



A PERSPECTIVE OF COPYRIGHT AS A LIBERTY AND LIMITATION

Shirish Kumar Shukla

Assistant Professor, ALS, Amity University, Patna.

ABSTRACT:

Somewhere Law is all about liberty and limitation. In the same way, Copyright Law, on one hand, creates liberty and on other hand creates limitation. The legislators maintained this concept in Copyright Act. Liberty demands some limitations to protect the interest of the society and the individual also. Sometimes these limitations are positive in nature and sometimes these limitations are negative in nature. When limitations are imposed on others for the benefit of the liberty of the concerned person then it is positive for the person but negative for the rest of the world. In another sense, we can also say that a limitation which helps a person is positive for him and that limitation which restricts the interests of the person are negative limitations for him.



KEY WORDS: Copyright, Limitation, Liberty.

INTRODUCTION:

Copyright law is known for the protection and promotion of original work. It is a unique law that gives moral support to the man to express themselves and enlighten the world. With the establishment of copyright law, man has dared to express his ideas, knowledge, imagination, and creativity in so many forms like books, theater, internet publication, sound recording, video recording, papers, maps, etc.

Copyright law is very vast and it touches the life of almost every individual even if he is not a part of it.

It acts as a guardian to the man of its rights. It is a right protector, so man feels liberty. Where there is no right, there is no liberty. The copyright owner has a bundle of rights, often known as exclusive rights which gives a feeling of liberty to the copyright owner to exhaust his rights.

It is a magical law that acts as changing roles one at the same time. On the one hand, it gives the right to the copyright owner to exhaust its rights exclusively and at the same time, it imposes limitations on him to exhaust it but is subject to conditions mentioned in the statute.

On the one hand, there is a limitation in the nature of restriction on the part of the rest of the public/persons to not encroach over the rights of the copyright owner, on the same hand it gives a liberty to the public at large to use the work of the copyright owner if that is coming under the permitted act/use or exceptions.

A copyright owner has the liberty to exhaust his exclusive rights but he cannot stop the rest of the world from using it if that is covered under the fair dealing/exception clause of the Act. Therefore,

the liberty of the other persons who have no copyright is also protected to a great extent. The rest of the world is free to use the copyrighted work within the permitted specified area fixed by the copyright statute.

Hence, we can see that copyright law imposes a limitation on the copyright owner to not stop any person or public at large to not to use/enjoying the copyrighted work.

On a close examination therefore it can say that copyright law fixes a line of demarcation or diameter within which the public and the copyright owner can fairly play with each other. No one can cross the areas fixed by the law of copyright. Both have to respect the rights and liberties of each other.

The rights of the copyright owner are at the mercy of the legislation because this right is a creation of the statute/legislation. Hence, this may also be seen as a limitation on the person because his rights are not unlimited here, his own will and wishes do not find space here. He cannot fly beyond the space left by the statute.

In this project, we will try to understand and see the copyright law from a different angle.

We will try to find out here how copyright law is proving us new liberties and new limitations in the present world. It has added a new dimension to our traditional liberties and limitation. It has also added a new step to our freedom of speech and expression along with new liberties and new limitations. We can say that the copyright law is an expansion of our liberty of speech and expression. After the birth of copyright law, now one can have the right to speech and expression plus one can have the right over the form in which he has spoken and expressed himself. Copyright law has given one additional fruit to man's fundamental rights. Now, man can earn his livelihood by this additional liberty created by the copyright law. Man has turned this into his profession. Now people are earning well by the copyright alone. Copyright has given a new meaning to our life. Some people are earning by mere fiction alone. They express their fiction in writing or film and with the help of copyright, they earn their income. Copyright has opened the door for every sector. It has created liberty for everyone to come and share his experience and knowledge and creativity without fear but with a sense and hope of reward. Copyright has given liberty to the electronic world also to come and enjoy the field of copyright. Copyright has played a vital role in the liberty of the singers, producers, actors, writers, and even the teachers and students. Even illiterate people now feel the liberty to express themselves by way of copyright, since, copyright encourages and protects the expression and not that in which form it is. A man can be illiterate but can have a good voice, a good painter, or an artist. Even he can express his fiction, story way engaging some man to pen down his thoughts. So, copyright has made no over the creativity of the person. So, this law has given so much liberty to the creativity of the person.

Copyright intake liberty for its beneficiaries imposes some limitations sometimes these limitations are for the public at large and sometimes these limitations are for the right holder and not for the public at large. The limitations on the public at large can be understood as the manners by which we can respect the right of the copyright holder. What the rest of the person should not do which can disturb the rights of the right holder can be said as the limitations on the public which should not be crossed. And when the copyright law tell to the copyright owner his extent of rights then that fixed extent can be seen as the limitation over his right. Up to what extent a man can exercise his rights also sometimes becomes a limitation on his right. Rights are unlimited when there is go to any extent. But when we fix an extent over some right then that enjoyment of right becomes subject to that extent fixed on the right. So is the case with liberty which comes as a fruit of the right. When rights are created liberty flow from it.

Since, this right is a creation of law and all new liberties and limitations are flowing from it alone, hence we can observe this new phenomenon by analyzing the present copyright law in the form of legislation i.e. Copyright Act, 1957 and the judicial pronouncements.

In this research paper, the researcher is analyzing the provisions of the Copyright Act, of 1957 in order to find out how copyright law is creating liberty and limitation.

MEANING AND NATURE OF COPYRIGHT

The term “copyright” is essentially composed of two prime essential words. One, is “copy” and the other is “right”. Hence, the meaning which flows from the conjunction of these two words is - “A right over the making of copy of something.”

It is also known as “reproduction rights”- A right to reproduce something. In its simplest way, it can be said as “a right to make a copy is called copyright”.

In the last few years, Intellectual Property has assumed great importance world over. With the changing needs of society, the importance of the subject has further enhanced and now is considered one of the most important subjects in the field of law. The Law of copyright is an important aspect of this branch of law.

Copyright ensures certain minimum safeguards to the rights of authors over their creation, thereby protecting and rewarding creativity. Creativity being the keystones of progress, no civilized society can afford to ignore the basic requirement of encouraging the same. The economic and social development of society is dependent on creativity. The protection provided by copyright law creates an atmosphere conducive to creativity, which induces to create more and motivates others to create. If copyright protection is applied rigidly, it can hamper the progress of society. However, copyright laws are enacted with necessary limitations to ensure that balance is maintained between the interests of the creators and of the community. Many types of exploitation of work which are for social purposes such as education, research, criticism, review, reporting, and so on are exempted from the operation of the rights granted in the act. The protection provided by copyright extends to the efforts of writers, artists, designers, dramatists, musicians, architects, and producers of sound recordings, cinematograph films, and computer software, creating an atmosphere conducive to creativity, which induces them to create more and motivates others to create.

According to Black’s Law Dictionary – copyright means the right to transcript, imitation, reproduction, sell, publish, to print copies of original work. The word “copyright” derives from the special “copier of words”. It was first used in this sense in 1586. The word ‘copy’ was alone used in 1485 and it meant manuscript or other matters prepared for printing. It is an exclusive right to dispose of, sell, and commercially exploit an intellectual work, by means of printing, lithography, graphic production, photography, a cinematograph film, gramophone record, recitation, theatrical representation, adaptation, performance, broadcast, transmission, or any other form of reproduction, multiplication of copies.

Copyright is a right to reproduce a work and for certain works the right of public performance. Copyright is made up of all the legal principles and rules including the reproduction of those who produce intellectual works in the field of literature, music, fine arts, films, photographs, and performances of artists.

In the case of *Bharat Law house, Messrs v. M/s Wadhwa and Co. Pvt. Ltd.*, it was held that, “copyright is the exclusive right to do and to authorize others to do and restrain others from doing a certain act in relation to a literary work which works on legal subjects and there will not be any infringement of this right if something is done by the defendant in the exercise of a right vested in him under a contract of assignment with the person who possesses”.

According to Copinger and Skone James, “the copyright law is concerned with the negative right as it prevents the copying of physical material existing in the field of literature and Art. Its object is to protect the writer and the artist from the unlawful reproduction of his material”. Copyright law is only concerned with the copying of physical material and not with the reproduction of the idea and it does not give a monopoly to any particular form of words. Copyright is a man’s inherent right over his intellectual property. According to Anthony Trollope, the great importance of copyright law is that it is a material asset. In his autobiography, he used these words:

“Take away from English authors their copyright and you would very soon take away from England her authors”. (Quoted by Carter Ruck and Skone James on Copyright, P. 19)

It is a branch of law that grants authors (writers, musicians, artists, and other creators) protection over their works. Such protection consists in providing authors with ownership or property

rights (or exploitation rights), which take into account their material interests. Under copyright, authors are entitled to protection against unauthorized use of their works as well as to a possible share in any earnings from its use by the public.

However, copyright laws may also provide protection for another set of interests, of a more personal nature, which is commonly called the 'moral rights' of authors. These rights allow the authors to claim authorship in their works as well as respect for their integrity. The protection of moral and material interests resulting from any scientific, literary or artistic production is also recognized as a human right under the Universal Declaration of Human Rights (1948) and the International Covenant on Economic, Social, and Cultural Rights (1966). Copyright is part of intellectual property (IP) law, which protects other subject matter as well, such as trademarks, patents, designs, plant seed varieties, trade secrets, integrated circuits, topographies, and geographical indications of source. All topics that come under the heading of intellectual property have in common the fact that a certain amount of intellect has been displayed in achieving the results for which protection is granted. Yet copyright laws do not only aim at establishing individual rights for the benefit of authors, they also take into account the needs of users and of society at large for access to knowledge and information. In order to maintain a fair balance between the conflicting interests, copyright protection is subject to a number of exceptions and limitations. The interplay between exclusive rights, on the one hand, and exceptions and limitations to these rights, on the other, forms the legal framework within which creativity and communication can develop.

There are two main justifications for the legal protection provided by copyright. The first is linked to economic considerations, while the second stems from theories referring to natural law. Nearly all copyright laws have taken into account elements from these two lines of argument, although different countries may give varying emphasis to each of them. From an economic point of view, granting an exclusive right ensures that the author will receive an economic reward for the exploitation of the work for a certain period and hence constitutes an incentive for creativity. According to justifications based on natural law, on the other hand, each person has a natural right of property to the products of her labour.

COPYRIGHT AS A LIBERTY

A Copyright owner gets the following liberties to do after having copyright over the copyrighted work:

In the case of a literary work not being a computer programme, the copyright owner has the exclusive right to reproduce the work, issue copies, perform, and communicate the work to the public, to make cinematograph film or sound recording in respect of the work, translation, and adaptation of the work. In the same way, the Copyright owner has the exclusive right in respect of dramatic work, artistic work, musical work, cinematograph film, and sound recording (as mentioned in Sec.14).

The abovementioned rights of the copyright owner give in another way liberty to him to exercise his rights in the manner provided therein.

Above mentioned rights are also known as the economic rights of the author. The copyright subsists in original literary, dramatic, musical, and artistic works; cinematographs films, and sound recordings. The authors of copyright in the aforesaid works enjoy economic rights u/s 14 of the Act. The rights are mainly, in respect of literary, dramatic, and musical, other than a computer program, to reproduce the work in any material form including the storing of it in any medium by electronic means, to issue copies of the work to the public, to perform the work in public or communicating it to the public, to make any cinematograph film or sound recording in respect of the work, and to make any translation or adaptation of the work. In the case of a computer program, the author enjoys in addition to the aforesaid rights, the right to sell or give on hire, or offer for sale or hire any copy of the computer program regardless of whether such copy has been sold or given on hire on earlier occasions. In the case of an artistic work, the rights available to an author include the right to reproduce the work in any material form, including depiction in three dimensions of a two-dimensional work or in two dimensions of a three-dimensional work, to communicate or issue copies of the work to the public, to include the

work in any cinematograph work, and to make any adaptation of the work. In the case of a cinematograph film, the author enjoys the right to make a copy of the film including a photograph of any image forming part thereof, to sell or give on hire or offer for sale or hire, any copy of the film, and to communicate the film to the public. These rights are similarly available to the author of sound recording. In addition to the aforesaid rights, the author of a painting, sculpture, drawing, or a manuscript of a literary, dramatic, or musical work, if he was the first owner of the copyright, shall be entitled to have a right to share in the resale price of such original copy provided that the resale price exceeds rupees ten thousand.

Further, as a creation of the mind, the work reflects the author's personality.

However, that has no bearing on the destiny of moral rights which continue to belong to the author who may hence claim authorship in the novel. In addition, the publisher may not remove his or her name as the author of the work, or substitute it with another one. However, some countries, especially those that adhere to the common law system, allow moral rights to be waived (or renounced) under certain conditions.

The right of attribution is one of the moral rights. It is often referred to as the 'paternity' right, which alludes to the spiritual kinship between the work and its creator, though this terminology may today seem outdated. Under the attribution right the authors are reserved the decision of whether or not to associate their names with the work and of when the work will be published or otherwise made available to the public. It is therefore the right to claim authorship, as well as the right to remain anonymous. The right of the author to be recognized as such has to be distinguished from the right to object to any wrongful attribution of authorship, e.g. when the signature of a famous artist is imitated on a painting which is not of his or her making. The possibility to defend one's name against usurpation by third parties does not, strictly speaking, fall within the category of authors' moral rights but rather forms a part of the general category of personality rights to which all individuals are entitled, regardless of whether they are authors or not. The right of integrity allows the author to prevent any distortion, mutilation, or derogatory action in relation to the work that would be prejudicial to his/her honour or reputation. This prerogative acknowledges the fact that the author's personality is intimately reflected in the work. It is therefore also often called the 'right to respect'. The integrity right grants protection against unauthorized modifications (a publisher may not, for instance, delete chapters from a narrative), as well as against the use of the work in a demeaning context (such as the use of a song in a pornographic film). With the advance of digital technology, authors face new types of threats to their works' integrity as it becomes easier and easier to manipulate and modify their contents at will. Yet not every deviation from the author's original design must be necessarily held to constitute an infringement of the integrity right. The problem becomes especially delicate in the case of adaptations. For example, when a novel is turned into a movie, the new medium or form of expression may make certain changes inevitable. It may sometimes happen that, the author's thoughts or opinions on issues exposed in the work change and that the work no longer reflects his/her intellectual or artistic views. In the case where this occurs after the work has been lawfully brought to the public, the author cannot resort to the disclosure right to prevent it from being distributed. Nevertheless, some copyright laws grant the author the right to withdraw the work from the market. Since the withdrawal affects the interests of those who have already acquired the right to use the work (for example the publisher, who is entitled to make and distribute copies of the work), the right of withdrawal is normally subject to a range of conditions. Such conditions are designed to take into account the legitimate interests of the persons who have entered into contractual agreements with the author. Typically, they are entitled to indemnification for their resulting losses. Moreover, some laws provide that the original contractors will enjoy priority for the conclusion of a new contract should the author decide to resume the exploitation of the work.

Section 57 of the Act defines the two basic "moral rights" of an author. These are: (i) Right of paternity, and (ii) Right of integrity. The right of paternity refers to a right of an author to claim authorship of work and a right to prevent all others from claiming authorship of his work. Right of integrity empowers the author to prevent distortion, mutilation or other alterations of his work, or any

other action in relation to said work, which would be prejudicial to his honor or reputation. The proviso to section 57(1) provides that the author shall not have any right to restrain or claim damages in respect of any adaptation of a computer program to which section 52 (1)(a) applies (i.e. reverse engineering of the same). It must be noted that failure to display a work or to display it to the satisfaction of the author shall not be deemed to be an infringement of the rights conferred by this section. The legal representatives of the author may exercise the rights conferred upon an author of a work by section 57(1), other than the right to claim authorship of the work.

Besides above-mentioned rights and liberties, the copyright owner gets also the liberty to assign his work by way of assignment:

The copyright owner has liberty to assign his rights to any other person by way of assignment. By assignment, the copyright owner transfer his exclusive rights to the assignee. The legal consequence of the transfer of rights by way of assignment is that the assignee becomes the new owner of copyright and can take actions in his or her own name, including legal actions against third parties infringing the rights in the work. The assignment can concern copyright in its entirety or can be limited to one or more specific prerogatives. Transfer of rights by assignment is typical of common law jurisdictions, which allow copyright as such to be assigned wholly or partially to third parties.

Assignment is a liberty because it is not a compulsion on copyright owner to assign his rights to third person. The Copyright Act, 1957 provides assignment of copyright under section 18 and 19. Section 18 and 19 of the Act says that:

The owner of the copyright in an existing work or the prospective owner of the copyright in a future work may assign to any person the copyright either wholly or partially and either generally or subject to limitations and either for the whole term of the copyright or any part thereof.

LIBERTY WITH RESPECT TO LICENCE:

A licence is an agreement whereby the copyright owner preserves ownership of the rights but allows a third party to carry out certain acts covered by his/her economic rights, generally for a specific purpose and for a specific period of time. For example, the author of a novel may grant a licence to a publisher to make and distribute printed copies, and, at the same time, license someone else to write a film script based on that novel. A licence may be granted on an exclusive or non-exclusive basis. A non-exclusive licence entitles the licensee simply to use the work in a defined manner concurrently with the copyright owner and, possibly, simultaneously with other licensees as well. A typical example is the licensing of the public performance right in non-dramatic musical works to bars, discotheques and similar public places where music is played. An exclusive licence means, by contrast, that the licensee may use the work for the purpose in question to the exclusion of any other persons, including the copyright owner himself. For the period for which it is granted, the exclusive licence has an effect comparable to a transfer of rights by assignment.

Our Copyright Act provide licence under section 30 which is in form of liberty because it is on copyright owner whether he wants to licence his copyright work to a third person or not. If we look at other form of license for example compulsory license, provided under copyright act, is not in form of liberty because compulsory license is a compulsion which is put by the copyright board on an application filed by the applicant over the copyright owner. Section 30 of the copyright act says that:-

The owner of the copyright in any existing work or the prospective owner of the copyright in any future work may grant any interest in the right by licence in writing by him or by his duly authorized agent:

Provided that in the case of a licence relating to copyright in any future work, the licence shall take effect only when the work comes into existence.

After reading the above section it can be said that there is no compulsion over the copyright owner. It is on him whether he wants to enter into licence or not.

Hence, we can say that the owner has the liberty to give a licence with respect to his work as prescribed by the Copyright Act.

LIBERTY TO RELINQUISH WORK:

The author has the liberty to relinquish his work which is created by him. The copyright act provides such a process of relinquishment of work under section 21. The author of a work may relinquish all or any of the rights comprised in the copyright in the work by giving notice in the prescribed form to the Registrar of Copyrights.

On receipt of a notice, the Registrar of Copyrights shall cause it to be published in the Official Gazette and in such other manner as he may deem fit.

The Registrar of Copyright shall, within fourteen days from the publication of the notice in the Official Gazette, post the notice on the official website of the Copyright Office so as to remain in the public domain for a period of not less than three years.

The relinquishment of all or any of the rights comprised in the copyright in a work shall not affect any rights subsisting in favour of any person on the date of the notice.

Copyright as a Limitations:

What act we cannot do that is known as our limitation.

“Idea” in form of limitation:

“One cannot have copyright over his idea however it may be so brilliant and a new one.”

Mostly this limitation gives tremendous pain to individuals and intellectuals that their ideas are not the subject matter of copyright protection.

But, it is an irony that on the other hand, this limitation opens the doors of liberty to use the ideas freely without any prohibition or limitation.

The first and primary limitation under Copyright Law is that the idea per se cannot be the subject matter of copyright unless it is expressed in some tangible form. The copyright act does not provide any type of protection to the idea. For instance, any person is entitled to write a book explaining to the general public how to use a recent version of a computer program. Such an idea cannot be appropriated by the person who first wrote the book. Hence the author could not prevent anyone from publishing a book on the same topic. Nevertheless, subsequent authors writing on the same topic should refrain from copying from books published or written before or by others. In order to illustrate what kind of works may be protected, most copyright laws contain an elaborate, but usually not exhaustive, list of examples. The enumerated categories comprise typically works of language (such as writings and speeches); musical works (with or without text, such as songs, sonatas, and musical scores for films); dramatic works (such as plays, including pantomimes and choreographies); works of fine art (such as paintings, drawings, sculptures, including works of architecture and applied art); photographic works and cinematographic works; illustrations of a scientific or technical nature (such as plans, maps, and sketches). It is important to note that such lists are given by way of example only, and that other sorts of creations not specifically mentioned in the list may be protected provided they qualify for copyright, i.e. are original. To qualify for copyright protection, a work must first and foremost be original. There is no unanimity as to what originality means, nor universally agreed upon standards. Broadly speaking, countries fall into two general categories. In common law countries courts require the display by the author of a certain degree of skill, labour, and judgment for his or her work to qualify as original (this is called the ‘sweat of the brow theory’). In civil law countries, courts require more: in order to be original, a work must reflect the individual personality of its creator. The mere display of skill, labour, and judgment is not enough: the author must also show creativity. This difference of appreciation can lead to different results, as common law courts may be less severe in their assessment of originality. It might therefore be the case that some works which would not qualify as original in civil law countries due to a lack of creativity may nevertheless be considered original in common law countries if the author has shown a sufficient degree of skill, labour, and judgment. Finally, it should be noted that work might be protected as original even though it is based on pre-existing work. Copyright also protects “derivative works”: translations, adaptations, arrangements of music, and other alterations of a literary or artistic work receive the same protection as original works. So do

collections of literary and artistic works, such as encyclopedias and anthologies provided they are original by reason of the selection or arrangements of their contents. For both derivative works and collections, the protection is granted “without prejudice to the copyright” in the pre-existing work or in the work forming part of the collection. This means that an author of a translation should obtain authorization to translate the work from the author of the work to be translated. Likewise, the author of an anthology of poems should obtain authorization to publish the selected poems from their respective authors.

The idea in a form limitation can be better understood in the light of the *R.G. Anand v. Delux films* case: in this case, the plaintiff, a playwright, dramatist, and producer of stage plays wrote a play entitled ‘Hum Hindustani’ based on the idea of provincialism and parochialism.

The defendants made the film ‘New Delhi’ which portrays three main themes:

- (1) Two aspects of provincialism i.e. the role of provincialism in regard to marriage and in renting out the accommodation;
- (2) Evils of a caste-ridden society; and
- (3) Evil of dowry

After the release of the film, there were comments in the newspapers that the picture was very much like the play. The court observed that:

A close perusal of the script of the film clearly shows that all the three aspects mentioned above are integral parts of the story and it is very difficult to divorce one from the other without affecting the beauty and the continuity of the film. Further, it would appear that the treatment of the story of the film is in many respects different from the story contained in the play. On a close and a careful comparison of the play and the picture, but for the central idea (provincialism which is not protected by the copyright), from scene to scene, situation to situation, anti-climax to anti-climax, pathos, bathos, in texture and treatment and support and presentation, the picture is materially different from the play.

The court laid down that ideas and opinions are not of the subject-matter of copyright. It is only the form, in which the ideas or opinions are expressed, that is protected by the law. What is protected is not original thought or information but the original expression of thought or information in some concrete form.

Term of Copyright as a limitation:

The copyright Act does not give an unlimited period of enjoyment of copyright to the owner to exhaust his exclusive right. One cannot have Copyright for an infinite period. Hence, this fixation on a period seems like a limitation on the full and final use of the right. Because one day the work will go into the public domain.

It is true fact that the copyright owner can do anything with respect to the copyright object but the term is fixed by the Copyright Act which limits the liberty of the copyright owner. After a certain time following the death of an author, however, the public’s interest in free access to intellectual works prevails, and therefore the rights of the authors, or at least their economic rights, expire. A work no longer protected by copyright is said to be in the public domain.

There are the following sections in the Copyright Act which deal with terms of copyright work:

Section 22 provides a term of copyright in any literary, dramatic, musical, or artistic work published. The term in this area of work would be the lifetime of the author plus sixty years from the beginning of the calendar year next following the year in which the author dies.

Example: A writes a poem in 1970. The poem was published in 1971. A dies on 30 Sept. 1972. The 60 years will be counted from 1st Jan. 1973 i.e. the calendar year next following the year in which the author dies. The copyright in the work, therefore, continues until 1st Jan. 2033. Thereafter the work will fall in the public domain.

Compulsory Licence in form of limitation on copyright:

Compulsory licence is also in form of limitation over liberty of copyright owner. The Copyright Act, 1957 provides for the grant of compulsory licences under section 31 in a work which has been

published or performed in public. It empowers the copyright board to direct the registrar to grant a licence if a complaint is made to it in writing under the Act during the term of copyright stating the necessary facts which are conditions precedent to the exercise of its power, provided that the owner has been approached in the first instance for the grant of a licence, and it is only if he has refused to republish or allow the republication of the work, and by reason of such refusal the work is withheld from the public, or if he has refused to allow communication to the public by broadcast to such work or in the case of a sound recording the work recorded in such sound recording, on terms which the complainant considers reasonable, that the complaint could be made. The copyright board after giving the owner of the copyright a reasonable opportunity of being heard and after holding such enquiry as it may deem necessary, may, if it is satisfied that the ground for such refusal is not reasonable, direct the registrar of copyrights to grant the licence to such person or persons who, in the opinion of copyright board, is or are qualified to do so, to republish the work subject to payment to the owner of the copyright of such compensation and subject to such other terms and conditions as the copyright board may determine.

Other example of compulsory licence is given under sections 31A, 31B, 31C, 31D which tell about compulsory licence in unpublished works or published works. According to these sections where the author of any unpublished work or any work published or communicated to the public and the same is withheld from the public in India, is dead or unknown or cannot be traced, or the owner of copyright in such work cannot be found, then any person may apply to the copyright board for a licence to publish or communicate to the public such work or a translation thereof.

Fair use as liberty and limitation

The doctrine of fair use incorporated in the legislation gives the liberty to the public to use the copyrighted work without the permission of the copyright owner. But it also plays a role of limitation by fixing a boundary for the public that they cannot go beyond that. And to the copyright owner, it gives a message of limitation to him that his rights are not unlimited. It makes a hole in the right of the owner by which anyone can fairly use and enjoy without taking any permission from the copyright owner. This doctrine of fair use tells the copyright owner that his rights have a limit and the purpose of copyright law is greater than the individual interests. By giving liberty to the rest of the world to use the work of the owner in the prescribed manner copyright law serves a welfare purpose. It balances the interest between the two. On the one hand, the law gives protection to the work and rights of the owner but, on the other hand, it protects the interest of the society to get enlightened from the work of the copyright owner. The copyright owner cannot debar the rest of the world from using his work simply because he has his sole exclusive rights over the work.

All copyright laws grant exceptions and limitations in favour of certain groups of users or the public at large. The legitimate interests recognized by domestic legislation and case law that would justify the existence of exceptions may be divided into four main categories: promotion of freedom of expression, access to knowledge, the purposes of justice and the public, and finally private or personal use. Yet it must not be overlooked that the notion of 'legitimate interest' may vary significantly from one jurisdiction to another. What may be allowed as an exception in one country is therefore not necessarily allowed in another.

The limitations laid down in national legislation and the form of each particular limitation is usually determined by the assessment of the need and desirability for society to use a work, in conformity with the country's national policy and traditions. The results of this assessment process vary considerably from one country to the next: while some countries (mainly those adhering to the civil law tradition) have adopted a very restrictive set of limitations on copyright protection, others include in their legislation comparatively extensive provisions allowing acts to take place without the prior authorization of the right owner.

According to Section 52, the Fair dealing exception applies to the use of literary, dramatic, musical, or artistic works in the context of research or private study; criticism, parodies, or reviews; using the work to report current events by way of newspapers, magazines, periodicals, radio, or through photographs in a cinematographic medium; a Government document or law; the public

recitation of certain extracts of work; the use of the work by educational institutions, teachers or students in the course of instruction; the use of the work by non-commercial clubs.

Moral Rights as A Limitation:

Moral rights put a limitation on the head of the assignee to not do some act that violates the moral rights of the author/performer. He can use the work, but he cannot modify the work *inter alia* which is prejudicial to the author/performer's reputation.

Moral rights are by their very nature connected to the person of the author, they are not property rights. Consequently, moral rights belong to authors, even though they may have transferred the economic rights to someone else. In addition, and contrary to economic rights, moral rights are not assignable. Authors cannot transfer their moral rights to someone else, whereas they would be allowed to sell their economic rights. For example, an author may have transferred to a publisher the right to reproduce and distribute his or her novel.

However, that has no bearing on the destiny of moral rights which continue to belong to the author who may hence claim authorship in the novel. In addition, the publisher may not remove his or her name as the author of the work, or substitute it with another one.

Moral rights in themselves create a limitation over the rights of the copyright holder. The copyright holder who got copyright through assignment cannot do any act which is doing any distortion, mutilation, modification, or other act in relation to the work which is prejudicial to author's honour or reputation. Under Sec.57 of the Act author can claim authorship even after the assignment.

Case Example of Moral Rights

Amar Nath Sehgal v. Union of India

In this case, the plaintiff created a bronze mural for one of the walls of Vigyan Bhawan at the request of the Government of India. The copyright in the artistic work, the bronze mural was assigned to the government. Later, in 1979, Vigyan Bhawan was renovated whereby the 140 feet long and 40 feet in height bronze mural was removed and kept in store in dismantled and damaged condition. The Plaintiff contended that his moral right of integrity was infringed by the defendant. Hon'ble Delhi High Court said that when an author creates a work of art or a literary work, it is possible to conceive of many rights which may flow. The first and foremost right which comes to one's mind is the "Paternity Right" in the work, i.e. the right to have his name on the work. It may also be called the 'identification right' or 'attribution right'. The second right which one thinks of is the right to disseminate his work i.e. the 'divulgarion or dissemination right'. It would embrace the economic right to sell the work or valuable consideration. Linked to the paternity right, the third right, being the right to maintain purity in the work can be thought of. There can be no purity without integrity. It may be a matter of opinion, but certainly, treatment of a work that is derogatory to the reputation of the author, or in some way degrades the work as conceived by the author can be objected to by the author. This would be the moral right of "integrity". Lastly, one can conceive of a right to withdraw from publication one's work, if the author feels that due to the passage of time and changed opinion it is advisable to withdraw the work. This would be the author's right to "retraction".

CONCLUSION

Hence, we have seen and felt a new reflection of copyright law in the form of liberty and limitation.

It is a matter of experience, how a person reacts to law or a right created in his interest.

Copyright law is basically created for the interest and benefits of the person to motivate and promote creativity and intellectual caliber so that everybody may start using his own inherent power of intellect. It also encourages art and culture and literature.

The copyright takes the person himself into its center and then it thinks about the society later.

But, it would be wrong to say that it does not have any concern for the public at large. It equally takes care of the public interests. The copyright never debars the public from taking light from the work

of the copyright owner. It creates a good balance between the personal rights of the individual man and social interests by giving both of them an equal opportunity to meet with each other.

The owner of the copyright should always feel free to make his work and enjoy his rights and the public should never misuse the liberties granted to use the copyrighted work. Both have to honour the rights and liberties of each other. Only in this way, the intellectual prosperity may grow day by day and, the generation present and future generations may always be connected with each other.

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