CHAPTER – 1

INTRODUCTION

Human beings are the unique creation of God, who carries a brain with inquisitiveness, due to this inquisitiveness man always try to do something different & useful things for the society. These creations of human brain are his solo development of his mind & labour. These developments should be protected by the others. In the Indian traditions & mythology there is a concept of gains of learning for those who do these works as a reward. In modern world India becomes a common law nation that’s why its legal system is founded on the basis of Common law Doctrines and Frameworks, due to this, the protection of these developments are also based on Common Law. India enacted Indian Copyright Act 1957 in the light of English enactment.

Copyright is a unique kind of intellectual property. The right which a person acquires in a work, which is the result of his intellectual labour, is called his copyright. The primary function of a copyright law is to protect the fruits of a man’s work, labour, skill or test from being taken away by other people. Statutory copyright, therefore, is based on a profit motive for both the author and the entrepreneur.¹

Copyright is one of the important facets of intellectual property which is of considerable importance in global information society. Copyright is a set of exclusive right given by law to creators of literary, dramatic, musical and artistic works to protect his work from unauthorized copying for a limited period of time. It is not a monopoly right rather exclusive right given to owner of copyright to have monopolistic advantage (e.g. a publisher may publish expensive hard bound edition of a book instead of cheap paperback edition of the particular book). The jurisprudential intent behind providing legal protection is that person should be able to reap the benefit of his creation which is the outcome of his skill, labor and capital. The purpose behind copyright law is to forester the growth and advancement of learning and to build a rich heritage of culture for the public welfare by means of recognizing exclusive rights to authors for a limited time. The domain of copyright is of extensive character due to the rapid development of technology in the field of printing, music, entertainment and computers. The concept of copyright as a right which is negative in nature has got the following attributes which makes it uniquely valuable and a subject of critical evaluation:

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2 Since there can be copyright in same and similar works if the works is outcome of independent skill and labour without any copying.
It provides the strongest protection for individual authors of creative works, advocates the provision of appropriate compensation in case of infringement of right in a given legal system, copy right enable us to distinguish between those moral principles that can be justly enforced and also controls the exploitation by others of the works created by the authors.

The concept of right expresses the idea that something is owed to individual and a certain performance or certain form of noninterference are his due or that he is entitled to them without a system of rights, individuals could only make request or beg or ask favours but cannot demand certain treatments from others.

Includes respect for persons, or includes recognition of the individual's status as a holder of rights. In a legal system where such recognition is lacking there exist a grave moral defect, Last but not the least the right holder may either invoke or waive his rights.

The copyright is a recognized statutory right given to individuals for their original creativeness for a limited period which can be licensed out, transmitted by bequest and is heritable. This right can be enforced and the right holder is compensated for infringement, save in case the act
is within the ambit of fair use. The moral rights (Integrity & Paternity rights of the said work in which the copyright subsists) given to the author for his creative tangible work, further assert the humanitarian aspect of copyright law.

The copyright can be granted as soon as the work is created and put into some tangible medium provided the work is original, which is the prime basis for the subsistence of copyright.

The Aim of copyright protection is to make conducive environment for creativity which further motivates others to create, the continuance of which paves way for the economical, and social development of society. Copyright ensures certain minimum safeguards to the right of authority over their creation. The law of copyright has necessary exception and limitations in order to maintain a balance between the interest of creator & community.

1.1 History of Copyright Law:

The origin of the concept of copyright can be traced back to the ancient times but the development of statutory law of copyright is of recent origin. After the advent of printing and related technologies in

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4 A.K. Koul & V.K. Ahuja, Law of Copyright from Gutenberg’s Invention to Internet: Faculty of Law, University of Delhi 2001, P-6.
mid fifteenth century the practice of frequent and mala-fide multiple copying of famous works became easier and rampant, to protect intellectual labour of authors and creators the need of regulation of such unscrupulous copying was felt in some countries of Europe and in the US that resulted into the framing of law related to the right to copy for the authors.

The law of Copyright traces its origin to the law of England for the protection behind the law of copyright is on the basis of maxim "Thou shall not steal" i.e. no man shall steal what belongs to another. No man is authorized to make a profit and to appropriate to himself what has been produced by the labour skill and capital of another. The fruit of man's brain can with the utmost propriety be called his property. It is this incorporeal right that the Law of copyright confers on the producers of original work and what is more important that it protects creativity. Questions of copyright began to agitate the minds of authors of books as soon as printing was introduced. Copyright first applied to books and was in course of time, extended to works other than books.

In England the first step in this direction was taken in 1534 by prohibiting importation of foreign books, then in 1556 the "Stationers'
Company\textsuperscript{5} was granted the powers for search, seizure and destruction was given over unauthorized copies of famous works. The most important step was taken in 1710 when a specific statute called the Statute of Anne\textsuperscript{6} was enacted to protect the exclusive right of the authors and creators over their creative works. In the next two hundred years a number of new legislations were enacted in Britain as the publishing industry expanded and newer technologies were introduced. Originally devised for written and printed materials, the scope of copyright law expanded to cover the newer forms of creative expressions like photographic and cinematographic works and phonograms which are the results of development in the field of technology.

The first English Act relating to Copyright was passed in the year 1709 (8 Anne c 21)\textsuperscript{7}. It conferred on a author the exclusive privilege of printing, reprinting and publishing his own original work. The laws on copyright today with the advent of modern mass media based on technological advancement in science have operation in a much wider field than it did more than two centuries ago. Burgeoning international trade in literary, musical and artistic works led to Universal Copyright

\textsuperscript{5} This company is a statutory body constituted under the seal of the crown consisting of authors, publishers and government officials.

\textsuperscript{6} The Copyright Act of 1710 (UK) granted "sole right and liberty of printing books" to authors and their assigns for a period of fourteen years.

\textsuperscript{7} It was the First Piece of legislation in Copyright Act.
Convention of 1952 and has caused deep concern to the owners of Copyright in countries other than the country of origin. The law of Copyright, essentially rests upon the statutory principle subject to certain restriction in the interests of the public, that creator of any original work, be it literary, dramatic musical or artistic should be entitled to certain benefits derived from the creation of his brain, skill and labour. The right has been recently extended to cinematograph films, records, computer programs and databases etc. also.

1.2 Justifications for a Copyright System:

Many justifications have been given for the existence of a copyright system. These justification or reasons are basically the forces that shape the copyright and neigbouring right laws of different countries. These reasons are as follows:

a). Principle of Natural Justice: The author is the creator or maker of the work which is the expression of his personality. He alone should be able to decide whether and how his work is to be published or reproduce. He should be able to prevent any injury or mutilation of his intellectual offspring. Moreover the author, like any other worker, sound be entitled

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8 Universal Copyright Convention, Paris Text 1971.
to the fruits of his efforts and, therefore, the royalties that are paid to him to be treated as the wages for his intellectual work. This gives an incentive to the author for increasing production of this work.

\textit{b). Principle of Social Justice :} In the modern world considerable investment is needed to make the creation of some works, such as works of literature, science, architecture or films possible. The purpose of the creation of practically all works is to make it available to the public. Communication and distribution of work to public also entails a lot of investment of money. These investments will not be made unless there is reasonable expectation of recouping them and making a reasonable profit. Furthermore, the doctrine of unjustified enrichment may apply if those who make creative contributions to the society were not compensated. A proper balance between the rights of knowledge creators and its quick dissemination and assimilation in the society is fundamental to the continued growth of economy.

\textit{c). Principle of cultural development :} The works produced by creators from a considerable national asset. Therefore, the encouragement of authors and rewarding creativity are in public interest as the authors have made a contribution to the development of the national culture.
d). **Principle of social interaction**: The dissemination of work to a large number of people forges links between classes, racial groups and age groups and therefore makes for social cohesion and creators thus render social service in the society for which they need to be compensated.

1.3 **Copyright System: A Functional Approach**:

Copyright system performs a number of functions in the society. According to Neil Weinstock, main functions of copyright system in a civil society are: production function, structural function and development function. It also plays a primary role in education of people.

a). **Production Function**: Copyright provides an incentive for creative expression on a wide array of political, social, and aesthetic issues and thus, bolstering the discursive foundations for democratic culture and civic association. Copyright law in almost all nations is designed to foster the creation and public communication of original expression. In fostering the production and dissemination of fixed original expression concerning a broad range of political, social, cultural and aesthetic matters, copyright promotes the democratic character of civil society.

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The dissemination of expression is a fundamental building block of any democratic institution.

**b). Structural Function:** Copyright is vital to maintaining the democratic character of public discourse in civil society. By supporting in independent market-based sector of authors and publishers, copyright achieves considerable independence from government administrators and private patrons who would otherwise meddle in their expressive content.

**c). Development Functions:** Copyright has a special role in the context of development, particularly since the 1950s when the political map of the world changed considerably, and several states progressively became independent and other states were newly created. In such a scenario, developing countries had to cope with the enormous problems of educating the vast masses of their people. For education, teaching material including the literary, artistic and scientific works had to be created by authors originating in the community to which the works were addressed. In many developing countries, there was a shortage of specialists in certain areas of knowledge. This could not be set in motion without guarantees to the author of adequate remuneration for his efforts. Further, for citizens to articulate their interests and participate in

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civil association they must have access to the store of accumulated wealth of mankind in knowledge, ideas and purposes. Copyright system supplies a vital incentive for authors and publishers to contribute to this store of knowledge.

1.4 Social Value of Copyright:

Copyright Law not only protects the commercial interest of a person in the work produced by his intellectual labour, but also protects the interest of the society. Because Art and Literature are the essential constituents of culture of any society. Maturity and Excellence in the art and literature means Maturity and Excellence in the culture. Thus, by protecting the Copyright of the authors and artists in their artistic or literary work, the Copyright law protects the culture of the society. As the Delhi High Court in Penguin books Ltd. England v/s Indian Book Distributors\textsuperscript{12} observed as follows:

“Copyright is a property right and throughout the world, it has been regarded as a form of property working for special protection in the ultimate public interest”.

\textsuperscript{12} AIR 1985 Del.68.
Similarly, in *Smt. Mannu Bhandari v/s Kala Vikas Pictures Pvt. Ltd.* The Delhi High Court highlighted the social interest served by the copyright law as follows:

“The hallmark of any culture is excellence of arts and literature. Quality of creative genius of artists and authors determine the maturity and vitality of any culture. Art needs healthy environment and adequate protection. The protection which law offers is thus not the protection of the artist or author alone. Enrichment of culture is of vital interest to each society. Copyright law protects the social interest.”

**1.5 Economic Value of Copyright:**

Copyright is often looked at and understood from the legal point of view; in light of its nature, scope of protection, duration of its protection, its enforcement and its infringement. There is, however, its other side – its economic characteristics. No doubt Copyright has a role in our everyday lives particularly in the areas of production, distribution and consumption. Similarly, its business interest has been boosted by the rapid growth of demands for investments, licensing, trade and transfers. This realisation has shifted the appreciation of Copyright, and

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necessitated studies in its economic characteristics, particularly its contribution to National Economies and Employment Opportunities.

For example, the rapid growth of software, multimedia and other technology-based products have reached very significant levels due to the protection of Copyright. When linked to the development of human capital, it results in educated, skilled and motivated individuals and becomes a dynamic combination in terms of stimulating creativity and innovation, generating revenue, promoting investments, enhancing culture, preventing brain drain, and nurturing overall economic health. Therefore, when we talk about Economic Value of Copyright we are actually talking about Copyright Based Industries.

Copyright is a private property right and the holder enjoys exclusive rights to exclude others from using her work. However, the law regulates the monopoly vested in a Copyright owner through the concept of exceptions and limitation for the public good. Secondly, the law is designed to create the right balance between the investment to facilitate cultural creations and their distribution, on the one hand, and the protection and enforcement of the rights protected in those works, on the other. Thirdly, the law strives to stimulate and balance production efficiency and distribution efficiency in order to give economic value to
the cultural good. Since the economic value of cultural goods is linked with the real value of the intellectual property in it, production efficiency is a prerequisite to finding and satisfying the market.

Consequently, Copyright redistributes income and costs between stakeholders (the Copyright holder, the user and the consumer) through the concept and function of royalties.

Therefore, without Copyright, it would be futile to trade in Cultural Goods since they would not acquire the characteristics of economic goods.

It should be noted that Copyright does not protect the medium through which the creation is expressed but the creation in that medium. So when you buy a CD or DVD or Cassette or a book, your ownership only extends to that medium but not the work (creation) in that medium.

1.6 Copyright Law & National Economy:

Besides protecting creative potential of the society, copyright contributes to a nation on economic-front as well. The copyright based industries together generate huge employment in the country of its origin. The national exchequer benefit from the contribution made by these industries in the form of excise duty, sales tax, income tax etc. from the production and sale of copyrighted products. Given the natural demand
for such products from across the national boundaries exports help consolidate country’s foreign exchange reserves position.

While there is no two views on the economic importance of copyright, it is not easy to assess it properly. The first and the foremost difficulty arises in defining the copyright based industries. In simplistic term copyright industries include all those activities which directly or indirectly depend on copyrighted materials for their commercial success. But the range of activities that come under the subject of copyright is so wide that the task of defining the copyright industry becomes difficult. These industries are drawn from a large number of different industry classifications and they are also not readily identified as an industry in the usual sense. This makes the issue more complicated.

However, there is a general consensus on the activities that come under copyright industries. It include printing and publishing of books, newspapers, journals & other periodicals, production and sale of audio products (Cassettes/CDs), production & distribution of cinemas, videos and cables, creation of computer software’s & databases and their distribution, radio and television broadcasting, advertising, photography, dramatic and musical performances etc. The list is not exhaustive. But the present study is confined to only the main segments of the copyright industry and covers
cinematographic works (including video), sound recordings, literary works (mainly book publishing), computer software's performances. The economic importance of copyright had been amply illustrated by a number of studies undertaken in the past in various parts of the world, notably in USA, Germany, Australia, U.K., Sweden and some other developed countries. For example, a study conducted in 1993 for the U.S.A. showed that the core copyright industries comprising motion picture, computer software, music & recording and book publishing industries accounted for $ 238.6 billion in value added to the US economy, which approximately accounted for 3.47 % of the country’s Gross Domestic Product (GDP). These industries grew at more than twice the annual growth rate of US economy as a whole between 1991 and 1993 (5.6% as against 2.7% for the economy as a whole). The total copyright industries taken together (i.e. core industries plus those distribute copyrighted products and other products those depend on wholly or principally on copyrighted materials) employed more than 5.7 million workers (about 4.8% of total U.S. workforce) and accounted for approximately 5.69% US GDP in 1993.

In India, no estimates are available to ascertain contribution of copyright based industries to the national economy. However, given the rich
cultural background and huge population of the country, it is believed that copyright industries collectively contribute enormously to the economy. India is the largest audio cassette market in the world in terms of number of units sold. In 1996, India sold more than 350 million audio cassettes & CDs and the industry’s sales turnover stood at Rs.105,605 million. India’s software industry is showing a phenomenal growth. During 1996-97, the software industry in India with its size of Rs.63,100 million achieved a remarkable growth rate of above 50% over its previous year’s performance. During the same period India could export software’s worth Rs.39,000 million and the software industry provided employment to more than 160,000 people.

The publishing industry is also quite large in the country. About 11,000 publishers are engaged in producing more than 57,000 new titles every year, of which about 22% is published in English language. In 1995-96 India exported Rs.1120 million worth of books and other printed material. A sizeable portion of this (about 29.1 percent) went to advanced countries in the Europe. The print media in India comprising daily newspapers and numerous other periodicals e.g. weekly, monthly and annual journals/magazines is huge. In 1997, it had a total circulation of 10,57,08,191 and the turnover from print media is estimated to be as
high as Rs. 8000 crores. The other core copyright industry namely film and video, also occupies an important place in the country. Film is considered as one of the best means of entertainment for the common people. India annually produces more than 600 films in major languages such as Hindi, Telugu, Tamil, Malayalam & Kannada. The demand for cable & satellite TVs are also on the rise. It is estimated that during 1996 cable connection in the country had reached about 20 million houses covering approximately 10 percent of the total households in the country.

1.7 Copyright-Based Industries & Copying of Protected Works:

Copyright-based industries such as publishing and computer software play a major part in the global knowledge-based economy, and the products and services they provide have a central role in facilitating innovation and social and economic development in general. The success of these industries is reflected by their tremendous growth, which has generated millions of high-paying jobs and billions in revenues, including in some developing countries. The computer software industry is also a highly important source of innovation in its own right and its members argue that they have produced dramatic gains in the performance and functionality of many commercial software
products in the last decade or so while prices have remained stable or even fallen.

Representatives from these industries have stressed to us the importance of copyright laws and strong protection against unauthorized copying to encourage investments in creativity and innovation, as well as in product and technological development. The scale of these investments in developing creative works and bringing them to market is certainly considerable. For example, according to the Publishers’ Association there are around 600,000 books currently in print in UK. This is a hugely valuable knowledge resource for innovative industries and society at large. And of course, industries must be able to recoup these investments to pay for new generations of knowledge-based products. So, for example, the computer software industry argues that charging licence fees for its products allows companies to generate revenues to fund future R&D.

The prevention of unauthorized copying has always been the principal objective behind the development of international copyright rules and this remains the case. Unauthorised copying of copyrighted works (usually described rather more pejoratively as “piracy” by copyright holders) has a long history and remains an international phenomenon, occurring in both
the developed and the developing world. The US, for example, justified its persistent refusal to grant copyright protection to foreign authors during the 19th century on the grounds that this was a necessity to meet the nation’s needs for knowledge and enlightenment. And interestingly, although industry claims that current rates of unauthorised copying are highest in some developing countries and transition economies, the biggest financial losses to rights holders still occur in developed countries, because their market size is so much bigger. The arrival of the digital era has created the fear for the copyright-based industries that they may be able to sell “only one copy” of a new e-book, DVD movie, music CD, or computer programme before it is illegally copied, as a perfect replica at no cost, and may be distributed seamlessly worldwide through computer networks and the Internet.

In the past, however, the evidence shows that weak levels of copyright enforcement have had a major impact on diffusion of knowledge and knowledge-based products in certain cases, such as computer software, throughout the developing world. Indeed, it is arguably the case that many poor people in developing countries have only been able to access certain copyrighted works through using unauthorised copies available at a fraction of the price of the genuine original product. We are therefore
concerned that an unintended impact of stronger protection and enforcement of international copyright rules as required, *inter alia*, by TRIPS will be simply to reduce access to knowledge products in developing countries, with damaging consequences for poor people. Responding to this concern, representatives from the copyright-based industries point to the special initiatives they are undertaking for developing countries, such as donation schemes and low price “budget” editions of books and computer programmes for cost-sensitive users, as the way forward rather than any weakening of international copyright rules and/or enforcement measures in the developing world. For example, the publishing industry is now supporting an expanding number of initiatives aimed at improving affordable access to books and journals in developing countries and establishing partnerships with publishers in less developed countries to encourage the development of local publishing industries. Likewise, in the computer software industry, a leading software company is making several of its software products available to South Africa’s 32,000 public schools at no charge, thereby helping South African students and teachers become IT-proficient, while helping to build its future markets.
But ultimately commercial companies are responsible to their shareholders. They are not charities, nor are they intended to be. Companies therefore think it is the responsibility of governments from developed countries and development agencies to meet developing countries’ requirement for subsidised access to affordable copyrighted works in order to address their needs for education and transfer of knowledge. As noted in a report presented to the UK Parliament in 1977 and by a recent decision of the UK Copyright Tribunal no one has yet suggested that the makers of notebooks, compasses or rulers should supply them to educational establishments free of charge. So why the copyright-based industries should tolerate widespread unauthorised copying of their books, journals, computer software or scientific databases?

*The Copyright Industries*

The kinds of works covered by copyright include novels, poems, plays, reference works, newspaper articles, computer programs, databases, films, musical compositions with or without texts, choreography, paintings, drawings, photographs, sculptures, architecture, advertisements, maps, technical drawings and multimedia productions.
Copyright industries can therefore be divided into the following three categories:

**Core copyright industries:**
These are industries that create copyright materials as their main product. They include Book Publishers and related industries, the music publishing industry, theater, film and television production companies, the visual arts industry, computer software, etc.

**Partially copyright-based industries:**
These are industries in which part of their product is directly related to the creation or exploitation of copyrighted works. Such industries include advertising agencies, computer consultants, architectural services, stationary manufacturing, commercial or job printing services, web page design services, etc.

**Copyright-based distribution industries:**
This category includes businesses involved in paper product wholesaling, computer and software retailing, film and video distribution, and motion picture projection as well as libraries, museums, performing arts’ venues, video hire outlets, photographic film processing, etc.
In order to sustain their competitiveness and success in business, copyright industries need to safeguard the fruits of their creativity and innovations from free-riders, imitators, and copiers. In fact, the viability of these industries rests on the existence and proper functioning of the copyright system in domestic and international markets.

Most businesses, although not directly involved in the copyright area, print brochures or publish advertisements that create and/or use copyright-protected materials. Even shopping malls, bars, nightclubs, hotels, airlines, restaurants and other retail outlets play music—protected by copyright—to attract customers and influence their behavior, entertain employees, and increase turnover and profits. Thus proprietors of these businesses must understand the basics of copyright law as safeguarding copyright and securing the permission of others before using copyrighted material is not only a legal necessity but also good business sense. Many businesses, especially small ones, do not have a sufficient understanding of the importance and relevance of copyright to their business success or bottom-line.

1.8 Copyright Law and New Technologies:

The contours of copyright law have always been drawn by the development in the technological world, specifically the contemporary
technologies available for copying a work, e.g. by hand, printing, lithography, broadcasting, and reprography and now digital technology. The phenomenon of piracy\(^{14}\) and the community of pirates always posed a threat to the copyright protection regime. The moment the law was updated they have devised new means of circumventing it and this technological development always proved to be a boon for them. The recent revolution in the technological world and evolution of digital technology, cyber space, provided the pirates another playing field consequently the international regime of copyright protection is facing new threat. The emergence of digital technologies towards the concluding decades of twentieth century and the defining paradigms of new age communication have raised a whole new set of challenges to copyright regimes. The traditional notions and the basis concept of copyright such as rights of reproduction and distribution have become inadequate in the this digital era. All works can now be digitalized whether they comprise texts, images, sound, diagrams and related materials and once digitized these various elements can be merged, transformed, manipulated or mixed to create endless various elements can be merged, transformed, manipulated or mixed to create

\(^{14}\) Unauthorized copying of creative works.
and endless variety of new works (i.e., adaptations). Earlier the Copyright could only be done in some material or physical form and its transmission across borders was not easy and took a lot of time and effort, but in contrast, the transmission of digitized works which are in non-material form is very easy and it can be transmitted or distributed throughout the world without any physical restrictions and within few seconds.

The history of copyright legislation has been the history of technology for exploitation of creative works of the human intellect. The beginning of that history can be traced from the invention of printing press by Gutenberg, which made it possible to multiply copies of literary works to onset and development of digital technology and transmission of information through Internet. Technological development of the twenty-first century like invention of computer, computer programmes, biotechnological inventions, techniques of reprography including audio and video recording, communication technologies like satellite, cable distribution, digital distribution systems transmitting information in real time, have brought copyright law to the forefront of legal debates.

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15 In 1920s came the invention of commercial broadcasting and talkies followed by invention of cable television and reprography in 1960s. 1970s are known for inventions of video cassette recorders and 1980s for the invention of personal computers. 1990s are known for development of computer softwares, computer generated works and the fast development and growth of Internet.
Because of these developments, the copyright law has assumed a great significance in the contemporary technological era.

In the early stages copyright law, focused on the protection of art, literature, music and related aesthetic forms of expression. Today, however, one of the major focal point copyright law is determining the degree to which products of technology like computer generated works and uses of technology for example fast and inexpensive duplication of works by duplicating machine, and digital transmission of work in real time are to be given protection. This change in focus has not been sudden. The scope of copyright has been expanding gradually to protect each new wave of work assuming that the value of copyrighted works was not undermined by the capacities of new technologies.  

The examples in advances of science that have in the past been addressed by copyright law of many countries include photography, various forms of sound recordings, motion pictures, radio programmes, wire and magnetic sound recordings, television, photocopying, computer programs, electronic data bases, videotapes, laser disc recordings,

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16 Arthur R. Miller, "The Protection of certain Technology based works under the Copyright law of the United States," paper presented at WIPO// Egypt National Seminar on Copyright and Neighbouring Rights organised by World intellectual Property Organization and the Cabinet Information and Decision Support Centre, Arab Republic of Egypt, WIPO/CNR/CA/94/7,

semiconductor chips and the latest in the series being digital technology including the internet However, improvement in the copying technology and reductions in the cost of making copies have seriously challenged the efficacy of copyright law as a means of controlling unauthorized copying. The growth of these copying technologies has resulted in prejudicially affecting the economic rights of the copyright owner.

1.9 Copyright Law in India:

*Indian Copyright Act, 1847 and the Imperial Copyright Act, 1911:*

Indian Copyright Law has grown out of English Common Law and Statutory Law.

The earliest legislation in India relating to copyright is the **Indian Copyright Act, 1847** enacted during the East India Company's regime. This Act was based on the English Copyright Act as wished in England to India. The Indian Copyright Act 1847 was in operation from 1847 – 1911. The **Imperial Copyright Act 1911** then came into force which extended throughout the British dominion and was brought into force in British India with effect, From 31.10.1912. This Act was replaced by the Indian Copyright Act, 1914 which was in force when India became a sovereign independent nation in 1947 and continued to be in force thereafter for another decade before it was replaced by the Copyright Act, 1957.
The Copyright Act, 1914:

The Act of 1914 consisted of 15 sections. Under the Act only original work attracted the protection of copyright law. The author's right came into existence as soon as the work was created and registration of the authors work was not necessary for protection of copyright law. Protection was granted not to the ideas but to the expression of an idea. The copyright protection was limited to 25 years after the death of the author. The infringement of copyright was not considered as a criminal offence under the Act but it authorized the owner of the copyright to destroy the infringing copies and prescribed penalties for infringement of copyright.

After Independence in 1947 and adoption of the Constitution of India in 1950, a need was felt to consolidate the law on copyright keeping in mind the technological developments and international conventions and therefore the Indian Copyright Act 1957 was passed. Krishna Iyer J. in *Indian Performing Rights Society Limited v. East India Motion Picture Associations* hold that, the creative intelligence of man is displayed in multiform ways of aesthetic expression but it often happens that the economic system so operate that the priceless divinity which we

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18 AIR 1977 SC 1443.
call artistic or literary creativity in man is exploited and masters, whose words are invaluable and victims of piffling payments. World opinion in defense of human rights to intellectual property led to international conventions calculated to protect work of art. India responded to this universal need by enacting the Copyright Act of 1957.

The Copyright Act, 1957:

The 1914, Copyright Act was replaced by the 1957 Act. It was in harmony with the Berne Convention, 1986 and the Universal Copyright Convention, 1952. India is a member to both the Conventions. The Act of 1957 was divided into 15 chapters containing 79 sections.

Under the Act, a copyright office was established under the control of a registrar of copyright who was to act under the superintendence and direction of central government. The principal function of this office was to maintain a register of copyright containing the names or titles of work, the names and addresses of authors etc. The registrar was given certain powers like entertaining and disposing of applications for compulsory licenses and inquire into complaints of importation of infringing copies.

19 For India Berne Convention came into force on April 1, 1928 and Universal Copyright Convention on January 21, 1958.
20 The Copyright Act 1957, sec.9.
21 Ibid. Sec.44 & 45.
The Act for the first time made a provision for the setting up of a Copyright Board.\textsuperscript{22} The proceedings before the Board were deemed to be judicial proceedings.\textsuperscript{23}

The definition of copyright was enlarged so as to include the exclusive right to communicate works by a radio diffusion; the cinematograph film was given a separate copyright, the term of copyright protection was extended from 23 to 50 years which was again extended to 60 years in 1992,\textsuperscript{24} term of copyright for different categories of work was also specified.\textsuperscript{25} The right to produce a translation of a work was made coextensive with other rights arising out of copyright.\textsuperscript{26}

Provisions relating to assignment\textsuperscript{27} of ownership and licensing of copyright including compulsory licensing in certain circumstances\textsuperscript{28} rights of broadcasting organization,\textsuperscript{29} international copyright,\textsuperscript{30} definition of infringement of copyright,\textsuperscript{31} exceptions to the exclusive rights conferred upon the author or acts which do not

\textsuperscript{22} Copyright Act 1957, Sec-11.
\textsuperscript{23} Ibid, Sec.12.
\textsuperscript{24} Ibid, Sec.22.
\textsuperscript{25} Copyright Act 1957,sec.22 – 29. The works included literary, dramatic, musical and artistic works.
\textsuperscript{26} Ibid,sec.14, according to the Act of 1914, the sole right to reproduce a translation of a work first published in India extinguished after 10 years of its first publication.
\textsuperscript{27} Ibid,sec.18 to 19A.
\textsuperscript{28} Ibid, Chapter VI.
\textsuperscript{29} Ibid,Sec.37.
\textsuperscript{30} Ibid, Sec.40.
\textsuperscript{31} Ibid, Sec.51.
constitute infringement, \(^{32}\) special rights of authors \(^{33}\) civil and criminal remedies against infringement and remedies against groundless threats or legal proceedings \(^{34}\) were also introduced.

In order to keep pace with the fast technological developments in the area of copyright and also to abide by its intellectual obligation the Government of India amended the 1957 Act in 1983, 1984, 1994 and 1999. The Copyright Amendment Bill 2012 has been passed by Parliament but it still awaits the assent of the President before which it could become the law of the land.

The salient features of these amendments are discussed in below:-

**The Amendment of 1983:**

The act was amended in 1983 to take the advantage of the Berne Convention, Paris text of 1971, which had incorporated special provisions in the Appendix for developing countries regarding compulsory licenses for translation and reproduction of foreign work for instructional purposes. Limitations to the right of reproduction of authors were introduced by way of compulsory licenses to produce and publish translations of literary or dramatic works in any language after a

\(^{32}\) Copyright Act 1957, Sec.52 also called doctrine of fair dealing.  
^{33} Ibid, Sec.57 also called special rights of author or moral rights.  
^{34} Ibid, Sec.54 to 70.
period of seven years from the first publication of the work.\textsuperscript{35} The period is three years where a translation is required for the purposes of teaching, scholarship or research and work is not an Indian work. Where such translation is in a language not in general use in any developed country the license may be made after a period of one year from such publication.

The amendment also introduced new provisions for issuing compulsory licenses for reproduction of an edition of literary, scientific or artistic work, whether or not the work is Indian for the purposes of systematic instructional activities where copies are not made available in India or have not been put on sale in India for a period of six months after the expiration of certain prescribed periods from the date of the first publication.\textsuperscript{36}

A new section \textsuperscript{37} was inserted which provided that in case of unpublished work where the author is dead or unknown or owner of copyright cannot be traced, any person wishing to publish material or translation thereof may advertise his proposal and apply to the copyright Board for permission which would grant such permission and fix an

\textsuperscript{35} Copyright Act 1957, sec.32.
\textsuperscript{36} Ibid, sec. .32A.
\textsuperscript{37} Ibid, sec.31A.
appropriate royalty. The royalty could be deposited in public account for specific period so as to enable the owner of copyright or his heirs, executors or the legal representatives to claim such royalty at any time.

**The Amendment of 1984:**

The members of Parliament while considering the Bill of 1983 to amend Copyright Act, 1957 voiced concern at the problem of piracy having a serious impact on the right of reproduction of authors and, stressed upon the need of taking sufficient antipiracy measures.

In an effort to amend the Act, it was stated:

“Mainly there are three types of piracy: piracy of printed word; of sound recordings and of cinema films. The object of pirated in all such cases is to make money and avoid payment of legitimate taxes and royalty. In respect of books, it is estimated that 400-500 titles are pirated every year, in India and on each of the pirated titles, the loss to the government in the form of tax evasion amounts approximately to Rs. 11,000/-. The emergence of new techniques of recordings, fixation and reproduction of audio programs combined with the advent of video technology has greatly helped pirates. It is estimated that losses to the films producers and other owners of copyright amount to several crores
of rupees. The loss to government in terms of tax evasion also amounts to crores of rupees. In addition, because of the video boom in the country, there are reports that uncertified video films are exhibited on a large scale. A large number of video parlors have also sprung up and they exhibit such films by charging fee from their clients.  

Consequently, the amendment of 1984 provided the following changes:

(i) To increase punishment provided for infringements of copyright to 3 years with a minimum imprisonment of 6 months and a fine upto Rs.2 lakhs with a minimum of Rs. 50,000/-

(ii) To provide for enhanced punishment in case of continuing convictions,

(iii) To provide for declaration of the offence of infringement of copyright as an economic offence so that the period of limitation as provided in Cr. P.C. is not applicable to these offences:

(iv) To specifically make provisions of this Act applicable to video films and computer programmes; and

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38 Statement of Objects and Reasons annexed to the Copyright Amendment Bill, 1984 (19:08:1984)
(v) To require the producers of records and video films to display certain information in the record, video films and containers thereof.

The Amendments of 1994:

This amendment was introduced after the addition of TRIPs Agreement. It introduced protection for performers by giving them a right to reproduce their live performances by way of sound or visual recordings etc.\(^{39}\) A new chapter dealing with copyright societies, seeking to promote effective administration of right of the authors, composers and other creative artists and a definition of reprography\(^{40}\) was also inserted. The amendment also provided for the assignment of copyright by an author or artist to protect the interest of both assignor and assignee and also for protection of computer programs, cinematograph films and sound recordings. The Indian Copyright Act became one of the most progressive copyright laws with the introduction of these amendments with respect to the rights of authors, performers and producers of phonograms etc. The Act has also always tried to keep pace with the technological development, though many gaps between the law and

\(^{39}\) Copyright Act 1957 Chapter VIII.
\(^{40}\) Ibid, sec. 2(x).
technology still remain. This work attempts to analyze some of these area and the ways by which the gaps could be filled up.

The amendment provided for:

i) the performers' rights protection covering any visual or artistic presentations made live by one or more performers,

ii) the copyright societies seeking to promote collective administration of the rights of the authors, composers and other creative artists;

iii) the assignment of copyright by an author or artist to protect the interest of both the assignor and assignee; and

iv) the protection of computer programmes, cinematograph films and sound recordings.

The other provisions in the amending legislation were usual and self-explanatory in nature.

Amendments of 1999

This amendment increased the protection of performers from 25 to 50 years as required by TRIPs. Rental right was introduced in case of computer programmes to strengthen the right of reproduction of authors

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41 Copyright Act 1957, sec.38. India is a member of TRIPs, sec.38 was introduced as a consequence of Art.14 of TRIPs.
42 Ibid, sec.14(1)(b).
of computers programmes in accordance with WCT, 1996.\textsuperscript{43} A new provision\textsuperscript{44} was inserted which gave power to the central Government to apply Chapter VI of the Act dealing with the rights of broadcasting organization and of performers to broadcasting organizations and performers of certain other countries, which, fulfilled the conditions, specified therein.

Another provision\textsuperscript{45} was added whereby power was given to the central government to restrict the rights of foreign broadcasting organization and performers if it appears to the government that such a foreign country does not give or has not under taken to give adequate protection to rights of broadcasting organization or performer of our country.

**The Copyright Amendment Bill 2012:**

The Copyright Act (Amendment) Bill 2012 was passed in India’s Lower House of Parliament on May 22\textsuperscript{nd}, 2012 and by the Upper House on May 17th, 2012 and now awaits final Presidential approval to become law. The Bill is aimed at correcting an imbalance in India’s copyright law which was seen as favoring film producers and record labels rather than the lyricists, script writers and song composers.

\textsuperscript{43} WCT,1996, Art.7 \\
\textsuperscript{44} Copyright Act 1957,sec.40A. \\
\textsuperscript{45} Ibid sec.42A.
The following are the salient features of the bill:

1. The original authors of literary, musical, dramatic and artistic works that have been incorporated in cinematograph film will be considered as the **first owner** of copyright in the said works. The “work for hire” concept which states that the employer or “commissioning party” is the first owner of copyright in relation to a said work shall not apply in the abovementioned circumstances.

2. Authors of literary or musical works incorporated in films or sound recordings shall be entitled to receive **royalties** equal to the royalties received by the assignee for exploitation of their work. However this provision does not extend to communication of the film to the public in cinema halls.

3. The right of an author to claim royalties or any other form of consideration for utilization of his work in any form other than as part of a cinematograph film or sound recording shall not be extinguished or affected in any way by assignment of the copyright in that work for making a film or a sound recording.

4. The right to claim authorship as recognized under section 57\(^{46}\) can now be exercised by legal representatives of the author. Hence the right to claim authorship does not extinguish with the **death of the author**.

\(^{46}\)Copyright Act 1957.
5. The right to claim damages in respect of any distortion, mutilation or other modification of the author’s work will be available even after expiry of the term of the copyright.

6. A new section 38A has been introduced which defines **Performer’s Right** as the exclusive right to do or authorize for doing any of the following acts in respect of the performance or any substantial part thereof, namely:

**a.** To make a sound recording or a visual recording of the performance, Including:

- Reproduction of it in any material form including the storing of it in any medium by electronic or any other means,

- Issuance of copies of it to the public not being copies already in circulation.

- Communication of it to the public

- Selling or giving it on the commercial rental or offer for sale or for commercial rental any copy of the recording

**b.** To broadcast or communicate the performance to the public except where the performance is already broadcast.
7. The **Compulsory Licensing** provisions under section 31, (in relation to published work) and 31A (in relation to unpublished work or anonymous work) which were earlier restricted only to Indian works have now been made applicable to all works.

8. A new provision has been inserted where the work may be made available under the **Compulsory License** for the benefit of the people suffering from disabilities.

9. Several changes have been made in respect of the law governing copyright issues in “**cover versions**”, the most significant being that a cover version of any literary, dramatic or musical work, can only be allowed after five years from the first recording of the original creation.

10. The amendment has introduced the concept of “**statutory license**” in relation to the published works. Any broadcasting organization, that proposes to broadcast any published work to the public including performance of any published musical/lyrical work and sound recording, shall be required to first give a notice of its intention to the owners of the rights. Such notice shall contain details regarding the duration and territorial coverage of the broadcast and royalties for each work at the rate and manner fixed by the copyright board shall be duly
paid to the owners of the rights. Moreover, the names of the author and the principal performer will have to be announced with the broadcast.

11. The amendment also permits authors of the work to be members of the Copyright Societies. Copyright Societies will be granted registration for a term of five years and would need to re-register within a period of one year from the date of commencement of the Copyright (Amendment) Act, 2012. Further, Copyright Societies will be required to have governing bodies consisting of equal number of authors and owners of work for the purpose of administration of the society. As per a new section 33A, Copyright Societies will also be required to publish their respective tariff Schemes.

12. Acts that do not amount to infringement are listed in section 52 and the said section has undergone some changes. The use for educational purposes, fair dealing will not amount to copyright infringement in respect of any work. Earlier this exception only extended to literary, dramatic, musical or artistic work. Several new exceptions have been included in the ambit of this section.

13. With an aim to curb piracy, Section 65A has been inserted and states the following:
“Any person who circumvents an effective technological measure applied for the purpose of protecting any of the rights conferred by the Copyright Act, with the intention of infringing such rights, shall be punishable with imprisonment which may extend to two years and shall also be liable to fine. However, the following are the exceptions:

• Doing anything referred to above, for the purpose not expressly prohibited by this Act:

Provided that any person facilitating circumvention by another person of a technological measure for such a purpose shall maintain a complete record of such other person including his name, address and all the relevant particulars necessary to identify him and the purpose for which he has been facilitated; or

• Doing anything necessary to conduct encryption research using a lawfully obtained encrypted copy; or

• Conducting any lawful investigation; or

• Doing anything necessary for the purpose of testing the security of a computer system or a computer network with the authorization of its owner or operator; or
• Doing anything necessary to circumvent technological measures intended for identification or surveillance of a user of national security.”

14. A new section 53 has been inserted which states that the owner of the copyright can make an application to the Commissioner of Customs for seizing of infringing copies of works that are imported into India.

15. Emphasis has been laid on Section 40 which deals with foreign work, that the term of copyright granted to foreign work shall not exceed the term of copyright provided under the Copyright Act, India.

16. As per Section 18, it has been clarified that no assignment shall be applied to any medium or mode of exploitation of the work which did not exist or was not in commercial use at the time when the assignment was made.

1.10 The Information Technology Act, 2000:

The Information Technology Act, 2000 (hereinafter referred to as I.T. Act) was enacted to provide legal recognition for transactions carried out by means of electronic data interchange and other means of electronic communication, commonly referred to as ‘electronic commerce” which involve the use of alternatives to paper – based methods of communication and storage of information, to facilitate electronic filling of documents with the Government agencies. The I.T.

This Act was enacted pursuant to the United National Commission on International Trade Law (UNCITRAL), which had adopted the Model Law on Electronic Commerce in 1996. The General Assembly of United National by its Resolution48 had recommended that all states should give favorable considerations to the said Model when they enact or revise their laws. The Model Law provided for equal legal treatment of users of electronic communication and paper based communication.49

The I.T. Act provides for legal recognition of electronic records50 and digital signatures.51 It enables conclusion of contracts and the creation of rights and obligations through electronic medium. It has also provided for a regulatory regime to supervise the certifying authorities issuing digital signature certificates.52 The Act also attempts to facilitate electronic governance.

47 The Information Technology Act 2000, Preamble.
48 Resolution No. 51/1, dated 30-01-1962.
50 Id. Sec.11-14.
51 Id. sec.3 and 15.
52 Id. Ch.VI and sections 17-39.
Offences have been specified and civil and criminal liabilities for contravention of the provisions of the Act have also been provided for. The Act provides for situations where on-line service providers will not be held liable. The Act clarifies that the service providers will not be held liable for any third party information or date made available by them if he proves that the offence or contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence or contravention.

The Information Technology Act, 2000, no doubt, has dealt with certain challenges that have been posed by the development of digital technology but, it has not directly touched upon the issues arising under copyright law due to digitization. At the international level two internet treaties have been drafted by WIPO, namely WCT and WPPT 1996. This work tries to examine whether and how the Indian law on copyright should be brought in conformity with these developments.

1.1.1 Issues before Copyright Law:

(I) Determination of liabilities of Internet Service Providers.

(II) Inclusion of provisions relating to circumvention of technological measures and Right Management Information.
(III) Problem of Film Piracy & lack of anti-cam cording provisions in the Indian Copyright Act 1957.

(IV) Problem of mass photocopying in the educational institutions.

(V) Problem of Home Tape Recording of music & films.

(VI) Problem of using ingenuine or unlicensed software in the corporate houses and by individuals.

(VII) Problem of the use of P2P Technological devices by people like Napster.

(VIII) Criteria of protection: The criteria of protection of copyrightable subject matter have been 'Originality of the work', specially in the countries where copyright system has been prevalent. Whereas the criteria of protection in the countries where author's right system has been in vogue is creativity of the work. Even Indian Supreme Court following the American decision in fiest publication case has called for some modicum of creativity works. This is an important issue facing the legislature as to what should be the criteria of protection of the copyrightable system.

1.12 Framework of the Study:

Thematically the study is doctrinal. The study is divided into six chapters:
Chapter One- We have discusses the concept of Intellectual Property and Copyright law briefly. It lays out the justification of the law of copyright. Its importance in the contemporary world, the economic importance of the copyright as a tool for development. Its contribution to the economy, the challenges posed by the technological developments and the issues before the law of copyright in India.

Chapter Two- We have discusses various scientific & technological developments which have changed all the earlier notions and methods of creation, reproduction, communication & distribution or transmission of the copyrighted works. In this chapter the researcher proposes to examine the ways & methods through which the creative works can be affected by the technological devices and how such activities caused by the individuals with the help of devices can have repercussion and implication for the rights of creative authors.

Chapter Three- In this chapter the researcher aims to study & discuss the various International Organizations, Treaties, Conventions relating to the law of copyright. There is a whole corpus of Treaties & Conventions regulating the law of copyright and provides protection to the rights of authors in the countries other than the countries of their origin or of the work.
Chapter Four- In this chapter the researcher proposes to examine & analyze the law of copyright as existing in India. The technological developments and the introduction of new Treaty law have necessitated a revision of the law of copyright in India. The need of the time is that the existing norms of copyright are reviewed and re-looked at in order to keep pace with the technological developments in this field and also to comply with India's obligation under the international law of copyright.

Chapter Five- In this chapter the researcher proposes to discuss and examine the law of copyright as it exists in U.K., U.S.A. and to draw parallels among these and the Copyright law in India. Thereafter, to highlight the areas in the law of these countries and to suggest in corporation of similar features in the Indian law.

Chapter Six- Contains the general conclusion of the study. The study gives some discreet suggestions for bringing legislative reforms in the Copyright Act 1957 and the methodologies to execute these reforms have also been attempted.