



USE OF LOK ADALAT FOR RESOLUTION OF COPYRIGHT INFRINGEMENT IN EDUCATION SECTOR

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Abstract

Copyright protection aims to protect rights of owners and authors or creators which they have in the work done. Copyright registration is not mandatory and so, whenever any person does a literary, artistic etc work, the copyright is automatically created in originally authored work. If copyright in a work is registered and someone uses or exploits it without consent of owner of the copyright, infringement of copyright takes place.

Today in education sector proactive efforts of teachers, educational institutions and student-parents etc, huge amount of original work is being created and we need more protection for our copyrights. Ordinary suit (litigation process) for copyright infringement in Indian courts takes a lot of time, money in the form of court fee, lawyers' fees etc and it generally results in permanently damaged relation between the disputing parties.

Lok Adalat is the unique system in India to resolve disputes by the mutual understanding or settlement between the disputing parties which is backed by the decree of the court. In India, the use of Lok Adalat for resolution of infringement disputes related to copyright is a question as there are many contradictory judgments from judiciary and lack of clarity in laws.

This research paper with the use of doctrinal method, focuses on clarity regarding the concepts of Lok Adalat, Copyright infringement in education sector, what can be done in education sector for avoiding copyright infringement and whether we can use Lok Adalat to resolve these disputes.

Keywords: Copyright, infringement, Lok Adalat, Education.

Introduction

The concept of Lok-Adalat satisfies the intentions of the drafters of Indian constitution like access to justice, freedoms, equality etc. in every manner possible. The traditional concept of resolution of conflicts, generally known as a 'Nyay-Panch' or 'People's Court' which uses various modes like Mediation, Negotiation etc. was there in India and this paved the idea of Lok Adalat. It has a flavour that the people are familiar with. It is one of the

most efficient and important Alternative Dispute Resolution system, and that it is best suited to the Indian context. On 14th March, 1982, in Junagarh, Gujarat, the first ever Lok Adalat was organised. The Lok Nyayalaya was established in Maharashtra in 1984.

How Lok Adalat Works?

NALSA (National Legal Services Authority) plans and organizes Lok Adalat throughout India along with other institutions. Lok Adalat is statutory entity as established

by Legal Services Authorities Act, 1987. One of the ADR processes is Lok Adalat, the forum for the amicable settlement of legal issues and cases that are pending in court or in the preliminary stages of litigation. According to the aforementioned Act, the award (judgement) given by the Lok Adalats is considered as decree of a civil court. This award or judgment is final and enforceable against all the parties involved in a dispute, and no legal recourse against such an award exists.

Once the matter is filed before the Lok Adalat, there is no court fee due. There is also provision of reimbursement of court fees already paid, to the parties, if a case that is currently before the legal system is referred to the Lok Adalat and it gets settled. The individuals who decide cases in Lok Adalats are known as Members; they are permitted to act as statutory conciliators only and do not have any judicial authority; as a result, they are only able to persuade the parties to reach an agreement to resolve the dispute outside of court in the Lok Adalat. Lok Adalat and its members cannot coerce or compel any person or party to settle the matter and it is based on free will and consent of the disputing parties only.

The Lok Adalat will not decide the issue that has been raised at its own initiative; rather, the subject will be resolved based on an agreement or compromise reached by the parties. The participants must support the parties in their efforts to settle their issue amicably in a neutral and impartial manner.

Lok Adalat is mainly aimed to reduce the cost of litigation which has to be borne by the disputing parties. It aims to be cost effective. People are referred to as Lok, while courts are called Adalat.

In general, Lok Adalat cannot be considered as Court in conventional manner. The reason of this lies in the fact that Lok Adalat is not having adjudicating powers or Lok Adalat cannot decide the matter on merit but it only the form of Alternative Dispute Resolution mechanism and so it helps in settlement or compromise between the disputing parties. Another difference between Lok Adalat and a court of law is that a court of law is located at its own premises, and disputing parties can

appear with their lawyers and evidences, and the court of law can administer justice to anyone at their doorstep. It is a venue that the people themselves or interested parties can approach. But in Lok Adalat, only disputing parties, with their own consent can settle the matter. The award given by the Lok Adalat is not a judgment in the sense that, it cannot be referred to as precedent.

The main principle of Lok Adalat is to settle disputes between individuals through dialogue, negotiation and conciliation for providing prompt and affordable justice along with the parties' free, mutual consent. It is, in essence, a form of party justice in which participants, including judges, settle disagreements by dialogue, persuasion, and consent.

Lok Adalats shall have jurisdiction to determine and reach a compromise or settlement between the parties to a disagreement concerning:

- a) Any pending matter in the court;
- b) Any subject matter which is not filed in any court but Lok Adalat is having jurisdiction to handle that subject matter. If the offence involved is not compoundable in nature under any statute, the Lok Adalat has no jurisdiction over such subject or case.
- c) A month prior, the Legal Aid Board determines the date and place of Lok Adalats. The chosen day is typically a Saturday, Sunday, or a holiday. Information on having a Lok Adalat is widely disseminated through the press and other mediums.
- d) Before a Lok-Adalat, the request is made or directions are given to all officers of local courts to see if there are any disputes pending at their instance which is capable of being resolved by using negotiation, conciliation etc.
- e) Once such cases are found, the members of the Lok Adalats encourage the parties to settle the disputes in Lok Adalat.
- f) The Lok Adalat team is made up of retired judges, members of the Bar, enthusiastic public servants, women social workers, and volunteer social groups. Typically, three conciliators/members are appointed.

- g) One more useful practice of Pre Lok Adalat-Mediation, negotiation or conciliation is in practice at all Lok Adalats. In these sessions, if the dispute is resolved amicably, compromise or settlement deed is made in writing with all involved parties' signatures on it and referred to competent court or Lok Adalat.
- h) The judge (Presiding officer) assesses the compromise deed and looks for fairness and legality of it along with the disputing parties' free mutual consent. If he thinks it fit to be legal, fair compromise, he issues a decree.

It is a court that gives out free justice. If the case has already been filed in ordinary court, the cost will be reimbursed if the problems are resolved through Lok Adalat. This is in consideration of the economically disadvantaged members of society.

It enables parties to reach an acceptable resolution since they may engage directly with the judge, even if they are represented by a lawyer. These parties can explain their side of the argument, which is difficult in regular courts. It eliminates unnecessary delays by eliminating lengthy legal procedures and formalities, and it strives for amicable settlements to prevent the need for additional appeals.

Lok Adalat's process is easy, adaptable, non-technical, and informal. There is no need for rigid procedural regulations such as the Civil Procedure Code and the Evidence Act for determining the parties' claims.

Recently, there is good response to the Lok Adalat and awareness about Lok Adalat is increasing. As per data published by National Legal Services Authority, National Lok Adalat held on 14.05.2022 (for all types of cases) has disposed off 9578209 cases as follows-

S. No.	Authority Name	Take n Up	Disp osed Of	Settle ment Amou nt(Rs.)
1	ANDAMAN AND NICOBAR **	1520	960	14631478

2	ANDHRA PRADESH **	265867	141501	2189563312
3	ARUNACHAL PRADESH	1271	193	12760371
4	ASSAM	176341	23083	637604107
5	BIHAR	530823	47630	1506662185
6	CHANDIGARH	14449	2350	127432595
7	CHHATTISGARH	345600	247176	1192831090
8	DADRA AND NAGAR HAVELI *	1046	503	30170555
9	DAMAN AND DIU *	70	18	3019949
10	DELHI	146863	126019	3058007309
11	GOA #	6487	1187	36006383
12	GUJARAT **	695117	302421	12440280427
13	HARYANA	190613	110324	2464859430
14	HIMACHAL PRADESH	43758	19432	562644238
15	JAMMU AND KASHMIR	148293	124840	2066419877
16	JHARKHAND	285084	223910	2314205620
17	KARNATAKA #	1069508	765077	11291702369
18	KERALA **	64864	17872	2110647429
19	LADAKH	626	472	10365701
20	LAKSHADWEEP	112	53	0
21	MADHYA PRADESH	835080	83391	3908675311
22	MAHARASHTRA *	5406159	1048378	12583013115
23	MANIPUR	573	461	41890028
24	MEGHALAYA	1281	244	3726135
25	MIZORAM	3328	1165	59580663
26	NAGALAN	642	211	31495820

6	D			
2	ODISHA	11143	11873	804641774
7		7		
2	PUDUCHE	6500	2067	109774905
8	RRY **			
2	PUNJAB	14690	57187	6228391616
9		1		
3	RAJASTHA	14251	921993	6403004411
0	N	83		
3	SIKKIM	119	97	5150154
1				
3	TAMIL	19603	102784	6058849730
2	NADU **	2		
3	TELANGA	76632	765326	1140582117
3	NA **	0		
3	TRIPURA	5993	612	18514681
4				
3	UTTARAK	17295	11601	1730225473
5	HAND			
3	UTTAR	67248	416647	9869836660
6	PRADESH	76	1	
3	WEST	34637	249327	3157688069
7	BENGAL	2		
	Grand Total	19982403	9578209	94224855087

* Maharashtra, Dadra & Nagar Haveli and Daman & Diu SLSA has organised National Lok Adalat on 07.05.2022.

Goa and Karnataka SLSA has organised the National Lok Adalat on 25.06.2022.

** A & N Islands, Andhra Pradesh, Gujarat, Kerala, Puducherry, Tamil Nadu and Telangana SLSA has organised the National Lok Adalat on 26.06.2022.

Out of total cases disposed of in this Lok Adalat, 6707435 cases were at Pre-Litigation stage and 2870774 cases were at pending stage. This shows efficacy of Lok Adalat.

WHAT IS COPYRIGHT? -

Copyrights are a kind of intellectual property protection that grants the owner the only right to duplicate their works for a certain length of time. Copyrights are formed automatically and begin the minute the work is created and existing in physical form. They are most commonly used for:

- Poetry, novels, speeches, and songs are examples of literary works.
- Code for computers

- Plays, movies, and television series
- Buildings with artwork, sculptures, and architecture

The Copyright Act, 1957 (Act) and the Copyright Rules govern copyright protection legislation in India. Copyright does not apply to mere ideas, information, or concepts. However, copyright safeguards the original expression of information and ideas. Copyright can be claimed by the creator, a person who inherited ownership rights from the original creator, or an agent authorized to act on the creator's behalf.

India is member/signatory of various international treaties and conventions related to Intellectual Property Laws and Copyright Laws like- Berne Convention (1886), Universal Copyright Convention, Geneva Convention and World Intellectual Property Organization and so, Indian Copyright Law is made as per the norms of these conventions.

The term "work" in the Copyright Act of 1957 has very broad scope and it covers many things like painting, cinematographic film, photo, artistic work, tables, maps, compilations, drawings, musical work, literary work, and software and so on.

In India, the registration of copyright is not required since it is seen as only considered as recording a fact. The formal copyright registration is not required to bring an action for infringement. This notion has been supported by Indian judiciary in a plethora of decisions.

The enforcement agencies in India are mostly unaware of intellectual property laws, are efforts are being made to give enforcing agencies and police department formal, detailed training of it. Generally, it is observed that the action against copyright infringement is taken in cities only where there is awareness. The registration certificate is considered as "proof of ownership" of copyright in courts and police authorities and so, it is useful.

In the case of original literary, dramatic, musical, and artistic works, the period of copyright is the author's or artist's lifetime, plus 60 years from the year of death.

Cinematograph films, sound recordings, anonymous and pseudonymous works, works of government, and works of international organizations are all protected

for 60 years, beginning with the year of publication.

COPYRIGHT INFRINGEMENTS IN EDUCATION SECTOR-

Due to the worldwide lockdown, education felt necessity of shifting its mode to online. Almost every aspect of education was turned online, be it classroom teaching, doubt resolutions, exams to exercise. Though it was very necessary and useful, it has certain drawbacks as well like usage of copyrighted content in online instruction.

While online education has been available for a while, it was only because of the CORONA epidemic that such type of method had to be implemented by various schools and institutions all over the world. Online teaching mainly involves live video lectures through various platforms or software, PPT presentations, sharing audios, videos and documents by the teacher and also, sharing and use of all these materials within students.

The instructor would be able to regulate the material being shared in an offline educational environment. He or she would be aware of who receives a copy of the document. However, managing information management becomes a challenging problem in the online-education, especially when the students had no actual physical access to school, college libraries and teacher or instructor had to share course materials online only.

Copyright law protects the “expression” that is, the tangible form of an idea or physical manifestation of an idea, rather than the idea itself. So, physical manifestations like books, drawings, charts, films etc are protected by copyright. In India, Section 13 of the Indian Copyright Act, 1957 specifies that works that are protected by copyright.

Copyright forbids anybody else from utilizing the copyright author's work or owners work without permission or consent or license. However, in some circumstances, the law allows the use of a copyrighted work without getting the original author's consent. This is the “fair use” doctrine, often known as the fair dealing theory in India. Through their judgements, Indian judiciary have

determined fair usage. The Kerala High Court established a 3-condition test in a case to evaluate whether fair use may be used in a case as the defense. These were as follows:

- The quantity and worth of the materials collected;
- The purpose of taking that material; and
- The possibility of rivalry amongst two works.

It is worth noting that Section 52(1)(a) of the Copyright Act specifically says that fair dealing of any original work, whether for criticism or review or even reproduction of any work by student or teacher for education purpose in educational institution is not considered as infringement of copyright. However, it does not mean that the theory of fair use/fair dealing permits the distribution of any copyrighted content for educational reasons, and so, it has certain limitations.

To begin, the copyrighted work must be purchased legally. If original copyrighted work is downloaded from internet, it is permitted but if the same material is obtained through illegal platforms or websites that allow free access and downloading of actual paid material would amount to infringement.

Second, the copyrighted material should only be utilized for educational purposes. Other's copyrighted material should not be used for commercial purposes or financial profits by instructors or students as well, without the permission or license from the copyright holder.

Third, one cannot claim fair use/fair dealing by uploading scanned copies of bought books to be shared with students. The 2012 Amendment to the Indian Copyright Act permits institutions to distribute scanned versions of purchased publications for educational purposes provided the institution already has in its library, the physical copy of the book.

As previously stated, certain materials may only be obtained through secondary sources. Because commercial or illegal use of such information may result in infringement that leads to legal enforcement, all the stakeholders in education sector should understand the following principles to avoid infringement of copyright.

- a) Instead of downloading and distributing the information, share the webpage address with pupils. This ensures that

the original writers receive proper credit for their publicly shared works. Illegal content providing websites and links should be avoided. Also, the content should have been publicly uploaded or authorized to be publicly posted by the original creator.

- b) Through their institutional credentials, schools and universities can also acquire software which will allow students to access the information.
- c) The adoption of open-access platforms, where content is given for free, should be encouraged. These sites allow for a free usage of material as long as that material is used for educational purpose only.
- d) Teachers, students and educational institutions can take license or permission from the copyright holder for use of that material for any purpose.
- e) Discourage students from sharing copyrighted information in the future by making students aware about the infringement of copyright and possible legal actions.
- f) Teachers should also aim to create original information or content that they can share without any hurdle.

LITIGATION PROCESS OF COPYRIGHT INFRINGEMENT

A copyright owner has the right to bring a lawsuit for an injunction, damages, accounts, etc. against the offender before a court with authority under Section 55 (1) of the Act. However, the copyright owner in such a situation can only seek an injunction and not any other remedy like damages or restitution if the infringer successfully demonstrates in court that on the day of the infringement, the infringer was unaware of the existence of copyright in favor of the owner. A copyright owner may request an Anton Piller order, a Mareva injunction, a permanent injunction, or an interim or interlocutory injunction. The Court will have the option to award costs in favor of any party to the lawsuit.

A person who is being intimidated by the owner of a copyright is protected by Section 60 of the Act from starting legal action over an alleged copyright violation.

A person who is being threatened may file a declaratory action, seek an injunction against the threats, and seek damages.

The jurisdiction of the court where a party can bring an action is significantly influenced by Section 62 of the Act. According to Section 62 (1), a civil lawsuit must be filed in a District court with relevant jurisdiction. According to Section 62 (2) of the Act, which serves as an exemption to Section 20 of the Code of Civil Procedure, 1908, a lawsuit may also be filed at a location where the party submitting it voluntarily resides, does business, or engages in gainful employment.

Criminal liability may also be brought against the copyright violator in addition to civil liability. According to Section 63 of the Act, anybody found guilty of willfully violating a copyright or aiding in its violation faces a sentence of between six months and three years in prison as well as a fine of between Rs. 50,000 and Rs. 2,00,000/-. However, the punishment and fine imposed upon the offender may be lowered if the infringer is successful in convincing the court that the infringement was not committed for financial benefit in the course of business or commerce. If a violator who has already received a Section 63 of the Act punishment repeats the offense, they would face a sentence of one to three years in prison and a fine of between one and two lakh rupees.

According to Section 64 of the Act, police officers have the authority to seize property in cases of violations of Section 63 of the Act. Without a warrant, the police officer has the authority to take all copies of the work and any equipment used to create unauthorized copies of the work, wherever they are discovered, and bring them before a magistrate.

Possession of any plates for the purpose of producing illegal copies of any work for which copyright protection is in place is punishable by up to two years in prison in addition to a fine under Section 65 of the Act. The Court may also order the destruction of any copies or plates that the accused offender is in possession of that are infringing under Section 66 of the Act.

Furthermore, no court lower than the Court of Metropolitan Magistrate or Judicial Magistrate of the First Class has the authority

to hear cases involving violations of the Copyrights Act of 1957.

A copyright owner may either file a FIR under Section 154 of the Criminal Procedure Code or begin criminal proceedings. may submit a request under Section 156(3) of the Criminal Procedure Code.

CAN WE USE LOK ADALAT FOR RESOLUTION OF COPYRIGHT INFRINGEMENT?

As discussed earlier, matters involving compoundable offences can be referred to Alternative Dispute Resolution System (ADR). Interestingly, Copyright infringement as per section 63 is a cognizable, non-compoundable offence and so, if a person whose copyright is infringed seeks criminal remedy through section 63 (Chapter XII of Copyright Act, 1957) like imprisonment or fine, this kind of matter cannot be referred to Lok Adalat generally. But if the disputing parties intend to settle the matter or do compromise amicably, they will have recourse of Lok Adalat. For instance, if complainant party takes back the complaint and settles the matter for compensation and permanent injunction, they can make settlement award through Lok Adalat. Also, if the aggrieved party seeks any civil remedy, then they can use Lok Adalat. This will be the win-win situation for all the parties. On the other hand, if the disputing parties agree to settle the matter outside court and do not use Lok Adalat for that purpose, the settlement will not be much reliable as any party can retract from their terms of settlement but if same is done by Lok Adalat it will have the same effect as that of Civil Courts decree.

Copyright Act, 1957 gives civil remedies as well. If a person seeks civil remedies like injunction, compensation, accounts of profit etc., these kinds of matters can definitely be referred to Lok Adalat. Party can directly approach the Lok Adalat or even if party approaches the court and then the matter can be referred to Lok Adalat by court directly or from the instance of parties.

In Lok Adalat, decisions are not made on the basis of merits. Lok Adalat will pass an award or decision or order on

the basis of consent of parties. This means, if parties involved in copyright infringement agree to compromise or settle the matters and come to an agreement regarding it, Lok Adalat will just formalize it and pass the order on same agreement.

If copyright is not registered, the party has to seek the civil remedy. Here, party can claim injunction, compensation or accounts of profit. In such cases it is generally difficult for the parties to prove the ownership of copyright as there is no registration certificate which is important documentary evidence that establishes presence and ownership of copyright in a particular work. So, in such cases, the litigation process gets even lengthier and here parties can use Lok Adalat effectively and settle the matter.

If these kinds of matters are referred to Lok Adalat by courts or by parties and get settled, court fee will be waived. Time of putting evidence on record and time consumed for technical process in litigation will be saved.

In education sector, most of the copyrights are unregistered. As per data of the Indian Copyright Office, the government has issued Copyright Registration Certificates as follows-

January – 1791
February- 1582
March- 1502
April - 1697
May- 1537
June- 1100
July- 916
August- 1127

Conclusion

The first and foremost thing is to avoid copyright infringement by education sector and if anyone infringes the copyright one must be able and vigilant about enforcement of his/her rights. Education is the foundation of the nation and moral or ethical rights of authors of copyright should also get protection. In education sector, copyright protection is very important but its registration is crucial as many works involve more than one authors, many works are owned by educational institutions and so on. Even World Intellectual Property Organization (WIPO) has reiterated that copyright protection must be given to every

originally authored work even without registration in domestic legal system. On this ground, in India, legal actions can be taken for protection and enforcement of copyright in education sector and Lok Adalat could be very useful for that as it saves time, money and most importantly it involves less technicality. But in Indian context, use of Alternative Dispute Resolution (ADR) techniques like Lok Adalat needs more awareness.

Suggestions

1. Sec. 63 of the Copyright Act, 1957 is not compoundable offence and so, there are some hurdles in using Lok Adalat or even any other ADR technique. If the statute of Copyright i.e., Copyright Act, 1957 as well as Legal Services Authorities Act that regulates Lok Adalat gets specific mention or permission of use of Lok Adalat in matters of Copyright infringement, it would be easy for the reference of Copyright Infringement Cases to Lok Adalat.
2. Another way out is setting Lok Adalat dedicated to Intellectual Property Right Disputes that will have experts in Intellectual Property like Copyright and Law which can directly settle the matters like copyright infringement amicably.

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