

An outline of The Indian copyright (amendment) act 2012 with special reference to library services

Sutapa Chatterjee

Librarian, Jogesh Chandra Chaudhuri College, Kolkata-33, W.B

Dr. Chaitali Dutta

Associate Professor. Dept. of Library and Information Science, University of Jadavpur. W.B.

ABSTRACT

Each country has its own copyright policy. Indian copy right act after independence was first came into existence in the year 1957, since than the act was amended from time to time to accommodate with the changing conditions. Recently a fresh amendment called "copyright amendment Act 2012" has been enacted by the Government of India bringing changes to the copyright Act 1957. The present study traces the historical development of the Indian copyright act in a chronological order, and elaborates the major changes made in the new act. The study also traces the areas of library services, which are directly concerned with copyright issues. Finally the study highlighted the provisions of newly amended copyright act that has some impact on libraries.

Keywords: Copyright, Indian Copyright act amendments 2012, Library, Library services.

1. Introduction:

1.1 Origin of the research problem:

Copyright has developed over many centuries in response to particular need and particular historical and technological developments. For this, copy right policies of different country are different from each other in many respects. Now a day, through different international treaties and conventions among participatory countries many issues of copyright have been standardized to some extent, though each of them may have their own copyright policy. The position of India, in respect to copyright appears at the same time unique and typical to the problems faced by many developing countries of the world. Indian copy right act after independence has first came into existence in the year 1957, since than the act was amended

from time to time to accommodate /adjust with the changing conditions. Since its inception in the year 1957, The Indian copyright Act has been amended five times, once each in the years, 1983, 1984, 1992, 1994 and 1999 to meet with the national and international requirements. At present a fresh amendment called “copyright amendment Act 2012” has been enacted by the Government of India bringing changes to the copyright Act 1957.

In this present study an attempt has been made to trace the historical development of the Indian copyright act. It also elaborates the new provisions of the copyright (amendment) act 2012, along with influence of those provisions on the library and library services of India as a whole.

1.2 Objectives of the study:

The purpose of the study is –

- To trace the historical development of the Indian copyright act
- To find out relation of copyright protection with different library services
- To highlight the new amendments introduced in “The copyright (amendment) act, 2012” and their effect on library services.

1.3 Scope and limitations

The focus of this study is on copyright issues related to literary expressions in printed media only. Copyright issues of digital materials are not included here. The study is restricted to the portrayal of Indian situations only.

2. Copyright protection and library services

Initially copyright law was restricted only to the copying of books. Over the time other issues such as translations and derivative works were made subject to copyright, and now copyright covers a wide range of area. Different issues are related with them, and several interest groups are associated with it, some of them directly, some indirectly. These interest groups are integral part of various copyright issues. Librarians being the information professionals often deal with intellectual property right and copyright issues in their day to day work. They play a significant role by balancing the interest of both the ‘creator and author’ and the ‘user’ of the information. Researchers from different countries have considered librarians, as one of the important stake holders of copyright. Librarians are expected to enforce intellectual property right and copyright regulations within their library

Copyright issues are especially significant for the “Periodical/Journal section”, “Thesis and dissertation section”, “Old and Rare book section” and to “Reference section” of a library. In all these sections, copyright protection is very much essential for the value of documents preserved there. The libraries should have a definite copyright protection policy, in compliance with the Indian copyright act, for all collection they possess. To practice the law properly within the library, they need to remain well aware of all the provisions of the Indian copyright act. But, all legal statements are not easy to understand, hence in this paper an attempt has been made to explain the new amendments of the Indian copyright act, in very simple

words. At the same time it also aims to find out the areas that need special attention for the betterment of library and library service.

3. Evolution and development of copyright law in India

The history of copyright law in India includes a series of legislative enactments both in British regime as well as independent India.

3.1 Pre- independence legislation

Indian copyright Act 1847: -

The first copyright law in British India was introduced during east India Company's regime with the title "The Indian copyright act 1847" This act was in operation during the period, 1847-1911. Later in 1914 the Governor General of India enacted the Indian copyright act 1914. The following important provisions are laid in the legislation –

1. The registration of the author work is not necessary.
2. The author's right came into existence as soon as the work was created.
3. Protection was provided not to the idea but the material form in which the work was expressed.
4. The term of copyright protection was fixed as the lifetime of the author and 25 years after death.

3.2 Post independence legislation

3.2.1 The copyright act 1957:-

India is a signatory to the two international conventions, viz, Berne conventions-1886, Universal copyright convention-1952. The following two concepts were freshly introduced in copyright act 1957

- a. Creation of copyright office.
- b. Setting up of a copyright board

This act, 1957 also make a provision to issue a license to any library to make or cause to be made one copy of any book in which copyright subsists and which is not available for sale.

The chronologies of different amendments of the act 1957 are briefly given below:

3.1.2 1983 Amendment to the copyright Act, 1957

1. The following changes are made in the 1983 amendments -
2. Issuance of compulsory license for translation reproduction of foreign works.
3. In case of unpublished work copyright Board would grant permission for translation or reproduction and the royalty could be deposited in public account of India.
4. Empowerment of copyright board to decide about disputes related to

assignment of copyright to author or publisher.

3.2.3 1984 Amendment to the copyright Act, 1957

The main object of this Amendment is to prevent piracy which has become a global problem due to advancement in technology.

Later, this Amendment, 1984 provided the following changes-

1. Punishment for piracy increased to 3 years with minimum imprisonment of 6 months and a fine of up to 2 lakhs with minimum of 50,000 in case of infringement.
2. To provide for enhanced punishment in case of continuing convictions.
3. Introduction of new provisions for application of the act to video film and computer programs.

3.2.4 1994 Amendment to the copyright Act. 1957

A joint committee of both houses of parliament was formed. The committee recommended many amendments which was passed by the Parliament in May, 1994.

These Amendments are:

1. Protection for performers of visuals or artistic presentation lives.
2. Recognition of copyright societies to collective protection of the rights of the authors, composers and other creative artists.
3. Computer program, cinematography of films and sound recordings, protection.

3.2.5 1999 Amendment of the copyright Act, 1957

The copyright Act, 1957 was again amended in the year 1999 and amendments are made to provide

1. Definition of literary work
2. Meaning of copyright in respect of computer program
3. Increase of the term of copyright of performers from 25 to 50 years.
4. Power to restrict of foreign broadcasting organizations and performers.

3.3 Need for new amendments:

In addition to the 1999 amendments of 1957 Indian copyright act, a few more areas are required to be looked upon with seriousness for the reasons mentioned below:

1. Advancement of technology, and change in the mode of dissemination of information.
2. Much more protection required for the authors.
3. Extension of function of the copyright board
4. More disputes regarding copyright infringement

5. Pressure from different sections of people for reflection of their opinion.

4. New changes introduced in the amendment of 2012 act

The major changes made in the new act are discussed below under the following sub headings.

4.1 Copyright Board

In the copyright act 2012 special attention has given to the formation and administration of the copyright Board. A number of new instructions are added to this section (Chapter II: copyright board). A completely new heading “qualification for appointments as chairman or other members” has been introduced. It directs that “The chairman and other members of the Board shall be appointed by the President of India”. New provisions are made regarding “payment of salaries and allowances” to the members of the Board. Functions of the secretary and other officers of the Board are also specified, which was not mentioned in the previous act.

In the present changed scenario, the copyright Boards responsibility is not only restricted to mere registration of copyright but extended to other important responsibilities, like, licensing, copyright society registration etc. Considering all these factors the new act added instructions of copyright Board formation.

4.2 Relinquishment of copyright

The relinquishing procedure is made simpler in the new act. Author have to send a notice in a “prescribe format” to the registrar to relinquish his copyrighted work. The author himself also can relinquish his right by giving a public notice through news paper, or through website, or through mentioning the notice on the cover of the work. An amendment in the subsection-II of this chapter is that, the author may forward a copy of the public notice to the registrar, and on receiving such notice the registrar shall post the same in the website of the copyright office for a period of not less than three years.

4.3 Compulsory licensing

Signification alteration is made in characterization pattern of this section. “Compulsory license for publication, translation and reproduction of work” issues are discussed in chapter v while in chapter vi provisions for “unpublished or published” work are illustrated. According to the new act compulsory license can be granted to “any work” instead of “Indian work” as mentioned earlier and the license can be granted to a “person” or “persons” as the copyright board may decide. Licensing issues related to “unpublished work “ is amended in such a way that from now on, compulsory license can be allowed for “any unpublished work” or “any work”, where the work is withheld from the public in India and in cases where the author is dead or unknown or the owner can't be traced.

4.4 Provision for the disabled

A completely new and separate section called “compulsory license for the benefit of disabled persons” has been introduced to provide license in works for the benefit of disabled. Any person working for the benefit of disabled persons can

apply for license of any copyrighted work, and the board will grant permission as far possible within two months period. Every such license shall specify, the 'time period', 'the medium' and 'the format', 'no. of copies', 'rate of royalties' to the owner of work and 'the name of the person (s)' to whom such royalties shall be provided.

This section provided guidelines that any type of adaptation, reproduction, communication in any format of a copyrighted work can be granted, if it serves for the benefit of the disabled. A person or an organization working for the benefit of the disabled can also avail this right, in a non profit basis.

4.5 License for cover version

New provisions are made for licensing of cover version of a sound recording in respect of any literary, dramatic or musical work. Procedure for adaptation and issuance of licenses are illustrated in this section. Rate of royalty for such licenses shall be fixed by the board.

4.6 Copyright societies

Changes are made regarding the provisions of registration and functioning of a copyright society. Amendments have been made in these sections to streamline the functioning of the copyright societies. All existing copyright societies will have to register them-self newly under these provisions. Registration period lasts for a period of five years and may be renewed from time to time. Every copyright society shall have a governing body consisting of equal number of 'author' and 'owners of work' for the purpose of the administration of the society. The society will share equal amount of royalty among the 'author' and the 'owner of work'.

This section has further amended adding "tariff scheme" by the copyright societies. The act mandates that every society shall publish its tariff scheme as per rules provided. The tariff scheme would be subject to scrutiny by the copyright board. The introduction of 'tariff scheme' system will bring transparency for distribution of royalties. Every copyright society shall have to maintain its own website giving all information pertaining to its activities. Provisions for 'management of copyright society', 'approval of schemes', 'meeting of the society', 'records to be maintain by the copyright society', 'code of conduct of copyright societies' are illustrated in the new act.

4.7 Enforcement and protection measures

Regarding importation of infringing copies new provisions are made. To strengthen enforcement the control of import of infringing copies are provided to custom Department. Every notice of infringing copies shall be made to the commissioner of customs. New provisions are introduced to provide "technological protection measures" to the copyright owner to protect their works. The punishment for such infringement shall extend to two years and shall also liable to fine.

5. Provisions for library and library services

Libraries objective is to maximize the use of a document while copyright proposes to restricted use. In this sense, libraries purpose is just the opposite of

copyright protection, though with a detail study it can be found that copyright prevent unfair and illegal use of a document while libraries are making the same available to its potential user for research or educational purpose. In Indian copyright act, use of documents for research and education purpose is considered as "Exceptions" or "Fair use/Fair dealing" to copyright, library and library services are also considered under this "Exceptions".

Section 52 of Indian copyright act deals with 'fair use', it provides a list of activities which are not considered as infringement of copyright, hence called as 'exception'. Libraries and library services are mentioned twice, in this list.

Section 52, clause (o) deals with books that are not available in India, it read like following –

"The making of not more than three copies of a book including (including a pamphlet, sheet of music, map, chart or a plan) by or under the direction of the person in charge of a public library for the use of a library if such book is not available for sale in India "

This means making maximum three copies of document within a public library is allowed by the law, which is otherwise is considered as infringement. "The copyright act (amendment) act, 2012" has amended this section 52 (o) by substituting the word ' public library " with " Non Commercial public library". The term "Non Commercial ", attracts special attention in this statement, it means no public library can earn money for lending those copies to its member users. The new amendment also signifies that any kind of profit making will be considered as infringement, even for a public library.

Another close, section 52 (n), also mentioned about library services. This clause is substituted like following –

" (n) the storing of a work in any medium by electronic means by a non-commercial public library, for preservation if the library already possesses a non-digital copy of the work; "

It signifies that libraries can make a digitize copy of a document, if library owns the printed (non digital) copy of the document. This is a welcome response to the long waited demand of libraries. Now a day, many libraries with reach collection of old and rare documents are digitizing their collection for better preservation and use. This section will encourage them for their effort.

Other than these two clause, libraries are mentioned in section 2 (f a) also, which deals with definition of different terms. This clause explains the meaning of "commercial rental ", it read like following –

"Commercial rental" does not include the rental, lease or lending of a lawfully acquired copy of a computer programme, sound recording, visual recording or cinematograph film for non-profit purposes by a non-profit library or non-profit educational institution."

This clause is explained by the act itself as - " non-profit library or non-profit educational institution " means " which receives grants from Government or exempted from payment of tax under the income-tax act, 1961 (43 of 1961)".

The above mentioned sections provide provisions, which are directly related to library and library services. There are few more provisions in the act, which may not directly but indirectly related to library services. Changes made to these sections have been discussed earlier. Provision for disabled is one of them. Many libraries are helping their disabled users (sightless students) by making audio record of a book. A person reads the book and his voice is recorded, which is consulted by a blind user for his education or research purpose. Section 31B "compulsory license for benefit of disabled" protects those libraries and encourage them for their efforts. The libraries even can make profit out this service, according to the new amendment of the 2012 act.

Another section which may concern for libraries is section 31A. The amendment related to translations, now protect libraries for translating anonymous works i.e. 'author is dead or unknown or cannot be traced, or the owner of the copyright in such work cannot be found' poses by them.

CONCLUSION

Many welcome amendments are introduced in the copyright act 2012 to address the demand of the changed situations of the present day. The copyright has now been extended to "right to storing", thus recognizing the digital era challenges. Many author friendly amendments are introduced. Provisions are made in such a way that it would streamline business practices but has an underlying concern about protecting authors. The new amendments would provide enhance access to the copyrighted works, by the provisions made for granting 'compulsory license', 'cover license', 'administration of copyright societies', and 'relinquishment of copyright'. The new act has given special attention for the disabled. New provisions are introduced for them for better access to copyrighted works, and fair use provisions are extended to those also, who are working for the disabled. There are few welcome reforms introduced regarding administration of copyright Board and copyright societies. The new act strengthens the enforcement procedures in case of infringement. Overall it can be said that, the changes introduced in 2012 act shows a futuristic approach.

Regarding library, it is found that, libraries got very little attention in the principle act (1957 act). In the historical development procedure it is found that libraries are rarely mentioned. Though in the current 2012 (amendment) act, few welcome provisions are there to support copyright protection within the library. Some of them may not directly but indirectly will help libraries to perform better. Finally it can be concluded that, amendments introduced in the new 'copyright (Amendment) act, 2012' are forward looking, though few areas related to libraries need much more attention.

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