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Email –

[editor@ijlra.com](mailto:editor@ijlra.com)

Website – [www.ijlra.com](http://www.ijlra.com)



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# **TUSSLE BETWEEN COPYRIGHT AND** **EDUCATION IN INDIA**

BY: TRISHLA PARIHAR STUDENT,  
SCHOOL OF LAW, CHRIST  
UNIVERSITY, BENGALURU, INDIA.

## **ABSTRACT**

The idea of creating a home called school where students can access and learn. The case projects a big issue of greater participation of students in the learning process and it is evident that no one can stop learning or restrict anyone from learning but this was a major concern that the copyrighted material used in a good faith would be a fair practice or not. The Delhi Court's Justice Rajiv Sahai Endlaw in his September judgement ensured students would not have to remain powerless of the latest information and access to knowledge. In a ruling that will have far-reaching consequences on the interpretation of copyright laws in India, Justice Endlaw has dealt a big blow to the battle attitude of academic publishing houses. In the case, under review, the petitioner had moved the court on the issue that Delhi University allowed a local photocopy shop for providing copies of several chapters of a book that was prescribed by the university. This clearly proves that nothing should stop one from celebrating a glorious victory in the war against lack of access to education but the Victory comes only after many struggles and countless defeats.

Keywords- Copyright, Copyright failures, Education and Copyright, Welfare concept in Intellectual property Right, Intellectual Property Right, Copyright: Fair Dealing and Fair Use.

## **1. INTRODUCTION**

Quoting Dr Bhim Rao Ambedkar "Education is the weapon for any Country. Affordability

should never be a hindrance to access knowledge and information, but that is a reality in India. The care of expenses on primary education is far different than the Secondary in fact, the expenses in secondary education are only for a smaller number of institutions”.

The development in the education sector is an old school, even if after being a part of the techno-science World the problem of getting effective education is making the situation worse by the prohibitive prices of books. Everyone requires to safeguard their work and like Oxford University Press, Cambridge University Press, Lexis- Nexis and others are trying to perform the same by their act of unwilling to compromise standing upon exercising their copyright to the academic works. Now, looking to the other side it was college and university libraries reeling under a severe insufficiency of books that leaves many students devoid of their skills. This is one of the major problems of schools colleges and libraries because of which the student for the sake of learning and crossing such hindrances finds such shortcuts in a constant learning mechanism. The companies declared it as a fake and claimed the university's actions amounted to allowing copying. Although the university explained the act as a 'fair use' act as per the Copyright Act, which allows with all requirements, permits the copying of certain portions of books but it is not as such. It was a big loss to those who are associated with the copyright or those who have created that article, they might have dedicated their entire journey of learning, what about it? The court's ruling has one very prominent part that tends to draw a critical distinction between the term's 'publication' and 'reproduction'.

Section 52 (1) (h) of the Copyright Act prohibits the public scattering of ideas of published work by ways of 'further editions' or 'reprints'.

Section 52 (1) (i) allows 'reproduction' of publications and is a permissible exception. Hence, that indicates the point that neither the university nor the photocopy shop personnel had broken the law.

The Court's ruling was now started to be polarised and was opinionated by multiple sects of issues. It created a huge impact on many who looked at it as a role of an activist to improve

access to education have come out in praise of the ruling. Now, there were two broad perspectives have started developing, the one camp- which wanted India's Intellectual Property Rights laws to be harmonized with global conventions and criticized Justice Endlaw's reasoning. First, the ruling deals with academic publishing only, if the ruling should also have addressed the issue of literary publishing at all.

India being a peaceful Country has believed in the Gandhian philosophy where socialism was a major concern. Understanding the act of business and differentiating the concept from socialism is necessary before dealing with the case. the case in the opinion of the author dealt more with respect to the socialism philosophy whereas the claim by Oxford and Cambridge was more inclined towards the money-making exercise and they were unwilling to lose upon it. The division bench, in its wisdom, decided not to order a stay on Justice Endlaw's ruling, and have posted the next hearing finally, concluded the actions of the defendants to not amount to infringement of copyright of the plaintiffs after which no trial is required and the suit accordingly dismissed.

In recent years several Law reviews, articles and recent Harvard University Press publications have all had been tackling the question of Academic ownership, with many of the works titled something like, 'Who owns academic work,' and 'Who owns course materials.' The work in the limelight prior to the case that took all the attention was that of Corynne McSherry, called Who Owns Academic Work: Battling for Control of Intellectual Property (2001). The arguments though discourage academics from using the law and court systems to protect their work. She suggested multiple divergences that academics should not ask for anything more than what they are given.

In 2012, the most debatable and effective case of Delhi University and a photocopying store on its Campus, Rameshwari Photocopying Services came up. The photocopying shop of the University was accused of infringing the copyright laws laid down by The Copyright Act of



1975, the Copy by publishers Oxford University Press, Cambridge University Press and Taylor & Francis<sup>1</sup>. The publishers had alleged the reproduction and issuing of their publications in the most “illegal and unauthorized manner” by the photocopiers at the instance of the University<sup>2</sup>. The photocopiers ‘shop was subsequently raided, and an inventory of all the pirated copies was made, and the copies were seized. The incident left the world of academia stunned, and many academicians, lawyers and scholars have expressed their shock about the matter.

## 2. FACTS

### 2.1 Defining the Ambit of the Copyright Act

The scope of the copyright is stated as per Section 51 of the Copyright Act<sup>3</sup> which states the general rule of copyright, the work shall deem to be infringed in certain cases. The Section specifies certain acts which shall not constitute the infringement of copyright but Several classes of cases of reproduction have been held to be fair and hence not an infringement, such as-

- a) Fair quotation- where the fair class is involved) Extracts from comments and criticism (portion which is drawn out of the case with the interest of criticism and comments)
- c) Bona fide chief and so forth (the case in good faith)

These cases depend on its own circumstances other cases of reproduction may be recognized when they arise, each case would depend on its own circumstances. All uses of a book are dedicated to the public. In some circumstances and for some purposes, the author may draw the previous work to its identical, and make use of them, specifically in arts and science which also includes medical and legal publications, in which the entire community has an interest<sup>4</sup>

### 2.2 Fair Dealing with Reference to Educational Institution

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<sup>1</sup> Staff Reporter, “Delhi University, photocopy service in the dock over piracy”, The Hindu, August 14, 2012

<sup>2</sup> Id

<sup>3</sup> Infringement of copyright

<sup>4</sup> *Sampson and Murdock v. Seaver-Radford Co.*, 140 Fed Cas 539 (541)



Section 52 of the Copyright Act<sup>5</sup> deals with the concept of fair dealing, by specifying what shall not constitute the infringement of copyright. This section mainly deals with what is known as 'fair dealing' and 'fair use'<sup>6</sup>. Fair use with reference to the copyrighted material is the extra-legal use, which is usual, reasonable and customary. Copyright fulfils the purpose of promoting progressive science and the scientific or usual arts. Therefore, the fair use of copyright material, even to the extent of some copying, under certain circumstances, is not an unlawful use and therefore, called to be fair use of the copyrighted material. The provision under the Copyright Act provides defences that could be claimed for infringement of copyright. The fair use of the copyrighted work cannot be claimed or protected under the common law of copyright before publication, the author keeps his work confidential and does not communicate it no one has a right to use it. Unless there is a misuse or act of copying or infringement of copyright there would not be a question of substantial taking or no act of copying, like infringement of copyright, for instance, no question of fair or unfair use arises. If it is found that there has been acting of use of copying is used, then the question arises as to whether the user has been fair or unfair.

In the case of *Hawkes and Sons (London) Ltd. v. Paramount Film Service Ltd.*, the issue was whether or not there had been any substantial taking from the musical work in question and whether the taking was fair dealing fell within the exception. The Chancery Court observed that the question of whether the dealing has been fair or unfair depends on the circumstances of each particular case. The provisions under this Section were upheld in the case of the Academy of General Education.

In another case of *Manipal v. B. Manini Mallya*<sup>7</sup> where the Supreme Court held that 'Section 52 of the Copyright Act provides for certain acts which would not constitute an infringement of copyright. The Copyright Act is socio-centric and welfare legislation. That being said, the aim

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<sup>5</sup> *The Indian Copyright Act 1975*

<sup>6</sup> *The Indian Copyright Act 1975*

<sup>7</sup> *Academy of General Education, Manipal v. B. Manini Mallya* 2009 (39) PTC 393 (SC).

of the legislation is to protect and safeguard the interests of authors and owners. The fundamental cannot be lost sight of the same, legislation balances the competing interest of the society and those who are members of the society so that the protection given to the authors should not unnecessarily infringe upon the legitimate acts done by bona fide persons. The Copyright Act provides exceptions that give the reproduction of any work done the copyright act has to be interpreted in the light of the corresponding benefit which will be given to the children and youth by enabling them to study the books and making them available at reasonable costs.

### **2.3 Another Social Issue with respect to the Welfarism in the Course of Education**

During the Course of Pandemic education became one of the fun spots for the privileged but it was never settled difficulty for the underprivileged. The trajectory was expanded to a very large extent. Similarly, the use of educational books or course books are very expensive and not all students are able to use them. Therefore, the first copy became a shortcut for the same. This is done by providing photocopies of selected pages of chapters from the prescribed books for educational purposes. It can be clearly seen that if the photocopying of educational books are not allowed then the future of our country will be hampered as knowledge will become the prerogative of the elite section of society. The high costs of these books will make it impossible for a significant section of the population. It must be kept in mind that India is a developing nation and a huge section of its population live below the poverty line or at just the basic sustenance level. In such a situation, even if an individual wants to pursue higher education, the high costs of access to education will limit his opportunities for growth. We must not see it as the loss of the individual but as a loss of the nation to effectively nurture its citizen and provide them opportunities for growth and self-realization. Seeing by the side of students it is the matter of affordability that is getting easier with the help of photocopier.

### **3. FAIR DEALING**

### 3.1 The concept of 'Fair Use'

To prevent copyright from becoming a hindrance to the legitimate use of works in which copyright subsists in furtherance of knowledge, the Copyright Act provides exceptions in the manner and circumstances detailed in the several clauses of the section. Such fair use is not an infringement of copyright under the act. The law of copyright protects authors and others against the use of their works without permission, the acts mentioned in this section are not in the interests of the public and of the various sections of the community. In some cases, the interests of the owners of the copyright themselves are regarded as the infringement of rights.

### 3.2 Fair Dealing Defined

The circumstances state the use of fair dealing and it also explains the subjects that fall under the fair dealing or those that do not, it depends upon the circumstances of each case. In determining the issue of fair dealing. The court should consider:

The nature, scope and purpose of the works in question- if the works are similar in these aspects, they may be regarded as competitive.

Fair dealing has not been explicitly defined in the Copyright Act, Section 52 (1)(a)<sup>8</sup> specifically mentions that 'fair dealing' is very different from 'reproduction' of any work. Justice A.K. Sikri, in the case of *Syndicate of The Press of The University of Cambridge on Behalf of The Chancellor, Masters and School v. B.D. Bhandari & Anr. and Chancellor Masters and Scholars of the University of Oxford v. Narendra Publishing House and Ors.*<sup>9</sup>

The issue that comes up was with respect to the 'fair dealing' is taken up is how much of the

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<sup>8</sup> Fair dealing with any work not being used for a computer program, for the purpose of private or personal use including research.

<sup>9</sup> *The Chancellor Masters and Scholars of the University of Oxford v. Narendra Publishing House and Ors.* 2008 (106) DRJ 482 {TA \l "Syndicate of The Press of The University of Cambridge on Behalf of The Chancellor, Masters and Schoolv, B.D. Bhandari & Anr.andThe Chancellor Masters And Scholars of The University of Oxfordv. Narendra Publishing House and Ors.

work fair dealing constitutes. In the case of *Chatrapathy Shanmughan v. S Rangarajan*<sup>10</sup>, the Madras High Court held that it was a settled position that an infringement of copyright would arise only when there was a substantial reproduction of the plaintiff's work. Similarly, in the case of *S.K. Dutt v. Law Book Co. and Ors.*, it was held that in order to be an infringement of a man's copyright there must be a substantial infringement of the work. A mere fair dealing with any work falls outside the mischief of the Copyright Act.

### 3.3 Explanation to the Fair Dealing:

Explanation to something like fair dealing, is very sceptic which has not been defined in any statute or document is a task in itself. However, The Courts come up with certain methods, which may be helpful in further understanding, and defining what comes under the umbrella of 'fair dealing'.

### 3.4 Defining the Purview of 'Fair dealing' in India

Sub-clause (i) of section 52 (1)(a)<sup>11</sup> of the Copyright Act provides for the fair dealing of a literary, dramatic, musical or artistic work for the purposes of private use, including research. The object of this clause is to enable students to make copies of copyrighted work for their own personal use.

## 4. Education and Copyright

Given the recognized need for and promise of distance education, the incredibly high costs of educational materials in the developing world, and the quality of unauthorized duplication, the importance of copyright law for developing countries are clear. Developing countries must structure their copyright laws in ways that maximise the availability of low-cost books, as well as the ability of educational institutions to provide learning materials through diplomas and

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<sup>10</sup> *Rangarajan* {TA \l "Chatrapathy Shanmughan v. S Rangarajan" \s "Chatrapathy Shanmughan v. S Rangarajan" \c 1}, (2004) 29 PTC

<sup>11</sup> A fair dealing with any work not being a computer program for the purpose of private or personnel use

other programs without having to pay prohibitively high royalties<sup>12</sup>

The link between copyright and learning is indeed an old one, and the freely scattering of knowledge and culture has always informed the normative spirit of copyright law. The approach of emphasizing public interest in the circulation of knowledge on the philosophical grant, that is limited exclusive rights to authors. Today, the treatment of public interest has majorly risen by the International institutions and is clearly articulated in all major instruments tasked with the global regulation of copyright<sup>13</sup>. Another important aspect that should be considered while the issue pertains to copyright work and access to knowledge. It is barely possible for the people belonging to other different economical backgrounds to have similar access to books and knowledge. It is also not very prudent to expect everybody to be able to buy and utilize many books that seem to cost a fortune these days. This profited only a few rich people and caused the entire world to lose out on vital knowledge and information. The authors did not profit from the activities of these copyright holders. They wanted to impart knowledge. He believed that “access to knowledge should be free”. This is especially true in a developing country like India where the poverty rate is as high as 37%. If one attempted to buy all the books, which are normally prescribed for any course, most of which are highly-priced, it would mean that only very few privileged students would be able to afford an education in India. The facility of copying certain pages for educational purposes is necessary because purchasing individual books is expensive.

India is a developing nation and in the context of the same, if photocopying of expensive course books for educational purposes is not allowed then it will lead to disabling students from economically challenged backgrounds with regard to access to education.

India is a socio- development believer and Socio-Nation and keeping that in mind, it is the duty

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<sup>12</sup> Government of India study on piracy of copyright, 2011 by ministry of human resource development

<sup>13</sup> [https://link.springer.com/chapter/10.1057%2F9781137024602\\_2](https://link.springer.com/chapter/10.1057%2F9781137024602_2)

HYPERLINK "<https://goo.gl/0XVI1t>"

of the court to uphold the constitutional values of equality of opportunity. Not allowing students who cannot afford to buy the books to photocopy will lead to the creation of a barrier to education. This will ultimately lead to increasing the gap between the rich and the poor. The privileged student would be able to easily get the source and the service they will have access to the expensive books which would lead to the occupancy of knowledge whereas the poor will continue to wallow in the mire. They will not have the means to access knowledge even if they are interested in further studies. It will destroy the ideals on which our constitution was created. Further, it will be a breach of section 52 (1) of the Copyright Act as a person who does not have the economic capability to buy expensive books will necessarily be disabled from accessing such books. Therefore, it will come within the ambit of section 51 (1). Recent and interesting case single bench judgement of High Court of Delhi, The Chancellor, Master & Scholars of the University of Oxford & ors versus Rameshwari Photocopy Services & ors<sup>14</sup> under the Coram of Delhi High Court Hon'ble Mr Justice Rajiv Sahai Endlaw. The landmark judgement, the Single Judge of the Delhi High Court on September 16, 2016, ruled that the preparation of 'course packs' that is, a compilation of photocopies of the relevant portions of different books prescribed in the syllabus, and their distribution to the students by educational institutions which does not constitute an infringement of copyright in those books under the Copyright Act, 1957. It held that such photocopying qualifies as a reproduction of the work by a teacher in the course of instruction and thus does not amount to copyright infringement by virtue of Section 52(1)(i) of the Act. In effect, it held that the educational institutions do not require a license or permission from the publishers for making and distributing course packs to students.

The suit was instituted before the Delhi High Court in August 2012 by three of the foremost publishers of scholarly, general and reference books in all disciplines of academia, namely, the Oxford University Press, the Cambridge University Press and the Taylor & Francis Group for a

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CS(OS) No.2439/2012, IA No.76/2017 & IA No.78/2017

<sup>14</sup>Order I Rule 10(2) for implement) and IA No.77/2017 (under Order I Rule-8A CPC for intervention).

permanent injunction against infringement of copyright in their publications by the University of Delhi and a photocopy shop named Rajeshwari Photocopy Service operating in the University under a license from it. The Plaintiff-Publishers alleged that the Defendants had been photocopying substantial prescribed syllabus and issuing or selling unauthorized compiled work that is in the form of course packs or anthologies, thereby infringing their copyright in those publications under Section 51 Section 14 of the Copyright Act.

Education is regarded as the most effective vehicle of social and economic empowerment. Education is a broader umbrella that covers secondary education and primary education, it is not just an inalienable human right, but a powerful instrument for generating benefits for individuals and their families, the societies in which they live, and future generations. Primary education is recognized as a basic human right across the world and is the most important step in educating a significant number of people as it is a prerequisite for higher levels of education. Economic returns have been on a constant downward spiral, especially in developing countries, where the dropout level has also been on an increase. On a macroeconomic level, it is more than apparent that the economic development of a country plays an important role in the quality and quantity of education an individual receives education. However, over the years, the quality of education has been on a steady downfall, Lesser-developed countries, where access to money and by extension access to education is difficult are known to have compromised with the education of the citizens.

## **5. CONCLUSION**

In the instant case, the educational society is divided into diversified philosophy, since India is hoping for Gandhian ideology where the States are obliged to respect the Welfarism, the need of the society in educating their children is exponentially more important than the needs of publishers and authors to make a profit. Primary Education is basic and one of the important fundamental rights and for Secondary education, the Government provide reservation on the



basis of class, caste and section. The judiciary must take care to ensure that education is not monopolized by publishers driven by the profit motive and that it is accessible to all who want to study. In fact, the institutions should also focus on increasing the quality of education rather than quantitative education. The education must not allow to be made the prerogative of the elite section of society and to do that, the scope of Fair Use and the students should widen the Educational Exception to allow photocopying of copyrighted material for use. There should not be a cap on the amount of material first copied, and the students essentially and not mandatorily be free to first copy any book assigned by the teacher to further their education. There is a need to bridge the gap between the classes and education is the only way to laid down this pillar. Access to expensive books should not be a hindrance in education, the loss will not be only for the student but it will be a loss for the Nation as a whole. The future of our country will be undermined as a large section of our society will be unable to cultivate.