Copyright in Literary Works: When themes converge but expressions diverge

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Introduction:

Copyright law, particularly in the domain of literary works, grapples with one of the most enduring tensions in intellectual property - the boundary between an author's monopoly over creative expression and the freedom of all others to draw upon the common wellspring of ideas, themes, history, and shared cultural heritage. This balance of rights has been recognised and incorporated in the law.

Relevant Legal Provisions Under the Copyright Act, 1957:

- **Section 2(1)(o)** defines 'literary work' as including computer programmes, tables and compilations including computer database.
- Under **Section 13** copyright subsists in original literary work and under Section 14, an owner of the literary work has the exclusive right to reproduce the work; issue copies of it; perform the work in public, make translation, adaptation, film etc. .
- **Section 51** provides for acts when a copyright is deemed to be infringed. A copyright is infringed if a person uses, reproduces, distributes, or performs a work without a licence from the owner.
- **Section 55** provides civil remedies for copyright infringement. The copyright owner is entitled to civil remedies including injunction, damages, and rendition of accounts against an infringer.

It is well settled that a copyright subsists in expression and does not extend to the ideas, themes, historical or legendary facts. A literary work could therefore be wholly original in its form or expression and yet rooted in facts, traditions, and landscapes that no author can claim a monopoly over.

Thus, merely because the two authors have written on the same subject, cannot by itself lead to an allegation of copyright infringement or plagiarism if the work has been developed in a different manner. Similarities and coincidences on the basis of common idea, are bound to occur and are of no avail in substantiating a claim of copyright infringement.

The Courts, time and again, with considerable rigour have examined what constitutes protectable

expression in a literary work, the evidence required to establish infringement or access, and how courts must assess similarity between works sharing common themes, plots or ideas. The discussion that follows analyses the legal framework under the copyright law and its broader implications in literary works.

Legal Framework under Copyright Law: Governing Principles

I. The idea-expression dichotomy: R.G. Anand v. M/s Deux Films, (1978) 4 SCC 118

The most foundational principle governing copyright infringement in literary works in India is the idea-expression dichotomy, authoritatively laid down by the Supreme Court in *R.G. Anand v. M/s Delux Films*. The following propositions emerge from this landmark ruling:

- There is no copyright in an idea, subject matter, themes, plots, or historical or legendary facts. Copyright only protects the manner of expression.
- The test for infringement is whether an average reader, after reading both works, is left with a definite and unmistakable impression that the later work is a copy of the original.
- Similarities in stock scenes, common phrases, or elements flowing naturally from the genre (the 'scènes à faire' doctrine) do not amount to infringement.

II. The requirement of access: Mansoob Haider v. Yashraj Films, (2014) 59 PTC 292

Access to the original work is a condition precedent to any successful claim of copyright infringement. In *Mansoob Haider v. Yashraj Films*, the Court held:

- To succeed in a claim of copyright infringement, the Plaintiff must first establish that the alleged infringer had access to the original work.
- Without proof of access, mere existence of similarities cannot lead to an inference of copying. Access is a condition precedent; without it, the chain of infringement is broken at the very first link.

III. Heightened burden where access is not established: Shivani Tibrewala v. Rajat Mukerjee, (2020) 81 PTC 329

Where access cannot be established, the evidentiary burden on the Plaintiff becomes even more onerous, as held in *Shivani Tibrewala v. Rajat Mukerjee:*

- Where access to the original work by the Defendant is not established, the burden of proving copying shifts to an even higher standard.
- The Plaintiff must, in such circumstances, demonstrate a degree of similarity so compelling that it could only be explained by copying, and not by coincidence or common source.

Dehi High Court's Recent Ruling (*Sivasundari Bose v. David Davidar*):

The principles discussed above found direct application in the Delhi High Court's judgment dated 30th April 2026 in two cross suits between *David Davidar* and *Sivasundari Bose*, a dispute involving two multi-generational novels set among the Nadar community of South Tamil Nadu during the pre-Independence era.

The bedrock of Ms. Bose's claim was that Mr. Davidar's novel, *The House of Blue Mangoes*, a multi-generational saga of the Nadar community set in South Tamil Nadu between 1899 and 1947 was derived from Ms. Bose's unpublished manuscript, *Golden Stag*.

After a complete trial and detailed examination of all facts and evidence, the Court, found no credible evidence establishing any access. The Court held that Ms. Bose failed to establish that Mr. Davidar had access to her unpublished manuscript. The absence of proof of access significantly undermined the claim of copying. The full manuscript, which lay at the core of the infringement claim, was never produced before the Court.

Even otherwise, the Court held that the comparative analysis of the two works does not substantiate the allegation of copyright infringement. Given the similar backdrop of the two books, similarities in names of characters, traits, societal and historical references are bound to be expected. The Court reaffirmed the settled principle that copyright does not subsist in ideas, themes, historical facts, but only in their original expression.

Applying the average reader test from *R.G. Anand*, the Court concluded that the differences between the two works significantly outweighed the similarities, which arose from shared heritage, geography, and historical fact rather than from copying of expression. The claim of copyright infringement was accordingly dismissed.

Conclusion

The recent Delhi High Court's judgment is significant beyond the particulars of the dispute it resolved. It reinforces the foundational principle that copyright protects the *form* of expression, the specific words and the inventive structure. Two authors writing about the same community, the same region, and the same century will inevitably produce works that echo each other in theme and setting. That is not plagiarism, it is the organic nature of literary tradition and shared heritage.

These principles when properly applied, ensure that copyright remains what it was always intended to be - a monopoly over creative expression, not over history, geography, or the shared human experience that every author draws upon. It not only allows creative freedom to artists, authors and creators but also ensure that their Intellectual Property is adequately protected.

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