497 (1986)

<sup>24</sup> Narayan Prasad & Pravesh Aggarwal, *Facilitating Educational Needs in Digital Era: Adequacy of Fair Dealing Provisions of Indian Copyright Act in Question*, 18 J. WORLD INTELL. PROP. 150, 152 (2015)

<sup>25</sup> *University of Delhi v. Rameshwari Photocopy Services*, Civil Appeal No. 8252 of 2012, (Supreme Ct. of India) “Rameshwari photocopy services integrated within Delhi University operating from the premises of and on the basis of a license provided by the university. The license mandates the price and nature of services. The future of student's access to educational materials in form of course packs in India, without which Indian higher education would go in same costly format of developed countries.”

shops turned into entrepreneurs to make course packs for students.<sup>26</sup> However, to substantiate and protect the interests of justice, the Indian Courts have supported the rights of copyright holders while participating in the idea-expression debate and discussing the test of originality<sup>27</sup>.

### **Piracy<sup>28</sup>**

Piracy denotes the relevance of an expression copied from one's idea and forming its intellectual property as a duplicate copy or a clone of the owner's creation who birthed the idea. "The Study on Copyright Piracy in India" as conducted by 'National Productivity Council'<sup>29</sup> provides that India is prey to Copyright Piracy in *Cinematographic works, Sound Recordings, Computer Software, Literary works, Performers*, and various other emerging forms of intellectual property. Even e-commerce platforms like *Amazon, Flipkart etc.* and ISPs trade in pirates unknowingly or knowingly causing harm to the rights of the owner. The losses incurred because of the piracy of products are an unimaginable figure. The technology also advances and has evidently innovated technologies like 3D Printers of shapes and designs which with easy access to generate pirated goods are again a challenge to the intellectual property protection regime.<sup>30</sup>

While the piracy of counterfeited goods sold in the market is prevalent and capable of being distinguished, however, the trend of digital piracy is yet to have a sound protection mechanism. Hence, in the digital arena, it is possible to develop exact copies of copyrighted artwork and virtual manipulated interpretations of the original which denotes the essence of the creative experience, and copies are required for data transmission over electronic networks, copies or reproductions tend to ride upon the reputation and commercial values traditionally assigned to originals resulting in copyright infringement<sup>31</sup>.

Cyberspace in its ambit further includes plagiarism of digital content which is fallacious and fraudulently provided on the internet. The passing of an idea as someone's own is termed digital

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<sup>26</sup> Associate Professor, University of Ottawa, Ontario, Canada Available at: <http://livemint.com/.../Small-shops-in-Delhi-university-at-centre-of-India> (last visited on January 25,2023)

<sup>27</sup> See, DB Modak, Deb and Cooper: Govmdan,; N.T. Raghunathan tv. A I.R., A.I.R. 1971 Bom. 48; J.N. Bagga; RŠG. Anand v. Delux Films , A.I.R. 1978 S.C. 1613 at 162

<sup>28</sup> See e.g. Kal Raustiala and Christopher Sprigman, 'The Piracy Paradox: Innovation and Intellectual Property in Fashion Design' (2006) 92 Virginia Law Review 1687; Kal Raustiala and Christopher Sprigman, 'The Piracy Paradox Revisited' (2009) 61 Stanford Law Review 1201. But see C Scott Hemphill and Jeannie Suk, 'The Law, Culture, and Economics of Fashion' (2009) 61 Stanford Law Review 1147; C Scott Hemphill and Jeannie Suk, 'Remix and Cultural Production' (2009) 61 Stanford Law Review 1227.

<sup>29</sup> STUDY ON COPYRIGHT PIRACY IN INDIA sponsored by Ministry of Human Resource Development Government of India.

<sup>30</sup> Deven R. Desai from the Thomas Jefferson School of Law and Gerard N. Magliocca from Indiana University, available at [http://www.philly.com/philly/news/science/3D\\_printers\\_The\\_next\\_intellectual\\_property\\_\\_game\\_changer.html](http://www.philly.com/philly/news/science/3D_printers_The_next_intellectual_property__game_changer.html) (last visited on January 25,2023)

<sup>31</sup> P. (1999). Electronic art and the law: Intellectual property rights in Cyberspace. Leonardo, 32(3), 191–195. <https://doi.org/10.1162/002409499553226> (last visited on January 24,2023)

plagiarism. As *Merriam-Webster* defines plagiarism, “to steal and pass off (the ideas or words of another) as one's own”.<sup>32</sup>

### **Counterfeiting Goods**

The Act of 1957 enables the owner of a copyright to prevent importation of infringing copies from being 'imported' into India; the owner to apply to the registrar of copyright who has the requisite powers of inquiry and search and to declare such copies to be prohibited imports.<sup>33</sup>

Counterfeiting as a concept indicates an overlapping infringement of copyright, trademark, and design and further the sale of the goods carrying such infringement of marks is also held to be illegal and violative of intellectual property rights. Further, Indian legislation has covered the provisions for counterfeiting goods but the reality as reflected in the National Productivity Council is evident with respect to the lacunae in the enforcement of such provisions.

### **Lacunae in The Copyright Act**

#### **Artificial Intelligence**

The growing ability of Artificial Intelligence ('AI') has grown into an immense spread of technology access for internet consumers. Traditionally built by humans to support the indigenous interest, now AI has developed into a massive adaptation of the AI software of *ChatGPT*. In general, and in prevalent law copyrighted materials were found by human authors, however, in modern times, the intangible forms of art are created by AI chatbots and hence must be protected. This lacuna of law is not established in the framework of Indian law as there is no prevalent legislation and judicial precedents.

#### **Internet Service Providers**

There are various points of departure wherein the copyright act, of 1957 is not in tandem with international standards. Without the consent of the copyright owners, sound recordings, digital photographs, literary works, and other literary works cannot be reproduced in accordance with Sections 13<sup>34</sup> and 67<sup>35</sup> of the Copyrights Act (1957). However, it places no accountability on Internet Service Providers for infractions (ISP). ISPs are now used to upload the works of copyright holders on the internet. The scope of copyright rules, as they apply to breaches or violations on the internet, is unclear. Although the responsibility of ISPs is only mentioned in passing in section 79<sup>36</sup> of the Information Technology Act of 2000. However, in our

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<sup>32</sup> Plagiarize." Merriam-Webster Online Dictionary. Merriam-Webster Online. 19 April 2010.

<sup>33</sup> Verma, S. K. ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS: TRIPS PROCEDURE & INDIA. <https://doi.org/43951903> (last visited on January 24,2023)

<sup>34</sup> Copyright Act, 1957. s.13.

<sup>35</sup> Copyright Act, 1957. s.67.

<sup>36</sup> Information Technology Act.s.79.

contemporary jurisdictions, this was addressed in their municipal legislation. As per Section 512(c)<sup>37</sup> of the Digital Millennium Copyright Act, 1998 enacted in the USA wherein the liability of the ISPs has been highlighted and they must comply with take-down orders and notices of the authorities or face civil and criminal liabilities. In the case of *BMG Rights Mgmt. (US) LLC v. Cox Commcn., Inc*<sup>38</sup>, the plaintiffs filed for damages against the defendant which is an ISP, and the court allowed for a sum of 25 million dollars as damages. The reasoning of the court against the said order was that ISPs must comply with copyright takedown orders and would be responsible for the copyright infringement of its users if it adopted a policy to expel serial offenders. In the Indian legal system, there is no concrete methodology or Redressal mechanism to resolve the same. The aggrieved parties have to undergo tedious litigation proceedings<sup>39</sup>. As per Rule 3<sup>40</sup> of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 which have been promulgated under the Information Technology Act, 2000, the ISPs must inform their users not to post or propagate any material on which they don't have ownership however the liability of ISPs is limited to the same.

#### **Animal as a copyright holder**

As per the current legal framework, animals are not considered copyright holders. Copyright laws are designed to protect the rights of creators of original works, such as books, music, software, and artwork, but they do not apply to animals. Animals cannot own property, including copyrights, and therefore cannot legally hold the rights to any work they may have created. In most countries, copyrights are granted to human authors and their estates, not to animals.

However, there have been instances where the works created by animals have been protected under “related rights” or “neighbouring rights” provisions, which protect the commercial exploitation of a work without the consent of the creator. In these cases, the profits generated from the commercial use of the work may be managed on behalf of the animal. One example of works created by animals being protected under “related rights” or “neighboring rights” provisions is the case of “*Grimaldi's Monkey Paintings*”.<sup>41</sup> These are paintings created by a

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<sup>37</sup> Digital Millennium Copyright Act, 1998.s.512(c). See Also, Anti-Cybersquatting Consumer Protection Act, 1999; Australian legislation Copyright Amendment (Digital Agenda) Act, 2000.

<sup>38</sup> Nos. 16-1972, 17-135 (4th Cir).

<sup>39</sup> Pocket Fm Pvt Ltd v. Mebiggo Labs Private Limited & Ors, 2022 SCC OnLine Del 4077 See Also, Marico Limited v. Abhijeet Bhansali, 2020 SCC OnLine Bom 60.

<sup>40</sup> Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.Rule 3.

<sup>41</sup> Andres Guadamuz, "Can the Monkey Selfie Case Teach Us Anything About Copyright Law?" (February 2018), in University of Sussex, United Kingdom. [https://www.wipo.int/wipo\\_magazine/en/2018/01/article\\_0007.html](https://www.wipo.int/wipo_magazine/en/2018/01/article_0007.html) (last visited on January 25,2023)

group of macaque monkeys who took cameras and snapped photographs. In this case, the animals' behavior was considered a performance, and the rights to the photographs were protected as a performance under the related rights provisions of copyright law. The profits from the commercial exploitation of these photographs were managed on behalf of the macaque monkeys.

### **Criminality of Section 63 of the Act**

The lacuna with respect to the criminality of “Section 63 of the Copyright Act, 1963” pertaining to piracy and infringement has also been under constant debate and confusion. This has been due to variable orders of Hon’ble High Courts in cases. For instance, The Andhra Pradesh High Court held that copyright infringement is a Bailable and non-cognizable offence in its decision in *Amarnath Vyas v. State of Andhra Pradesh*<sup>42</sup> in an order dated 19 December 2006. In contrast, the Kerala High Court held in “*Suresh Kumar S/o Kumaran v. The Sub Inspector of Police*”<sup>43</sup> on May 29, 2007, that the offence is cognizable and not subject to a bail requirement. Due to the aforementioned precedents, there is a conflict with respect to the status of the offence pertaining to bail<sup>44</sup>. Due to such conundrums, there is a rise in the cases of piracy in India. India has gained notoriety due to remaining on the Priority Watch List continuously for years despite the existence of protection granted by the Indian Copyright Act, of 1957, mostly due to horrendously high piracy rates and a lack of adequate enforcement mechanisms<sup>45</sup>. India ranked 3<sup>rd</sup> in the global piracy index in the year 2017<sup>46</sup>. According to the International Intellectual Property Alliance's (IIPA) 2007 study on India, copyright infringement cost the country's economy 496.3 million US dollars in lost commerce. Such funds have been allegedly used in criminal acts of terror against nation-states<sup>47</sup>. It makes perfect sense in this grim circumstance

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<sup>42</sup> *Amarnath Vyas v State of Andhra Pradesh*, 2007 Cri LJ 2025 (A P).

<sup>43</sup> *Sureshkumar S/o Kumaran v The Sub Inspector of Police*, 2007 (3) KLT 363. See Also, *Jitendra Prasad Singh v State of Assam*, 2003 (26) PTC 486 (Gau).

<sup>44</sup> Code of Criminal Procedure, 1973.s.438.

<sup>45</sup> Desai Rachana, Copyright infringement in the Indian film industry, *Vanderbilt Journal of Entertainment, Law & Practice* (Spring 2005), 259-278.

<sup>46</sup> Frost, J. (no date) Global piracy increases throughout 2017, Muso reveals, MUSO. Available at: <https://www.muso.com/magazine/global-piracy-increases-throughout-2017-muso-reveals> (Accessed: January 25, 2023).

<sup>47</sup> Treverton, Gregory F., Carl F. Matthies, Karla J. Cunningham, Jeremiah Goulka, Greg Ridgeway, and Anny Wong, *Film Piracy and Its Connection to Organized Crime and Terrorism*. Santa Monica, CA: RAND Corporation, 2009. [https://www.rand.org/pubs/research\\_briefs/RB9417.html](https://www.rand.org/pubs/research_briefs/RB9417.html).- “There is compelling evidence to suggest that revenue generated from piracy of intellectual property is used in funding terrorism activities and other crimes. A report titled “Film Piracy, Organized Crime and Terrorism” published by RAND Corporation listed seventeen (17) organized crime units that generate funds through piracy. More alarmingly, one of those units is the D-Company led by Dawood Ibrahim who is wanted for many terrorist attacks in India including the 1993 Mumbai serial blast.

to give the police the authority to undertake *suo-moto* raids to stop piracy<sup>48</sup>. However, there must clarity with respect to the criminality of Section 63.

### **Traditional Knowledge**

The copyright act, 1957 does not provide for any reference with respect to the protection of traditional knowledge. In a country such as India with such a potpourri of cultures and diversity in demographics, there is an instant need to safeguard the traditional knowledge of citizens. The copyright act does not protect indigenous people's folklore or their traditional knowledge, but Section 31A of that law, which protects unpublished Indian works, might be used to infer that it does. The question that emerges is whether Section 31A<sup>49</sup>, is adequate to safeguard traditional knowledge. The question has been raised following the Neem plant patent controversy<sup>50</sup> and the issue of the copyright of Bikram Yoga in the United States of America<sup>51</sup>. In the popular case of Bikram Yoga, as per the Ninth Circuit Court of Appeals, the yoga pose sequence was not deemed to be a copyrightable subject matter under 17 U.S.C. 102(b), and Choudhury's copyright in a book outlining his technique did not grant him copyright over the pose sequence itself<sup>52</sup>. The copyright act is inadequate to protect the facets of traditional knowledge as these lack authorship and fixed form i.e. a tangible form.

### **Conclusion**

The way forward for India to be an improvised and copyright haven, there is an excessive need for policy change and paradigm shift in the legislation. For instance, India has a very rich and thriving traditional knowledge base, and this knowledge can be applied in a variety of ways across a wide range of industries, including agriculture, pharmaceuticals, and other fields. However, for some reason, Indian intellectual property laws fail to adequately protect this traditional knowledge. Sui generis systems and benefit-sharing programs are two alternatives that may be used to prevent the misuse of this wealth of information. Any research on Indian

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<sup>48</sup> International Intellectual Property Alliance, 2007 Special 301 Report India, 12 February 2007, p. 49, 51, 53-54, 117, [www.iipa.com/rbc/2007/2007SPEC301INDIA.pdf](http://www.iipa.com/rbc/2007/2007SPEC301INDIA.pdf) (21 September 2008).

<sup>49</sup> Copyright Act, 1957.s.31A.

<sup>50</sup> Emily Marden, The Neem Tree Patent: International Conflict Over the Commodification of Life , 22 B.C. Int'l & Comp. L. Rev. 279 (1999), <http://lawdigitalcommons.bc.edu/iclr/vol22/iss2/3>. See Also, VANDANA SHIVA, BIOPIRACY: THE PLUNDER OF NATURE AND KNOWLEDGE (1997)

<sup>51</sup> Reddy, S (2002): Asian Medicine in America: The Ayurvedic Case, Annals, AAPSS, 583, September, pp 97-121 See Also, Intellectual Property Rights and Traditional Knowledge: The Case of Yoga Published in Economic & Political Weekly Vol. 47 No. 27 & 28, July 14-20, 2007 Pp 2866 - 2871 <http://www.epw.org.in> Krishna Ravi Srinivas.

<sup>52</sup> Bikram's Yoga Coll. of India, Ltd. P'ship v. Evolution Yoga, Ltd. Liab. Co. - 803 F.3d 1032 (9th Cir. 2015). See Also, Bikram's Yoga Coll. of India, ltd.. p'ship v. Evolution Yoga, ltd.. Liab. co. - 803 f.3d 1032 (9th cir. 2015) Community, <https://www.lexisnexis.com/community/casebrief/p/casebrief-bikram-s-yoga-coll-of-india-ltd-p-ship-v-evolution-yoga-ltd-liab-co> (last visited Jan 25, 2023).

traditional knowledge must promote the idea of benefit-sharing in order to benefit indigenous people as well. Furthermore, there is an excessive need for reform in the criminal liability of the copyright and there must be further criminalization of the same. The lack of accountability in the Indian copyright realm for ISPs is also alarming. Furthermore, there is a need for policy development and legislation over unregulated and newly developed facets of copyright such as the advent of the creation of AI prompted intellectual properties and new licensing mechanisms like “*copyleft*”<sup>53</sup>.

### **Suggestions**

- There is a need to strengthen the deterrent effect on those who violate the Copyright Act, a strong and harsher enforcement system must be put in place, and the penalties must be increased. Hence, it is essential to provide clarity on the status of the Bail jurisprudence behind copyright infringement under Section 63<sup>54</sup>.
- The copyright act must include legislative intervention concerning the protection of traditional knowledge and create special criteria for the special nature of Traditional Knowledge.
- There is an instant need for a stricter policy for catering piracy, copyright infringement, and counterfeit goods as it is damaging our economy as well as the jurisprudence and objective behind the legislation protecting IPRs is defeated.
- India must formulate their stand on the adoption of unregulated facets of copyright-like “*copyleft*” and AI-created intellectual properties.
- The ISPs must be brought under the ambit of policy and their liability must be fixed by the Act in a proper manner.
- Copyright Act as well rules must provide for legislative amendment for the availability of intellectual material thus created for the visually impaired and other people who suffer from any kind of impairment<sup>55</sup>.

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<sup>53</sup> Friedman, K. (2016, July 13). *copyleft*. Encyclopedia Britannica. <https://www.britannica.com/topic/copyleft>.

<sup>54</sup> Proposed decriminalization of offenses under copyright act’ 1957 -FICCI ..., <https://ficci.in/SEDocument/20518/DecriminalisationofCopyrightActProvisions.pdf> (last visited Jan 25, 2023)

<sup>55</sup> Pillai, Priya. (2012). Accessible Copies of Copyright Work for Visually Impaired Persons in India. Creative Education. 03. 1060-1062. 10.4236/ce.2012.326159. See Also, AKSHAT BALDWA & ORS. v. YASH RAJ FILMS, 2023 LiveLaw (Del) 48; Lawrence Liang, Exceptions and Limitations in Indian Copyright Law for Education: An Assessment, The Law and Development Review, Volume 3, Issue 2 2010.