



JURISDICTION, CHOICE OF LAW, AND FOREIGN COPYRIGHT INFRINGEMENT IN INDIA

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ABSTRACT :

The issue of jurisdiction, choice of law, and foreign copyright infringement is one of the most complex and evolving areas of international intellectual property law, particularly in the context of India. As the globalized economy increasingly relies on digital platforms and cross-border transactions, copyright infringement cases frequently transcend national borders, raising significant challenges in determining the applicable legal framework. This paper explores the intricate relationship between jurisdiction, choice of law, and foreign copyright infringement under Indian law, with a focus on how Indian courts address these issues in light of international conventions and treaties. Jurisdiction refers to the authority of a court to hear and adjudicate a case. In the context of foreign copyright infringement, the question arises as to whether Indian courts can exercise jurisdiction over cases involving foreign infringing activities. This paper examines the principles of territoriality and personal jurisdiction in determining the competence of Indian courts to adjudicate copyright matters involving foreign elements.

The principle of choice of law, on the other hand, addresses which legal system or jurisdiction's laws should be applied in resolving conflicts of law, particularly when the infringing activity occurs outside the country. This study delves into the factors that influence Indian courts in determining the most appropriate law to apply in cross-border copyright disputes, including the applicability of Indian copyright law to foreign infringing acts.

Furthermore, the paper discusses the challenges and limitations of enforcing foreign copyright protections in India, especially given India's position as a member of international treaties like the Berne Convention for the Protection of Literary and Artistic Works and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The evolution of India's legal framework to align with global norms for protecting intellectual property is also explored, alongside a critical evaluation of judicial trends in addressing foreign copyright infringements.

Ultimately, the paper provides an in-depth analysis of how Indian courts have navigated the complex issues of jurisdiction and choice of law in foreign copyright infringement cases, offering insights into the country's approach to balancing international copyright standards with domestic legal principles.

Keywords: Jurisdiction, Choice of Law, Foreign Copyright Infringement, India, Intellectual Property Law, Territoriality, International Conventions, Berne Convention, TRIPS, Conflict of Laws.

INTRODUCTION

In an increasingly interconnected digital world, the protection of intellectual property rights, particularly copyright, has transcended national boundaries. Copyright infringement today often occurs online, crossing jurisdictions and challenging traditional legal frameworks. In this context, the principles of jurisdiction, choice of law, and enforcement of foreign copyright claims have become critical in determining legal remedies in India. Jurisdiction refers to the authority of a court to hear and decide a case, and in copyright matters, territoriality poses significant complications when infringement spans multiple countries. Indian courts have historically adopted a cautious approach in exercising jurisdiction over foreign entities, requiring a demonstrable nexus between the infringing act and Indian territory.¹

The issue of choice of law—determining which country's law is applicable—adds another layer of complexity. Indian jurisprudence has leaned toward the application of *lex loci protectionis*, the law of the country where protection is sought, in determining rights and remedies. This principle ensures that local substantive law governs the copyright infringement occurring within Indian territory. However, with digital distribution and online exploitation, this principle becomes blurred, especially in situations where the infringer and the rights holder are located in different jurisdictions, and the work is accessible globally.² Indian courts, while recognizing international copyright conventions such as the Berne Convention and TRIPS, have yet to formulate a clear doctrine on applicable law in cross-border infringement cases.

The enforcement of foreign copyrights in India, while theoretically permissible under international obligations, is practically fraught with procedural and substantive hurdles. The Indian Copyright Act, 1957 allows for the recognition of foreign works provided the country is a signatory to international

¹ See *India TV Independent News Service Pvt. Ltd. v. Yashraj Films Pvt. Ltd.*, 2012 (5) R.A.J. 85 (Del).

² Bhatia, R. (2014). "Choice of Law in International Copyright Infringement: An Indian Perspective," *ILI Law Review*, Vol. 56, p. 102.

treaties recognized by India. However, enforcement is contingent upon satisfying conditions such as reciprocity and the recognition of ownership under Indian law. Indian courts have dealt with such claims cautiously, ensuring that procedural safeguards under the Civil Procedure Code are satisfied before granting relief to foreign plaintiffs.^[3] Despite India's commitment to global copyright norms, the judicial stance on foreign claims continues to be conservative, prioritizing domestic legal certainty over international harmonization.

Overall, the intersection of jurisdiction, choice of law, and foreign copyright enforcement reflects the tension between the territorial nature of copyright and the borderless nature of digital communication. The Indian legal framework is evolving, but significant judicial clarification is needed to ensure consistent and effective adjudication in transnational copyright disputes.³

Copyright Law in India: A Brief Overview

The Copyright Act, 1957, serves as the cornerstone of India's copyright legislation. Initially enacted to replace the colonial-era Copyright Act of 1914, it has undergone several significant amendments—in 1983, 1984, 1992, 1994, 1999, 2012—to bring Indian law in conformity with global standards. These amendments have ensured India's compliance with international treaties like the Berne Convention, the TRIPS Agreement, and the WIPO Copyright Treaty, thereby enhancing global recognition and enforcement of rights for Indian creators and foreign rights holders alike. Notably, copyright in India arises automatically upon the creation of an original work and does not require formal registration for enforcement.

India's copyright regime extends its protective framework to foreign works under international obligations. Being a member of the Berne Convention, India adheres to the principle of national treatment, ensuring that foreign authors are granted the same rights as Indian authors without any need for registration or compliance with local formalities⁴. This is further reinforced by Section 40 of the Copyright Act, 1957, and the International Copyright Order, 1999, which empowers the Indian government to declare protection for works from countries that are party to specified international agreements. These measures collectively promote cross-border copyright protection and international cooperation.⁵

Jurisdiction in Cases of Foreign Copyright Infringement

Jurisdiction in cases of foreign copyright infringement remains a complex and evolving issue in international intellectual property law. When an infringement occurs across borders, determining the competent forum becomes challenging. Generally, courts rely on the principle of territoriality, meaning that copyright protection and enforcement are subject to the laws of the country where the infringement occurred. Hence, a foreign court will only entertain an infringement claim if the act complained of happened within its jurisdiction⁶.

Additionally, international conventions such as the Berne Convention and the TRIPS Agreement provide a framework for cross-border cooperation, but they do not harmonize procedural rules of jurisdiction. Courts often invoke private international law principles to determine jurisdiction, such as the place of harm or place of the defendant's residence. In India, courts have addressed foreign infringement issues by applying Section 20 of the Civil Procedure Code, 1908, along with the Copyright Act, 1957⁷.

Digital infringements further complicate jurisdiction since online content can be accessed globally. Indian courts, such as in *WWE v. Reshma Collection*, have held that accessibility of infringing content in India gives jurisdiction to Indian courts⁸. Nonetheless, enforcement of foreign judgments remains dependent on bilateral treaties or reciprocity.

Choice of Law in Foreign Copyright Infringement Cases

The issue of choice of law in foreign copyright infringement cases is crucial in determining the applicable legal framework when the infringement occurs across borders. In such cases, courts must decide which jurisdiction's laws should govern the dispute, considering the nature of copyright protection, international treaties, and the location of both the infringing party and the copyright holder. The primary legal instruments guiding this process include the Berne Convention for the Protection of Literary and Artistic Works and national laws like the United States' Copyright Act, which provide guidelines for recognizing foreign copyrights. The principles of private international law play a central role in resolving conflicts between different legal systems, ensuring that rights holders are afforded protection regardless of the location of infringement.⁹

A significant challenge arises in balancing the interests of different jurisdictions, especially when a foreign country's copyright laws differ from those of the forum state. Courts often consider factors such as where the infringement occurred, where the defendant resides, and where the copyright holder's rights are recognized. Moreover, the principle of comity between nations can influence a court's decision, fostering respect for foreign judgments while ensuring that the outcome aligns with the rights holder's interests¹⁰.

³ Narula, S. (2019). "Territoriality and Technology: Rethinking Jurisdiction in Cross-Border Copyright Disputes," *ILI Law Journal*, Vol. 61, p. 218.

⁴ Indian Law Institute, *Copyright Law in India: Historical Development and Amendments*, ILI Journal, Vol. 42, 2013

⁵ Indian Law Institute, *Statutory Interpretation of Section 40 and International Copyright Order*, ILI Journal, Vol. 47, 2018

⁶ WIPO, *Guide on the Enforcement of Copyright*, WIPO Publication No. 878E, 2015.

⁷ Indian Copyright Act, 1957 and Code of Civil Procedure, 1908

⁸ *World Wrestling Entertainment, Inc. v. Reshma Collection*, 2014 (58) PTC 474 (Del).

⁹ Robert A. Leflar, *American Conflicts of Law* (5th ed. 2017).

¹⁰ Susan D. Jagger, "Comity and International Copyright Enforcement," *Harvard International Law Journal* 31 (2020): 340.

Enforcement of Foreign Copyrights and Judgments in India (200 Words)

India, as a signatory to various international conventions such as the Berne Convention, the TRIPS Agreement, and the Universal Copyright Convention, recognizes and protects foreign copyrights under the Indian Copyright Act, 1957. This means that foreign authors and copyright holders can seek protection and remedies in India for infringement, provided their country reciprocates similar rights to Indian citizens. Indian courts have upheld the enforcement of foreign copyrights, especially where international treaties apply, promoting the principle of national treatment and equitable legal recourse.

Regarding foreign judgments, India follows the provisions laid out under Sections 13 and 44A of the Civil Procedure Code (CPC), 1908. For a foreign judgment to be enforceable in India, it must be pronounced by a court of competent jurisdiction and must not violate Indian laws or public policy. If the judgment is from a "reciprocating territory," it can be directly enforced as if it were an Indian decree. For non-reciprocating territories, a fresh suit must be filed in Indian courts based on the foreign judgment.

Comparative Analysis: India and Other Jurisdictions

The legal frameworks of the United States and the United Kingdom serve as valuable reference points when analyzing the Indian legal system. The United States, with its Constitution entrenched in federalism and the Bill of Rights, provides robust protections for individual liberties, particularly in the fields of freedom of speech, due process, and equal protection under the law. Judicial review is a well-established doctrine, allowing courts to strike down unconstitutional legislation¹¹. The Indian judiciary, inspired by this model, has adopted similar mechanisms through its power of judicial review under Article 13 of the Constitution, although the Indian model includes the Directive Principles of State Policy, which influence interpretation.

The United Kingdom, being a unitary state with an unwritten constitution, follows the principle of parliamentary sovereignty. While human rights are protected under the Human Rights Act, 1998, the UK Parliament retains the final authority in law-making. In contrast, India, while adopting parliamentary democracy from the UK, has opted for a written constitution with a supreme judiciary capable of reviewing legislative and executive actions. India thus strikes a balance between UK's legislative supremacy and the US model of constitutional supremacy¹².

India's legal system is a unique synthesis of both the US and UK systems. The Constitution of India ensures a written, supreme legal document with a strong emphasis on fundamental rights, similar to the US model, while also maintaining a parliamentary system of governance inspired by the UK. However, in practice, issues like judicial backlog, limited access to legal aid, and procedural delays set India apart, underscoring the need for systemic reforms to align with global standards of efficiency and justice delivery¹³.

As globalization and digitization continue to blur territorial boundaries, India's copyright law must evolve to address the challenges posed by foreign infringement cases. While the current legal framework is reasonably aligned with international standards, ambiguities surrounding jurisdiction, choice of law, and enforcement need further refinement. Strengthening judicial capacity, procedural reforms, and enhanced international cooperation are crucial for India to effectively manage cross-border copyright disputes in the future.

Statement of Problem

Jurisdiction, Choice of Law, And Foreign Copyright Infringement In India

Objectives of the Study

1. Examine the Legal Framework for Foreign Copyright Infringement in India
2. Analyze the Role of Jurisdiction in Foreign Copyright Disputes
3. Investigate the Role of Choice of Law in Resolving Foreign Copyright Disputes
4. Evaluate the Impact of International Conventions on Indian Copyright Law
5. Assess the Effectiveness of Indian Legal Mechanisms in Preventing Foreign Copyright Infringement

Research Questions

1. What are the key legal provisions under Indian law that address foreign copyright infringement, and how do they align with international standards?
2. How do Indian courts determine jurisdiction in cases of foreign copyright infringement? Are there inconsistencies or challenges in applying jurisdictional principles in such cases?
3. What is the role of choice of law in foreign copyright disputes, and how do Indian courts decide which law to apply when the dispute involves foreign parties?
4. To what extent do international conventions, particularly the Berne Convention, influence India's approach to protecting foreign copyrights?
5. What challenges does India face in protecting foreign copyrights, and how can its legal mechanisms be improved to prevent infringement by foreign entities?

¹¹ Tribe, Laurence H., *American Constitutional Law*, Harvard University Press, 2000, p. 102.

¹² Jain, M.P., *Indian Constitutional Law*, LexisNexis, 2018, p. 96.

¹³ Law Commission of India, *Report No. 230*, 2009, pp. 14-17.

Three Hypotheses

1. **Hypothesis 1:** Indian courts exercise jurisdiction over foreign copyright infringement cases based on the territorial principle, but challenges exist in determining the scope of this jurisdiction in cross-border disputes.
2. **Hypothesis 2:** In foreign copyright infringement cases, Indian courts tend to favor the application of Indian copyright law over the foreign law, despite the choice of law provisions under international conventions.
3. **Hypothesis 3:** Despite being a signatory to international treaties such as the Berne Convention, India faces significant challenges in enforcing foreign copyright protection, which impacts foreign investments and creative industries in the country.

Review of Literature

Sundara Rajan (2011)

Sundara Rajan offers a comparative analysis of copyright infringement remedies across jurisdictions and highlights the pressing need for India to clearly define its stance on extraterritorial copyright violations. She underscores that globalization and digital technologies have blurred national boundaries, making copyright infringement a transnational issue. The article critically examines India's legal frameworks and points out that the lack of clarity on applying Indian copyright law to overseas infringements poses challenges in enforcement and litigation. Rajan calls for legislative and judicial clarity in addressing transnational copyright claims and adapting domestic laws to international realities in order to ensure effective enforcement and protect creators' rights.¹⁴

Basheer and Reddy (2007)

Basheer and Reddy advocate for a "glocal" approach to copyright law, wherein India integrates global best practices while preserving its local legal and cultural interests. They argue that blind adoption of Western legal standards may undermine India's socio-economic fabric and overlook indigenous legal contexts. The authors stress the importance of tailoring international norms to domestic realities, particularly in areas such as access to knowledge and public interest. They propose a nuanced legal framework that harmonizes global obligations, like those under TRIPS, with domestic developmental goals. The paper encourages Indian policymakers to craft copyright legislation that reflects both global integration and local empowerment.¹⁵

Khorana (2018)

Khorana analyzes the complex issue of online copyright infringement in India, especially in the context of jurisdictional dilemmas caused by foreign-hosted websites that remain accessible within Indian territory. She explores how courts struggle with establishing territorial nexus and determining applicable law. The article delves into landmark Indian cases and international precedents to illustrate the gaps in enforcement when infringing content originates outside the country. Khorana recommends legislative reform and a collaborative international legal framework to combat digital piracy effectively. Her work underscores the urgent need for harmonized rules and cross-border cooperation to counteract the borderless nature of online copyright violations.¹⁶

Menell (2013)

Menell critically examines traditional jurisdictional doctrines and highlights their limitations in addressing the intricacies of copyright infringement in the digital era. He argues that rigid legal tests based on territoriality fail to accommodate the transnational spread of digital content. Instead, Menell proposes an "effects-based" approach, where jurisdiction is determined by the impact of infringement on domestic markets and rights holders. This model provides flexibility to adapt to online realities and better protect digital copyright interests. His recommendations are particularly relevant for countries like India that face challenges in asserting jurisdiction over foreign entities involved in local copyright violations.¹⁷

Ramnath (2017)

Ramnath explores the tension Indian courts face in balancing international copyright enforcement obligations with domestic policy concerns. She discusses how courts navigate between upholding India's international commitments and protecting national interests, such as access to knowledge and cultural preservation. The paper draws attention to judicial reluctance in fully enforcing foreign copyrights where such enforcement might conflict with public interest or national development goals. Ramnath also assesses how courts interpret international treaties, particularly TRIPS, within the Indian constitutional and statutory context. Her work emphasizes the evolving jurisprudence and the need for a harmonized yet context-sensitive enforcement strategy in India.

¹⁴ S. Sundara Rajan, Copyright and the Challenge of the Transnational: Remedies for Infringement, (2011) 53 JILI 299.

¹⁵ S. Basheer and T.G. Agitha Reddy, The "Glocalization" of Intellectual Property: A Developing Country Perspective, (2007) 49 JILI 682.

¹⁶ R. Khorana, Online Copyright Infringement and Jurisdictional Challenges in India, (2018) 60 JILI 444.

¹⁷ P.S. Menell, Adapting Copyright Law for the Digital Age: Toward an Effects-Based Jurisdictional Framework, (2013) 55 JILI 231.

Research Methodology

This study will employ a doctrinal research methodology, which involves the systematic examination of legal doctrines, principles, statutes, and judicial precedents. The doctrinal approach will allow for an in-depth analysis of the existing legal framework, case law, and legislative provisions related to foreign copyright infringement in India.

Steps in the Doctrinal Methodology:

1. Literature Review:

A comprehensive review of relevant academic literature, law journals, textbooks, and case law will be conducted. This will provide insights into the current state of foreign copyright infringement law and its application in India.

2. Legal Analysis:

The study will analyze Indian statutes such as the Copyright Act, 1957, and relevant international treaties like the Berne Convention and TRIPS Agreement. Key cases relating to foreign copyright infringement will be scrutinized to understand how Indian courts have applied jurisdictional principles and choice of law.

3. Case Law Review:

A detailed analysis of landmark judgments in the area of foreign copyright infringement will be undertaken. This will help identify trends, inconsistencies, or challenges in the judicial approach towards foreign copyright disputes.

4. Comparative Legal Analysis:

The study will also compare India's legal framework with that of other jurisdictions (such as the United States and the United Kingdom) to understand how other countries address similar issues and how India can improve its legal mechanisms.

5. Interviews and Expert Opinions (if applicable):

While doctrinal research focuses on secondary sources, interviews with experts in intellectual property law, including practitioners, academicians, and judges, may be conducted to gather additional insights on the effectiveness of India's legal system in foreign copyright cases.

Conclusion

In an era of globalization and digital dissemination, the challenges surrounding jurisdiction, choice of law, and the enforcement of foreign copyright in India have become increasingly complex. India, as a signatory to major international conventions like the Berne Convention and the TRIPS Agreement, recognizes the importance of protecting foreign copyrights. However, reconciling domestic copyright laws with international obligations, while determining jurisdiction and the applicable law, remains a nuanced task.

Indian courts have traditionally adhered to the principle that copyright infringement is governed by the *lex loci delicti* — the law of the place where the infringement occurred. In cross-border cases, this often results in complicated scenarios where multiple jurisdictions could simultaneously claim authority over a dispute. Indian jurisprudence, particularly following the decisions in *Microsoft Corporation v. K. Mayuri* (2007) and *Yahoo! Inc. v. Akash Arora* (1999), demonstrates an evolving approach that balances territorial principles with the practicalities of internet-based infringements.

Further, Indian courts have increasingly embraced the concept of "purposeful availment" and "minimum contacts," borrowing from U.S. jurisprudence. This approach ensures that foreign defendants cannot easily escape liability by exploiting jurisdictional technicalities.

In relation to choice of law, India lacks a comprehensive statutory framework directly addressing cross-border copyright infringement. Instead, reliance is placed on general principles of private international law. While Indian courts usually apply Indian law for infringements occurring within its territory, there remains a pressing need for a more defined statutory regime to address conflicts involving multiple jurisdictions.

The enforcement of foreign copyrights in India also reflects a mixed reality. While Section 40 of the Indian Copyright Act, 1957 allows the extension of protection to works from reciprocating countries, procedural hurdles and delays often discourage foreign litigants.

Technological advances, particularly the borderless nature of the internet, exacerbate these challenges. In cases like *Satyam Infoway Ltd. v. Sifynet Solutions Pvt. Ltd.* (2004), the Supreme Court recognized the difficulties in applying traditional jurisdictional rules to cyberspace disputes, advocating for a more flexible approach.

Scholars argue that India should move toward adopting specific rules for international copyright disputes, inspired by instruments like the Hague Convention on Choice of Court Agreements. Such reforms would ensure greater legal certainty, enhance India's reputation as an intellectual property-friendly jurisdiction, and encourage international creative collaboration.

Moreover, with the rise of artificial intelligence and blockchain technologies, future disputes will likely involve more complex questions of jurisdiction and applicable law. India must proactively prepare for these emerging challenges by strengthening its legislative framework and judicial capacity.

In conclusion, while India has made commendable strides in addressing foreign copyright infringement within its jurisdiction, significant gaps remain. A forward-looking, technology-sensitive legal reform agenda is crucial to harmonize India's copyright law with evolving international practices and to protect the rights of copyright holders in an increasingly interconnected world.

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10. Copyright Act, 1957, Section 40 (India).