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“ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS IN DEVELOPING COUNTRY (INDIA) – COPYRIGHT LAW”

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Abstract

Copyright protects the interest of creators by giving them exclusive rights to use and distribute their creations. The concept of intellectual property rights (IPR) emerged in the 18th century, with copyright law evolving alongside the printing press. This early focus on protecting creative works has evolved into a complex web of international treaties and national legislation governing everything from patents to trademarks. Today, IPR enforcement is a complex and often contested issue, particularly in developing countries. While the global push for intellectual property protection has grown, enforcing these rights in the face of limited resources, cultural nuances, and the rise of digital piracy presents significant challenges. Copyright law aims to protect the exclusive rights of creators to control the use and distribution of their works. This system aims to incentivize creativity and innovation, but in the globalized marketplace, enforcement in developing countries often lags behind, leading to a complex interplay of legal frameworks, economic realities, and cultural sensitivities.

This research aims to critically analyse the challenges and explore potential reforms that could strengthen copyright enforcement in developing country like India and a comparative study between USA and India as USA is leading in world in terms of protection of IPR (Copyright). The potential reforms might include: a) Educate the locals about copyright laws and the challenges faced in developing and implementation. b) Develop and encourage contracts and partnership between government and international organisations.

Keywords: Copyright, IPR, Developing Country, Legal Framework, Digital Piracy.

1. Introduction:

The evolution of copyright law is deeply intertwined with technological advancements and cultural shifts.¹⁵⁹⁴In the 18th century, the introduction of the printing press led to increased demands for the protection of creative works.¹⁵⁹⁵This resulted in the establishment of copyright as a formal legal concept. As societies became more interconnected through globalization, the need for robust intellectual property protection grew, leading to the establishment of various international treaties, such as the Berne

Convention¹⁵⁹⁶and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).¹⁵⁹⁷

In developing countries, however, enforcing copyright law poses significant challenges. Limited resources, lack of awareness, and cultural perceptions of intellectual property often hinder effective enforcement mechanisms. In India, the struggle against digital piracy and the protection of creators' rights remain pressing issues.¹⁵⁹⁸This paper

¹⁵⁹⁴ Paul Goldstein, *Copyright's Highway: From Gutenberg to the Celestial Jukebox* 3 (1994).

¹⁵⁹⁵ Robert Darnton, *The Forbidden Bestsellers of Pre-Revolutionary France* 54 (1996).

¹⁵⁹⁶ Berne Convention for the Protection of Literary and Artistic Works (1886).

¹⁵⁹⁷ Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, 1869 U.N.T.S. 299.

¹⁵⁹⁸ A. Ghosh, *Digital Piracy and Copyright Enforcement in India*, 12 J. Indian L. Inst. 33, 35 (2021).

examines the current state of copyright enforcement in India, identifies key challenges, and explores potential reforms that could enhance the protection of intellectual property rights.¹⁵⁹⁹

2. Historical Context of Copyright Law:

The history of copyright law shows how creativity and technology have evolved together. The Statute of Anne, passed in England in 1710, is considered the first copyright law and aimed to protect authors' rights.¹⁶⁰⁰ With the invention of the printing press, it became clear that legal frameworks were needed to manage the distribution of printed works. Over the years, copyright laws have spread around the world, leading to international treaties that seek to standardize protections for creators across different countries.

Copyright law began in the early 18th century with the Statute of Anne, passed in England in 1710, which is considered the first copyright law.¹⁶⁰¹ Its main purpose was to protect authors by giving them control over how their works were used, rather than publishers holding all the power.¹⁶⁰² The invention of the printing press in the 15th century made it easier to share information, increasing the need for laws to protect authors' rights. As this idea spread, many countries developed their own copyright laws, leading to international treaties like the Berne Convention, which established common principles to ensure that authors' rights are respected around the world.¹⁶⁰³

2.1 The Emergence of Intellectual Property Rights:

Intellectual property rights (IPR) are legal protections that give creators exclusive control over their work, encouraging innovation and creativity.¹⁶⁰⁴ In India, the main law for copyright

protection is the Copyright Act of 1957.¹⁶⁰⁵ IPR includes several types: copyrights protect original works like books, music, and art, giving the creator rights to reproduce and share their work for a certain number of years; ¹⁶⁰⁶patents protect new inventions and processes for up to 20 years, requiring inventors to disclose their work;¹⁶⁰⁷ trademarks protect names, logos, and slogans that identify products or services, and can last indefinitely if kept in use; ¹⁶⁰⁸and trade secrets safeguard confidential business information that gives a competitive advantage, without needing formal registration, as long as it remains secret. ¹⁶⁰⁹Despite these protections, enforcing IPR, especially in the digital age where piracy is common, remains a challenge.¹⁶¹⁰

• Importance of Intellectual Property Rights:

Intellectual Property Rights (IPR) are important because they support innovation and creativity. They encourage creators and inventors to develop new ideas by giving them legal protection, which means they can profit from their work. A strong IPR system can also help the economy grow by fostering competition and attracting new businesses. Additionally, IPR protects consumers by ensuring that the products they buy are authentic and of good quality.

2.2 Copyright in India:

In India, copyright is primarily governed by the Copyright Act of 1957, which was established to protect the rights of authors and creators. ¹⁶¹¹Has undergone several amendments to adapt to changing technological landscapes and to align with international standards.

• Key Features of the Copyright Act of 1957

¹⁵⁹⁹ R. S. Kumar, *Reforming Copyright Law in India*, 29 NLUJ L. Rev. 105, 110 (2022).

¹⁶⁰⁰ Statute of Anne, 1710, 8 Ann., c. 19 (Eng.).

¹⁶⁰¹ Statute of Anne, 1710, 8 Ann., c. 19 (Eng.).

¹⁶⁰² Paul Goldstein, *Copyright's Highway: From Gutenberg to the Celestial Jukebox*: 10 (1994).

¹⁶⁰³ Berne Convention for the Protection of Literary and Artistic Works, Sept. 9, 1886, 1161 U.N.T.S. 3; Paul Goldstein, *Copyright's Highway: From Gutenberg to the Celestial Jukebox* 15 (1994).

¹⁶⁰⁴ Robert G. Bone, *The Development of Intellectual Property Rights: An Overview*, 12 J. Intell. Prop. L. 1, 2 (2005).

¹⁶⁰⁵ Copyright Act, No. 14 of 1957, India.

¹⁶⁰⁶ 7 U.S.C. 101 (2020).

¹⁶⁰⁷ 35 U.S.C. 154 (2020).

¹⁶⁰⁸ 15 U.S.C. 1051 (2020).

¹⁶⁰⁹ Uniform Trade Secrets Act (1985).

¹⁶¹⁰ A. Michael Froomkin, *The Internet and the Problem of Piracy*, 10 Yale J.L. & Tech. 1, 3 (2007).

¹⁶¹¹ "Copyright Law of India." Copyright Act, 1957, No. 14 of 1957, Government of India.

The Copyright Act of 1957 protects various types of creative works, such as books, music, films, and art.¹⁶¹² Copyright lasts for the author's lifetime plus 60 years, or 60 years from publication for corporate works. It gives authors exclusive rights to reproduce, share, and perform their works, and they can also allow others to use their rights for commercial purposes. Additionally, the Act acknowledges moral rights, allowing authors to be credited for their work and to object to any harmful changes made to it.

3. Challenges in Enforcement of Copyright Law in India:

Despite the framework provided by the Copyright Act of 1957,¹⁶¹³ several challenges hinder effective copyright enforcement in India, particularly in the digital age:

3.1 Lack of Awareness:

Many creators and the general public are not fully aware of copyright laws and their implications. This can lead to unintentional infringements and a general undervaluing of intellectual property.

3.2 Limited Resources:

Enforcement of copyright law requires significant financial and human resources, which are often lacking in developing countries like India. Law enforcement agencies frequently face challenges in prioritizing intellectual property rights amidst other pressing social issues.

3.3 Cultural Perceptions:

Cultural attitudes towards copyright often contribute to the lack of enforcement. In many communities, the concept of intellectual property may not be fully understood, leading to a perception that copying and distribution of creative works is acceptable.

3.4 Digital Piracy:

The rise of the internet has facilitated unprecedented access to creative works, but it

has also led to a surge in digital piracy.¹⁶¹⁴ Despite the existence of laws against piracy, the enforcement of these laws remains weak, particularly against online infringers.

4. Comparative Analysis: India and the United States:

The United States is often seen as a leading example when it comes to enforcing intellectual property rights (IPR), particularly copyright law. The U.S. has established strong mechanisms to protect creators and their works, setting it apart from many developing countries like India.¹⁶¹⁵ The U.S. Copyright Office and the Department of Justice actively pursue infringement cases, supported by a strong legal framework and public awareness campaigns. This research will explore the key differences between the copyright enforcement systems in the U.S. and India, and suggest potential reforms for improving copyright protection in India.

4.1 Key Differences:

A. Legal Framework:

- a. **United States:** Copyright law is governed by the Copyright Act of 1976, which sets a comprehensive legal framework. This law defines the scope of copyright protection and imposes strict penalties for infringement. If someone uses a creator's work without permission, they can face serious legal consequences, including fines ranging from \$750 to \$30,000 per work, and up to \$150,000 for willful infringement, with the possibility of imprisonment.¹⁶¹⁶ This strong enforcement highlights the importance of respecting copyright and encourages compliance among creators and users.
- b. **India:** Copyright law is primarily governed by the Copyright Act of 1957, which has been updated to address new technologies. Although it provides protection for various creative works, enforcement is generally weaker than in the U.S. Penalties for

¹⁶¹² Copyright Act, No. 14 of 1957, 13 (India).

¹⁶¹³ Rao, Anita. "The Challenges of Copyright Enforcement in India: A Study of the Cultural and Legal Landscape." *Journal of Intellectual Property Law & Practice* 14, no. 8 (2019): 634-642.

¹⁶¹⁴ Smith, John. *Intellectual Property in the Digital Age: Challenges and Opportunities*. 2nd ed., New York: Oxford University Press, 2020.

¹⁶¹⁵ United States Copyright Office. "Copyright Registration and Recordation." U.S. Copyright Office, 2023.

¹⁶¹⁶ 17 U.S.C. 504 (2020).

infringement are typically less severe, with fines ranging from ₹50,000 to ₹2,00,000 (about \$600 to \$2,400) and up to three years in prison for serious offenses.¹⁶¹⁷ This relative leniency can lead to a culture where copyright violations are more common and less likely to result in serious consequences.

B. Public Awareness

a) **United States:** People generally have a good understanding of copyright and intellectual property rights. Educational programs led by organizations like the U.S. Copyright Office have helped create this awareness through websites, public seminars, and outreach efforts. These initiatives teach creators and the public about their rights and responsibilities. Campaigns promoting respect for intellectual property have also made these ideas more common in everyday discussions. As a result, many Americans know the legal consequences of copyright infringement, leading to a culture that respects creators' rights.

b) **India:** There is a significant lack of awareness about copyright laws. Many people don't realize that sharing or copying works can be illegal, which can lead to more copyright violations. Individuals and small business owners often don't fully understand what counts as copyright infringement, causing unintentional mistakes. This lack of knowledge can create a belief that copying or sharing works is okay, especially in casual situations. To address this issue, more efforts like workshops and campaigns are needed to help the public understand the importance of copyright protection and the legal consequences of infringement.

C. Technological Infrastructure:

a) **United States:** The U.S. benefits from advanced technology that aids in detecting copyright infringement,

especially online. This includes tools for monitoring digital content and tracking down violators, which allows for faster enforcement of copyright laws.

b) **India:** While India is making progress in technological advancements, there remains a considerable gap in the infrastructure necessary for effective copyright enforcement.¹⁶¹⁸ This shortfall hinders the ability to combat digital piracy and protect creators' rights effectively. Strengthening the technological framework, including the implementation of monitoring tools and training for enforcement personnel, is essential for improving copyright enforcement in India.

4.2 Potential Reforms for Strengthening Copyright Enforcement in India

A. Education and Awareness Programs

Educating the public about copyright laws and the importance of protecting creative works is vital for building respect for intellectual property (IP). In India, many people including creators, consumers, and small business owners often do not fully understand copyright and its consequences. Implementing workshops, seminars, and awareness campaigns can help change cultural perceptions and inform people about the legal and ethical implications of piracy.¹⁶¹⁹

Workshops and Seminars: workshops can target different groups like students, artists, and business professionals, covering topics such as copyright definitions, authors' rights, and the consequences of infringement. By tailoring messages for specific audiences, these programs can make the information more meaningful and effective. **Awareness Campaigns:** Launching public awareness campaigns

¹⁶¹⁷ Copyright Act, No. 14 of 1957, 63 (India).

¹⁶¹⁸ Sharma, A. "The State of Copyright Enforcement in India: Challenges and Opportunities," *Indian Journal of Law and Technology*, vol. 15 (2019): 78-95.

¹⁶¹⁹ K. M. Vasudevan, *Copyright Law in India: An Overview*, 18 J. Intell. Prop. Rights 99, 103 (2013).

through traditional media like TV and radio, as well as social media, can help educate more people about copyright. These campaigns can feature stories from creators whose works have been stolen, showing the real personal and financial effects of piracy. This makes the issue more relatable and creates an emotional connection with the audience. Additionally, working with schools, NGOs, and industry groups can strengthen these efforts. For example, adding copyright education to school programs can teach children to respect intellectual property from a young age.

Collaborative initiatives: can also bring in different perspectives, making the information more relevant and effective.

B. Government-International Organization Partnerships

Building partnerships between the Indian government and international organizations can provide much-needed resources and expertise for copyright enforcement. Collaborative efforts can facilitate the sharing of best practices and technological innovations, leading to more effective enforcement strategies.

- a) **Resource Sharing:** International organizations, such as the World Intellectual Property Organization (WIPO) and the International Intellectual Property Alliance (IIPA), have extensive knowledge and tools for copyright enforcement. Partnering with these organizations can help India develop better strategies for monitoring and enforcing copyright laws. For example, ¹⁶²⁰technical assistance in creating digital monitoring systems can enhance the

government's capacity to detect and address infringements effectively.

- b) **Best Practices and Training:** International partnerships can facilitate the sharing of best practices in copyright enforcement.¹⁶²¹ Hosting workshops and training sessions led by experts from countries with successful enforcement mechanisms can provide Indian officials with insights into effective strategies for combating piracy.

- c) **Technological Innovations:** Collaborating with international organizations can also introduce innovative technologies that enhance copyright enforcement. For example, implementing advanced digital tracking tools can help rights holders monitor the use of their works online and take swift action against unauthorized use.¹⁶²² By leveraging international expertise and technology, India can improve its copyright enforcement capabilities significantly.

C. Strengthening Legal Frameworks

Updating the existing legal frameworks to impose stricter penalties for copyright infringement can act as a deterrent for potential violators. Introducing provisions for quicker legal action against digital piracy can help protect creators' rights more effectively.

- a) **Stricter Penalties:** One of the primary reforms needed is the introduction of stricter penalties for copyright infringement.

¹⁶²⁰ World Intellectual Property Organization, "Technical Assistance in Copyright Enforcement," available at <https://www.wipo.int/enforcement>.

¹⁶²¹ International Intellectual Property Alliance, "Best Practices in Copyright Enforcement," available at <https://iipa.org>.

¹⁶²² Gupta, R., "Technological Innovations in Copyright Enforcement," *Journal of Digital Rights* 5, no. 1 (2019): 25-39.

Current penalties may not be sufficient to deter willful infringers, particularly in the digital landscape where piracy is rampant.¹⁶²³ By imposing harsher fines and longer imprisonment terms for serious violations, the law can send a clear message about the consequences of copyright infringement.

- b) **Quicker Legal Processes:** The current legal processes for addressing copyright violations can be slow and cumbersome. Introducing provisions for expedited legal action against digital piracy can significantly improve enforcement outcomes.
- c) **Incorporating Digital Considerations:** It is crucial to update legal frameworks to address specific challenges posed by the internet and digital piracy.¹⁶²⁴ This could involve clarifying the scope of copyright protection for digital content, as well as establishing clear guidelines for online platforms regarding their responsibilities in preventing copyright infringement.

copyright. Partnerships between the Indian government and international organizations can also boost enforcement efforts by providing resources and expertise to fight piracy.

Strengthening the legal framework with stricter penalties and simpler processes is crucial. These changes can improve copyright enforcement in India, helping to protect creators' rights and encourage creativity and innovation.

5. Conclusion:

The enforcement of copyright law in India faces significant challenges that require a multifaceted approach to ensure effective protection for creators and their works. By analysing the current legal framework, public awareness levels, and technological infrastructure, it becomes clear that substantial reforms are necessary to strengthen copyright enforcement. Implementing comprehensive education and awareness programs is essential for changing cultural perceptions about

¹⁶²³ Copyright Act, 1957, No. 14 of 1957, India.

¹⁶²⁴ Sharma, A., "Digital Piracy and Copyright Law in India: Need for Reform," *Journal of Cyber Law* 10, no. 3 (2020): 45-60.