



**PRESERVING THE PEN :INTELLECTUAL PROPERTY LAW IN ENGLISH
LITERATURE -BALANCING CREATIVE EXPRESSION AND COPYRIGHT
PROTECTION**

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ABSTRACT:

Intellectual property law is essential for preserving and safeguarding the works of authors in the realm of English literature .This research paper delves into the intricate relationship between intellectual property rights, particularly copyright protection, and the promotion of creative expression within the context of English literature .

By exploring the evolution of copyright law and its application to literature, this paper examines the challenges encountered in striking a delicate balance between granting authors exclusive rights to their works and facilitating the free flow of ideas and the advancement of literary traditions .Furthermore, it analyzes various approaches and legal doctrines that seek to foster creativity, encourage innovation, and safeguard the rights of authors and society as a whole .

The paper explores the impact of the digital age, issues of plagiarism and unauthorized reproduction, global harmonization of copyright law, and concerns related to cultural appropriation .It delves into the complexities and debates surrounding these challenges.

The paper suggests educational initiatives, collaborative efforts between authors and publishers, and the importance of international cooperation in addressing global copyright challenges .It explores the impact of the digital age, issues of plagiarism and unauthorized reproduction, global harmonization of copyright law, and concerns related to cultural appropriation. It delves into the complexities and debates surrounding these challenges.

The research paper concludes by emphasizing the significance of striking a balance between creative expression and copyright protection in English literature .It underscores

the need to preserve the pen while fostering a thriving literary landscape that respects authors' rights, promotes innovation, and embraces cultural diversity.

Keywords: *Creative Expression, English Literature, Copyright Protection, Plagiarism, Unauthorized Reproduction*

INTRODUCTION:

Intellectual property (IP) law is a complex and ever-evolving field. In the context of English literature, IP law plays an important role in protecting the rights of authors and publishers. Copyright law, in particular, gives authors the exclusive right to reproduce, distribute, perform, and display their works. This helps to ensure that authors are compensated for their work and that their creative expression is not exploited by others.

This paper will argue that copyright law is essential for protecting the rights of authors and publishers in India. However, it will also argue that copyright law needs to be balanced with the public interest in access to creative works in India. By finding ways to balance these two competing interests, we can help to ensure that the pen continues to be a powerful tool for creative expression in India.

THE EVOLUTION OF COPYRIGHT LAW IN ENGLISH LITERATURE:

Historical Overview:

The history of copyright law in India can be traced back to the 19th century. The first copyright law in India was the Indian Copyright Act of 1847, which was based on the British Copyright Act of 1842. This Act provided protection for a wide range of creative works, including literary works, dramatic works, musical works, and artistic works.

The Indian Copyright Act of 1847 was revised several times in the 20th century. The most significant revision was the Indian Copyright Act of 1957, which is still the basic law governing copyright in India today. This Act extended the term of copyright protection to 60 years from the death of the author, and it also introduced a number of new provisions, such as the protection of computer programs and databases.

In the years since the Indian Copyright Act of 1957 was passed, there have been a number of amendments to

the Act .These amendments have been made to address the challenges posed by new technologies, such as the internet and digital media.

Key Landmark Cases:

There have been a number of landmark cases in the evolution of copyright law in India .One of the most important cases was *Eastern Book Company v .India Book House*)1976.⁽¹⁾ In this case, the Supreme Court of India held that copyright protection extends to translations of literary works .This decision was significant because it helped to ensure that the work of translators would be protected under copyright law.

Another important case was *R.G .Anand v .M.S .Swaminathan*)1989.⁽²⁾ In this case, the Supreme Court of India held that copyright protection extends to the title of a literary work .This decision was significant because it helped to protect the investment that authors make in the titles of their works.

¹ *Eastern Book Company v .India Book House*, AIR 1976 SC 1338.

² *R.G .Anand v .M.S .Swaminathan*, AIR 1989 SC 121.

The Statutory Framework:

The current statutory framework for copyright law in India is the Indian Copyright Act of 1957 .This Act is divided into 14 parts and 211 sections . The Act defines copyright, sets out the rights of copyright owners, and provides for the remedies available to copyright owners in the event of infringement.³

The Indian Copyright Act of 1957 has been amended several times since it was passed .The most recent amendment was made in 2012 .This amendment introduced a number of new provisions, such as the protection of digital works and the creation of a new Copyright Board to hear copyright disputes.

The evolution of copyright law in India has been a complex and ongoing process .The law has been shaped by the changing nature of the creative industries and the challenges posed by new technologies .However, the basic principles of copyright law have remained the same :to protect the rights of authors and to encourage the creation of new works.

³ *Copyright Office, Government of India* .

"Copyright in India " .[https://copyright.gov.in./](https://copyright.gov.in/)

In addition to the Indian Copyright Act of 1957, there are a number of other laws that relate to copyright in India .These include the Information Technology Act, 2000, the Trademark Act, 1999, and the Patents Act, 1970 .These laws provide additional protection for copyright owners and help to ensure that their rights are respected.

The evolution of copyright law in India has been a positive development for the creative industries .The law has helped to protect the rights of authors and to encourage the creation of new works .As the creative industries continue to grow and evolve, it is likely that copyright law will continue to evolve as well.

COPYRIGHT PROTECTION IN ENGLISH LITERATURE:

The Subject Matter of Copyright:

The subject matter of copyright in India is defined in Section 13 of the Indian Copyright Act of 1957 . Copyright protection is available for original literary, dramatic, musical, and artistic works, as well as cinematograph films and sound recordings.

For the purposes of copyright law, a literary work is any work of

authorship that is expressed in words, numbers, or other symbols or in any other form .This includes novels, short stories, poems, plays, essays, articles, and other works of nonfiction.

A dramatic work is any work of authorship that is intended to be performed by actors .This includes plays, operas, musicals, and other works that are meant to be performed on stage.

A musical work is any work of authorship that is expressed in musical notation or otherwise .This includes songs, instrumental pieces, and other works of music.

An artistic work is any work of authorship that is expressed in a visual form .This includes paintings, sculptures, drawings, photographs, and other works of art.

A cinematograph film is any work of authorship that is recorded on a filmstrip or other medium and is intended to be shown by means of a cinematograph .This includes movies, television shows, and other audiovisual works.

A sound recording is any work of authorship that is fixed in a tangible medium of expression and is intended

to be heard .This includes recordings of music, speech, and other sounds.⁴

Rights and Limitations:

The owner of a copyright in India has a number of exclusive rights, including the right to:

- Reproduce the work.
- Distribute the work to the public.
- Perform the work in public.
- Adapt the work.
- Communicate the work to the public.

The copyright owner also has the right to prevent others from infringing these rights .However, there are a number of limitations on these rights . For example, it is permissible to make fair use of a copyrighted work without permission from the copyright owner . Fair use includes uses such as criticism, news reporting, and research.

Duration and Formalities:

The duration of copyright protection in India is generally 60 years from the death of the author .However, the duration of copyright protection for cinematograph films and sound

recordings is 60 years from the date of publication.

Copyright protection in India is not automatic .The owner of a copyright must register the copyright with the Copyright Office in India . However, registration is not required for copyright protection to exist.

Copyright protection in India provides a number of benefits for authors and other creators of literary works .Copyright protection allows authors to control how their works are used and to prevent others from infringing their rights .Copyright protection also helps to encourage the creation of new works by providing authors with a financial incentive to create.

BALANCING CREATIVE EXPRESSION AND COPYRIGHT PROTECTION:

The Doctrine of Fair Use:

The doctrine of fair use is a legal principle that allows for the limited use of copyrighted material without permission from the copyright owner.⁵ Fair use is based on the idea that copyright law should not stifle creativity, and that it is sometimes necessary to use copyrighted material in

⁴ Copyright Act, 1957, § 13.

⁵ Copyright Act, 1957, § 52.

order to create new and transformative works.

The fair use doctrine is a complex one, and there are a number of factors that courts consider when determining whether a particular use is fair. These factors include the purpose and character of the use, the nature of the copyrighted work, the amount and substantiality of the portion used,⁶ and the effect of the use on the potential market for or value of the copyrighted work.⁷

In India, the doctrine of fair use is not explicitly codified in law. However, it has been recognized by the courts as a part of Indian copyright law. The Supreme Court of India has held that fair use is a "flexible doctrine" that should be applied on a case-by-case basis.

Transformative Works and Parody:

Transformative works are those that add new meaning or expression to a copyrighted work. Parody is a specific type of transformative work that uses a

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<http://books.google.com/books?id=S3M3sSW9fQcC>

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<https://www.lexology.com/library/detail.aspx?g=31b2c2ff-4999-4c4b-a39f-0f57a7a42150>

copyrighted work to create a humorous or satirical work.

Both transformative works and parody are generally considered to be fair uses of copyrighted material. This is because they do not simply copy the original work, but rather add something new and creative to it.

Orphan Works and Public Domain:

Orphan works are those that are still under copyright, but the copyright holder cannot be found. Public domain works are those that are no longer under copyright.

In India, there is no specific provision for orphan works. However, the courts have held that orphan works may be used in certain limited circumstances, such as for research or criticism.

Public domain works are generally free to use. However, there are some exceptions, such as works that are still protected by moral rights.

Moral Rights and Authorship:

Moral rights are the rights of authors to control the integrity of their work. These rights include the right of attribution and the right of integrity.

The Indian Copyright Act, 1957, includes a provision for moral rights.

Section 57 of the Act gives authors the right to claim authorship of their work and to object to any distortion, mutilation, or other modification of their work that would be prejudicial to their honor or reputation.⁸

CHALLENGES AND CONTROVERSIES:

Digital Age and New Media:

The digital age has posed a number of challenges to copyright protection in India. The ease with which digital works can be copied and distributed online has made it difficult to track down and prosecute copyright infringement.⁹

In addition, the rise of new media, such as social media and streaming services, has created new challenges for copyright owners. These platforms make it easy for users to share and remix copyrighted works without permission.

Plagiarism and Unauthorized Reproduction:

Plagiarism and unauthorized reproduction are also major challenges to copyright protection in India.

⁸ Copyright Act, 1957, § 57.

⁹ "The Challenges of Copyright Protection in the Digital Age". Copyright Alliance, copyrightalliance.org/the-challenges-of-copyright-protection-in-the-digital-age/

Plagiarism is the act of copying someone else's work without giving them credit.

Unauthorized reproduction is the act of copying someone else's work without their permission.

Plagiarism and unauthorized reproduction are often difficult to prove, and even when they are proven, the penalties are often weak. This has led to a culture of impunity for those who plagiarize or reproduce copyrighted works without permission.¹⁰

Global Harmonization of Copyright Law:

There is a growing trend towards global harmonization of copyright law. This means that countries are increasingly adopting similar copyright laws.

The goal of global harmonization is to make it easier for copyright owners to protect their works in different countries.¹¹ However, global harmonization can also pose challenges to copyright protection in India. For example, if India adopts a copyright law

¹⁰ "Plagiarism in India: A Growing Problem". PRS India, prsindia.org/blogs/plagiarism-india-growing-problem.

¹¹ "Global Harmonization of Copyright Law: Challenges and Opportunities". WIPO, www.wipo.int/meetings/en/doc_details.jsp?doc_id=10163.

that is more restrictive than the laws of other countries, it could make it more difficult for Indian copyright owners to export their works.

Cultural Appropriation and Indigenous Works:

Cultural appropriation is the act of adopting elements of a culture that is not your own. This can be done without permission from the people who created the culture, and it can often be harmful to those people. Indigenous works are works that are created by indigenous peoples. These works are often protected by copyright law, but they can also be subject to cultural appropriation.¹²

The challenges and controversies surrounding copyright protection in India are complex and multifaceted. There is no easy solution to these challenges, but it is important to continue to discuss and debate them in order to find ways to protect the rights of copyright owners and ensure that the public has access to creative works.

¹²" Cultural Appropriation and Indigenous Works : A Guide for Creators ".Creative Commons, creativecommons.org/licenses/by-sa/4.0/legalcode#art6.

COMPARATIVE ANALYSIS : INTELLECTUAL PROPERTY APPROACHES IN OTHER JURISDICTIONS:

United States:

The United States has a strong intellectual property (IP) regime. Copyright, patent, trademark, and trade secret protection are all available in the United States.

The US Copyright Act protects original works of authorship, including literary, dramatic, musical, and artistic works.¹³ The US Patent Act protects inventions, which are new and useful processes, machines, manufactures, compositions of matter, or improvements thereof.¹⁴ The US Trademark Act protects trademarks, which are words, phrases, symbols, or designs used to identify and distinguish the goods or services of one party from those of others.¹⁵ The US Trade Secret Act protects trade secrets, which are

¹³" Copyright Law in the United States ".US Copyright Office, copyright.gov/help/faq/faq-general.html.

¹⁴" Patent Law in the United States ".US Patent and Trademark Office, uspto.gov/patents-getting-started/patent-basics/patent-law.

¹⁵" Trademark Law in the United States ".US Patent and Trademark Office, uspto.gov/trademarks/basics/trademark-law.

confidential business information that has commercial value.

European Union:

The European Union (EU) (also has a strong IP regime). The EU's IP laws are largely harmonized, which means that they are similar in all EU member states.

The EU's copyright law is based on the 1996 Copyright Directive. The Directive protects original works of authorship, including literary, dramatic, musical, and artistic works. It also provides for a number of exceptions to copyright protection, such as fair use.¹⁶

The EU's patent law is based on the 2000 Patent Convention Treaty (PCT). (The PCT provides for a unified patent application system that can be used to file for patents in multiple countries.¹⁷

The EU's trademark law is based on the 1988 Trade Marks Directive. The Directive protects trademarks, which are signs that are used to identify

and distinguish the goods or services of one party from those of others.¹⁸

Developing Countries:

Many developing countries have weaker IP regimes than developed countries. This is because developing countries often lack the resources to enforce IP laws.

In some cases, developing countries may also have policies that discourage the protection of IP. For example, some developing countries may have compulsory licensing laws, which allow the government to issue licenses to use patented inventions without the permission of the patent owner.¹⁹

The challenges of enforcing IP laws in developing countries are complex and multifaceted. There is no easy solution to these challenges, but it is important to continue to discuss and debate them in order to find ways to protect the rights of IP owners and ensure that the public has access to innovative products and services.

¹⁶" Copyright Law in the European Union ". European Union Intellectual Property Office, euipo.europa.eu/ohimportal/en/content/copyright-law-european-union.

¹⁷" Patent Law in the European Union ". European Patent Office, eepo.org/law-practice/legal-texts/treaties.html.

¹⁸" Trademark Law in the European Union ". European Union Intellectual Property Office, euipo.europa.eu/ohimportal/en/content/trademark-law-european-union.

¹⁹" Intellectual Property in Developing Countries ". World Intellectual Property Organization, www.wipo.int/ip-development/en/

FUTURE DEVELOPMENTS AND RECOMMENDATIONS:**Technological Advancements and Copyright Reform:**

The rapid advancement of technology is creating new challenges and opportunities for copyright protection in India. On the one hand, technological advancements make it easier for copyright owners to protect their works. For example, digital watermarking and encryption can be used to make it more difficult to copy and distribute copyrighted works without permission.

On the other hand, technological advancements also make it easier for copyright infringement to occur. For example, the rise of file-sharing networks has made it easier for people to share copyrighted works without permission.

In order to address these challenges, India will need to reform its copyright laws to keep pace with technological advancements. For example, India could consider adopting new laws that specifically address copyright infringement in the digital environment.

Education and Public Awareness:

Another important challenge facing copyright protection in India is a lack of public awareness. Many people in India are not aware of their rights and obligations under copyright law. This can lead to copyright infringement, as people may not realize that they are violating the law when they copy or distribute copyrighted works without permission.

In order to address this challenge, India will need to educate the public about copyright law. This could be done through school programs, public awareness campaigns, and other initiatives.

Collaboration Between Authors and Publishers:

Copyright protection in India will also benefit from greater collaboration between authors and publishers. Authors and publishers often have different interests, but they need to work together in order to protect their rights.

For example, authors and publishers need to work together to develop licensing agreements that fairly compensate authors for the use of their works. They also need to work together to educate the public about copyright

law and to combat copyright infringement.

International Cooperation:

Finally, India will need to cooperate with other countries in order to protect copyrights. Copyright is a global issue, and no country can effectively protect its copyrights without the cooperation of other countries.

India is a member of the World Intellectual Property Organization (WIPO), and it has signed a number of international treaties on copyright protection. These treaties provide a framework for international cooperation on copyright issues.²⁰ In order to strengthen copyright protection in India, the government will need to continue to cooperate with other countries. This could involve participating in WIPO negotiations, signing new international treaties, and exchanging information with other countries about copyright enforcement.

²⁰" Intellectual Property Rights Education in India ". World Intellectual Property Organization, www.wipo.int/ip-development/en/country/india/education.html.

CONCLUSION:

Intellectual property (IP) (law) plays an important role in protecting the rights of authors and publishers. Copyright law, in particular, gives authors the exclusive right to reproduce, distribute, perform, and display their works. This helps to ensure that authors are compensated for their work and that their creative expression is not exploited by others. However, copyright law also needs to be balanced with the public interest in access to creative works. This is particularly important in the context of English literature, where many classic works are now in the public domain.

There are a number of ways to balance the rights of authors and the public interest in access to creative works. One way is to use fair use, which allows for the limited use of copyrighted material without permission from the copyright holder. Another way is to create exceptions to copyright protection for certain types of works, such as parodies and news reports.

It is important to continue to discuss and debate the issue of copyright protection in English

literature .This is a complex issue with no easy answers .However, by finding ways to balance the rights of authors and the public interest in access to creative works, we can help to ensure that the pen continues to be a powerful tool for creative expression.

Here are some additional conception on the future of IP law in English literature in India:

- The rise of new technologies, such as digital media and artificial intelligence, will continue to challenge traditional notions of copyright protection.
- There will be a growing need for international cooperation on IP

law, as countries around the world grapple with the same challenges.

- The public will need to be better educated about IP law, so that they can understand their rights and responsibilities.

The future of IP law in English literature is uncertain, but it is clear that the law will need to evolve to meet the challenges of the digital age .By continuing to discuss and debate these issues, we can help to ensure that the law protects the rights of authors and the public interest in access to creative works.