

Crime and Copyright Infringement

Why in news?

The Supreme Court of India has passed a judgment resolving the question of whether copyright infringement is a cognisable offence under the Code of Criminal Procedure (CrPC), 1973.

What is the legal provision available regarding copyright infringement?

- Copyright ensures certain minimum safeguards of the rights of authors over their creations, thereby protecting and rewarding creativity.
- **Copyright Act of 1957**- It protects original literary, dramatic, musical and artistic works and cinematograph films and sound recordings from unauthorized uses.
- **Term of copyright**- Literary, dramatic, musical or artistic works enjoy protection for the life time of the author plus 60 years beyond i.e. 60 years after his death.
- In case of joint authorship, the term of copyright is to be construed as a reference to the author who dies at last.
- It gives broadcasting reproduction right to every broadcaster which is valid for 25 years from the beginning of the calendar year next following the year in the broadcast has been done.
- **Copyright Board**- The Act provides for the establishment of the Copyright Board and empowers Central Government to constitute the same for settlement of disputes, granting of licenses, etc.
- **Punishment**- The copyright infringement is punishable with imprisonment for a term which may extend up to 3 years.

What is the recent judgement about?

- In the *Knit Pro International v. The State of NCT*, the SC held that the offence of copyright infringement under Section 63 of the Copyright Act is a cognizable and non bailable offence.
- The bench held that if the offence is punishable with imprisonment for three years and onwards but not more than seven years (3-7 years), the offence is a cognizable offence.
- As a result, it takes away the right of the accused to post a bail bond with the police and shifts the responsibility on to the courts for judicial determination on a case-by-case basis.

Cr.P.C. defines cognizable offence as an offence for which the police officer can arrest the convict without a warrant and can start investigation without the due permission of the court. These are the offences that are usually very serious and generally heinous in nature such as rape, murder, kidnapping, dowry death etc.

What are the issues with the Act?

- **Registration**- A copyright is created the moment a piece of art or music or literature is fixed on a medium, provided it is original.
- Unlike trademark law, it is not mandatory under the Copyright Act to register copyrights as a necessary precondition in order to enforce the same.
- **Originality**- Whether the piece of art or music or literature is original or not is another complicated question of law.
- **Exceptions**- There is the question of whether the use of the copyrighted work is permissible under all the provisions in Section 52 of the Copyright Act outlining the exceptions to copyright infringement.
 - For example, if a work is qualified for protection under the Designs Act of 2000, it can no longer claim protection under the Copyright Act once it is reproduced beyond a certain threshold.
- **Determination of copyright infringement**- Determining the copyright infringement would require the court to apply the test of substantial similarity on a case-by-case basis.

What is the case of criminalisation of copyright infringement in India?

- In 1914, when the British extended the Imperial Copyright Act, 1911, to India, copyright infringement was punishable only with a monetary fine.
- It was independent India that introduced imprisonment for the offence of copyright infringement in 1957.
- India's international law obligations under the Trade-Related Aspects of Intellectual Property Rights (TRIPS) do not require India to criminalise all kinds of copyright infringement.
- Article 61 of the TRIPS agreement requires criminal measures to be applied for at least "wilful copyright piracy" on a commercial scale.
- All piracy of copyrighted works is an act of infringement, but all infringement cannot be termed as piracy.
 - A person indulging in the mass reproduction of copyrighted books without the authorisation of the copyright owner would be guilty of copyright piracy.
 - On the other hand, a dispute between two publishing houses on similar content in their textbooks would qualify only as copyright infringement.
- The Indian Copyright Act makes a distinction between commercial and non-commercial infringement by allowing the courts to impose a sentence of less than six months or a fine of less than Rs. 50,000.
- The law needs to be amended to differentiate between the different acts of copyright infringement and requires prior judicial cognisance as a precondition of criminal investigation by the police.

References

1. <https://www.thehindu.com/opinion/op-ed/crime-and-copyright-infringement/article65504063.ece>
2. <https://www.livelaw.in/top-stories/supreme-court-copyright-infringement-section-63-cognizable-knit-pro-international-vs-state-of-nct-of-delhi-2022-livelaw-sc-505-199775>
3. <https://taxguru.in/corporate-law/copyright-act-1957.html>



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