

Copyright and Related Rights Law

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WEEK - 04

LECTURE - 17

Literary Work v Dramatic Work - Part 1

Welcome back to this course on copyright and related rights law. This week, we are discussing the subject matter of dramatic works in copyright and related rights law. In the previous session, we looked at the definitions of dramatic works in various copyright Acts in different countries. What we observed in these definitions was that, apart from providing some examples of subject matters that can be categorized as dramatic works, the definition also excluded cinematograph films. But what we also saw was that dramatic works, such as choreography, are capable of being written, and if it can in fact be written, how is it any different from literary work? This foundational distinction is something we will discuss today and in the next session. Consider this image.

What do you see? You see a person using a pen and going to write. What we saw in the previous session was that when considering the term writing, we can possibly imagine a broader application, such as the use of not just words but also symbols. And if we consider it that way, then notations could be written. In saying so, can a work of dance be written? Or, in other words, can choreography be written? If we break down the term choreography, we see that it is formed of two parts.

The first part is a reference to the word 'khoreia,' which is a Greek term meaning dancing in unison, and the term 'graphy,' which means writing. Together, it should mean dance writing. The fact that dance is nothing but a sequence of steps that have come together. What if this sequence of steps were written prior to its performance? We had seen that in cases of dances, such as ballet, the level of clarity that performers need in order to dance in unison requires a lot of practice, and such practice must be based on predetermined choreography. And therefore, systems such as the Laban system or the Benesh system, which are systems of dance or systems of works of dance, provide a manner of representing dance in written form.

Notationally representing or graphically representing through lines, for example on a similar format, such as the format that we had seen for graphical notations and musical works - is an attempt to fixate choreography in order to bring clarity for performers who are looking to replicate those sequences of steps. But if a work of dance is something that can be performed, can a literary work be performed as well? Since we are considering commonalities between literary work and dramatic work, we see that the Benesh system and the Laban system seem to be systems that favor writings. But if the dramatic work that can be written is being performed in the form of a dance, is that also something that is happening with literary works? If yes, then is there really a difference between literary works and dramatic works? For instance, when a person sings, are the lyrics being used dramatic works or are they literary works? Let us look at what the Indian Copyright Act provides in Section 14 as copyrights with respect to literary works. It says, for the purposes of this Act, copyright means the exclusive right, subject to the provisions of this Act, to do or authorize the doing of any of the following acts— In respect of a work or any substantial part thereof, namely in the case of a literary work, to perform the work in public. The question that we are looking to answer is whether literary works can be performed.

What we have seen in Section 14 is that, just like dramatic works, literary works can also be performed. What, then, is the distinction between literary works and dramatic works? When we started this discussion, we focused on the question of whether a dramatic work could be written. You see now we are at a point where performance, which we were considering as being central to dramatic work, is something that is also common between literary work and dramatic work. Early copyright statutes, in fact, protected dramatic works as literary works, similar to how musical works were protected as literary works. In a case that comes from the UK, *Norowzian v. Arks* - It was stated that the expression "dramatic work" is broad and should therefore be given its natural and ordinary meaning, which is that it is a work of action, with or without words or music, that is capable of being performed before an audience. What this tells us is that the purpose of literary works, whether it is informative value or the dissemination of information or instruction, is to encourage performance in dramatic works, and not just any performance, but the performance of action. Is that the point at which we distinguish dramatic works from literary works? If yes, then perhaps we can say that a literary work can be performed with the use of words but without action. But for dramatic works, a performance would require some kind of action. Therefore, look at this question and try to answer it.

Are lyrics a dramatic work? You would note that when a singer is looking to sing the lyrics, there is no action component required. A singer can sing simply by using their voice. The action component is, in fact, an additional component that is technically not required for singing the lyrics itself. And therefore, lyrics do not seem to be covered

within our preliminary understanding of what a dramatic work is. Rather, lyrics seem to fall within the ambit of literary works.

Take a look at this image. You can see this person performing a handstand, which is quite a difficult exercise routine. But can exercise routines, from the mere fact that they are action-oriented, amount to dramatic works? In other words, if the sequence of exercises can be fixed in some form because they are action-oriented in terms of their presentation - will such fixated form be considered a dramatic work? What would the repercussions of such dramatic work protection be? Would it extend to preventing people from exercising? Think of another complex issue like this one. An issue that arises in sports. The fact that sporting activity is also action-oriented.

Is it possible to relate it to a work of sports similar to a work of dance or mime? What about stunting? Is it right to call it a work of stunt? So this person who is engaged in an adventurous routine with his motorcycle, is he in fact performing some kind of dramatic work? These interesting questions are something we will look at in a lot of detail, and hopefully, through our understanding of this particular case that came before the Delhi High Court, we will be in a position to answer. This is the Institute for Inner Studies versus Charlotte Anderson, in which the Delhi High Court was looking to analyze whether a claim towards the subsistence of literary or dramatic work protection - on books written on the ancient science of pranic healing and the exercise routines that were claimed to be dramatic works; would such subject matter classifications in fact apply? What we will see in this judgment is how the court is explaining what the literary work component in such a scenario would be and what the dramatic work component would be. Through this, we will be able to answer difficult questions, such as the ones we are looking to answer here. According to the claimant, he says that he has adapted and systematized the ancient science of Pranic Healing. There is copyright in the material stated in the books, and there is copyright in the performance.

Now, what are the possible works in which the exercises are compiled? Can we say that the compilation, because of its selection and arrangement, is a literary work? Can we say that the exercise routines are predetermined and fixated? Can we say that this is choreography? The judge, Justice Manmohan Singh, points to the fact that there are some unsolved questions relating to literary works in the Copyright Act. What are these unsolved questions? Whether the performance of the work in public in relation to literary work would include merely a recitation of the work in the cases of literary work in public. Or, in the alternative, performance of the entire facts or narration stated in the literary work in public in the form of performance by action or otherwise. To this, there is no clarity regarding the Act itself. Second, whether there are any exceptions to the said right of the performance of the work in public in relation to literary work, or whether all the literary works enjoy a similar level of protection that gives the owner of the copyright an exclusive right to perform the literary work in public in any manner, including the

right to restrain the implementation of the facts stated in the literary work under the guise of performing the work in public.

According to Justice Manmohan Singh, in providing that literary work authors have the copyright of performing the work in public does not explain what would constitute such a copyright. Would it be the mere restriction of the recitation, or would it also be some kind of restriction on the content in terms of the facts as stated here? Can the facts themselves be brought within the ambit of copyright protection, and would any kind of literary work be covered within the ambit of section 14, or will there be some kinds of expressions that fall outside the scope of section 14? Justice Manmohan Singh refers to *Eastern Books v. D. B. Modak*, a very important Supreme Court decision that we will examine in much more detail when we consider the question of the interpretation of originality.

But for now, let's look at this specific excerpt. It says, although for establishing a copyright, the creativity standard applies, it's not that something must be novel or non-obvious, but some amount of creativity in the work to claim a copyright is required. It does require a minimal degree of creativity. This is in reference to how an expression would attain the subsistence of copyright. When we have looked at the *University of London versus University Tutorial Press* case, we looked at how an expression must objectively be categorized as literary work and then such literary work must be considered on the anvil of originality.

According to the Supreme Court, this is a subjective assessment that must raise the question of whether there is any creativity satisfied by such expression. The court also looks at *RG Anand versus Deluxe Films*, another Supreme Court decision, which we have discussed earlier as well, wherein it was said that there can be no copyright in an idea, subject matter, themes, plots, or historical or legendary facts. And violation of the copyright in such cases is confined to the form, manner, arrangement, and expression of the idea by the title author of the copyrighted work. In our previous discussions, we have attempted to make a distinction between copyrightable expression and the underlying event, the underlying fact, or the underlying idea, something to which copyright doesn't extend. Where, however, the question is of the violation of the copyright of a stage play by a film producer or a director, the task of a plaintiff becomes more difficult in proving piracy.

Why is this the case? The court explains that it is manifest that, unlike a stage play, a film has a much broader perspective, a wider field, and a bigger background where the defendants can, by introducing a variety of incidents, give a color and complexion different from the manner in which the copyrighted work has expressed the idea. Even so, if the viewer, after seeing the film, gets a total impression that the film is by and large a copy of the original play, a violation of copyright may be said to be proved. In this image, you can see a representation of an idea. But you can also see that the representation is a

distinctive expression of what we will perceive as an idea. You will now be able to answer any queries on the distinction between expression and idea.

In the present case, we see that the claimant is looking to prevent the implementation of facts and narrations stated in the book, which are asanas of yoga, on the premise— that the said facts and narrations, descriptions of asanas and techniques stated in books authored by master are his copyright; and thus the performance of the said works, in physical form actions, or performing such pranic healing yoga asanas, must result in copyright infringement. Can this happen? Can copyright protection extend to preventing what the expression is representing? Can it happen? I'm sure all of you are now saying that this cannot happen. Copyright cannot prevent someone from performing a particular asana, on account of the mere fact that there has been an expression of that asana in written form, because copyright doesn't extend to such matters. The court also explains that, for the unwary, who are not very clear about the distinction between idea and expression and the scope of copyright protection, which is limited to expressions - on first blush, the argument is actually convincing that considering the provisions of the act, and in the manner they are worded, so as to include the performance of the work in public. But once the said argument is tested from the glasses of idea-expression distinction, which sometimes the courts have to make in a given case, the answer becomes clearer and the shadow of doubt which exists in the mind proceeds to obliterate.

With this, we have formed a foundational understanding of the manner in which literary works must be considered in terms of performance. In the next session, we will look at this case in more detail in terms of both the literary work and the dramatic work component, and with that, we will be able to answer some complex questions about how these two are different. Thank you for joining me. See you in the next session. Thank you.