



COPYRIGHT ENFORCEMENT AND ACCESS TO JUSTICE: WHY LITIGATION COSTS DETER CREATORS IN INDIA'S MEDIA AND ENTERTAINMENT SECTOR

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Abstract

Copyright enforcement in India is formally grounded in a robust statutory framework. Sections 55, 62, and 63 of the Copyright Act, 1957 provide civil and criminal remedies, and the Commercial Courts Act, 2015 creates a dedicated forum for commercial intellectual property disputes. Yet the practical accessibility of these remedies for individual screenwriters, lyricists, composers, and independent creators in India's media and entertainment sector is severely constrained. Employing a doctrinal methodology supplemented by comparative analysis of enforcement models in the United Kingdom and the United States, this paper argues that the cost of copyright enforcement encompassing ad valorem court fees under the Court Fees Act, 1870, professional legal costs, and the opportunity costs of protracted litigation operates as a structural deterrent to enforcement by individual creators and small rights-holders. This deterrent is compounded by the dissolution of the Intellectual Property Appellate Board in 2021 and the consequent absence of a specialised, accessible forum for copyright disputes below the High Court level. The paper applies Cappelletti and Garth's access to justice framework to demonstrate that India's enforcement architecture systematically advantages well-resourced institutional rights-holders over individual creators. Drawing on the United Kingdom's Intellectual Property Enterprise Court and the United States' Copyright Claims Board as comparative reference points, the paper proposes four targeted reforms: introduction of a copyright small-claims tribunal, revision of the court fee structure for copyright matters, mandatory pre-institution mediation with enforceable outcomes, and reinstatement of a specialist copyright forum below the High Court level.

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Keywords: *copyright enforcement; access to justice; litigation costs; Intellectual Property Appellate Board; media and entertainment; small claims; Copyright Act 1957*

1. INTRODUCTION

The right to copyright protection and the practical capacity to enforce that right are not coextensive. India's Copyright Act, 1957 confers upon authors a comprehensive suite of remedies injunctions, damages, accounts of profits, delivery up, and criminal sanctions for wilful infringement³ that are formally sufficient to discharge India's obligations under Articles 41 to 50 of the TRIPS Agreement.⁴ In practice, however, the majority of individual creators in India's media and entertainment sector screenwriters working on a single screenplay, independent composers, lyricists whose works are commercially exploited without credit or compensation are structurally excluded from the enforcement architecture that these provisions constitute. The cost of accessing that architecture exceeds the expected benefit for most individual rights-holders.

The research gap this paper addresses is the absence of a sustained doctrinal analysis of the cost structure of copyright enforcement in India as a systematic access to justice problem specifically in the media and entertainment context. Existing scholarship treats enforcement costs as an incidental concern; this paper treats them as the central structural failure. The paper argues that four compounding factors ad valorem court fees, professional legal costs, the duration of proceedings, and the post-2021 institutional deficit following the dissolution of the Intellectual Property Appellate Board together constitute a deterrence architecture that is as effective in neutralising creator rights as the substantive legal gaps examined in the existing literature. The paper proceeds as follows: a literature review and theoretical framing (Section 2); a statement of methodology (Section 3); analysis of the statutory enforcement framework, cost barriers, and institutional deficit (Section 4, sub-sections 4.1–4.3); a comparative and evaluative discussion (Section 5); and a conclusion with reform proposals (Section 6).

2. LITERATURE REVIEW

The theoretical foundation of this paper is Cappelletti and Garth's access to justice framework, developed in their landmark study of worldwide movements to make rights effective.⁵ Their 'three-waves' model identifies successive challenges to legal accessibility: the first wave concerns legal aid for the poor; the second addresses diffuse and collective rights; the third most directly relevant to this paper identifies the structural barriers that prevent effective assertion of individual legal rights even in the presence of formal legal entitlement, and advocates procedural innovations such as small claims courts and ADR mechanisms as the appropriate institutional response.⁶

³Copyright Act, 1957, ss. 55, 62, 63.

⁴Agreement on Trade-Related Aspects of Intellectual Property Rights, 1994 (TRIPS), Arts. 41–50.

⁵Mauro Cappelletti and Bryant Garth, "Access to Justice: The Newest Wave in the Worldwide Movement to Make Rights Effective" (1977–78) 27 *Buffalo Law Review* 181, 182.

⁶*Ibid.* at 195.

This framework has been applied to intellectual property enforcement in the comparative scholarship,⁷ but has not been applied in the Indian copyright context to the media and entertainment sector.

Among Indian scholarship, P. Narayanan's treatise addresses the statutory remedies under Section 55 of the Act in detail but does not systematically engage with the cost of accessing those remedies.⁸ V.K. Ahuja's commentary notes the complexity of copyright litigation and the multiple fora available but does not develop this into a structural critique.⁹ Ananth Padmanabhan's work on infringement and remedies provides the most detailed available analysis of enforcement options, including the role of criminal remedies as a lower-cost alternative to civil proceedings, but does not assess the systemic deterrent effect of cost across enforcement options.¹⁰ In the comparative literature, Cornish, Llewelyn and Aplin's standard treatise addresses the UK's Intellectual Property Enterprise Court (IPEC) as an institutional response to the access to justice problem in intellectual property a model directly relevant to the Indian reform debate.¹¹ The gap in the literature is the application of the Cappelletti and Garth third-wave framework to an integrated doctrinal and institutional critique of copyright enforcement costs in India's media and entertainment sector.

3. RESEARCH METHODOLOGY

This paper adopts a doctrinal methodology, involving textual analysis of the Copyright Act, 1957, the Commercial Courts Act, 2015, the Court Fees Act, 1870, the Tribunals Reforms (Rationalisation and Conditions of Service) Act, 2021, and relevant Indian case law. Doctrinal analysis is supplemented by comparative legal analysis of enforcement mechanisms in the United Kingdom and the United States, selected as jurisdictions that have specifically addressed the access to justice problem in copyright through institutional innovation. The paper does not draw on empirical data. Its principal limitation is the absence of quantitative data on copyright enforcement costs and litigation duration in India data that would strengthen the deterrence argument and is recommended for future empirical research. Primary sources comprise Indian and comparative legislation and judicial decisions; secondary sources are confined to peer-reviewed scholarship and established legal treatises.

4. ANALYSIS

4.1 The Statutory Framework for Copyright Enforcement in India

The Copyright Act, 1957 provides three principal enforcement mechanisms. Section 55(1) confers civil remedies for copyright infringement, including injunctions and an election between damages and an account of profits.¹² Section 62 confers jurisdiction on the District Court within whose local limits the plaintiff resides or carries on

⁷William Cornish, David Llewelyn and Tanya Aplin, *Intellectual Property: Patents, Copyright, Trade Marks and Allied Rights* (Sweet & Maxwell, London, 9th edn., 2019) 45.

⁸P. Narayanan, *Intellectual Property Law* (Eastern Law House, Kolkata, 3rd edn., 2001) 240.

⁹V.K. Ahuja, *Law of Copyright and Neighbouring Rights* (LexisNexis, New Delhi, 2007) 320.

¹⁰Ananth Padmanabhan, *Intellectual Property Rights: Infringement and Remedies* (LexisNexis, New Delhi, 2012) 210.

¹¹Cornish, Llewelyn and Aplin, *supra* note 5, at 48.

¹²Copyright Act, 1957, s. 55(1).

business a plaintiff-friendly jurisdiction provision designed to reduce geographical access barriers.¹³ Section 63 creates criminal liability for wilful infringement, providing for imprisonment and fines a remedy that carries lower direct litigation costs for the complainant than civil proceedings but imposes the evidentiary burden of proving wilfulness.¹⁴

The Commercial Courts Act, 2015 designated copyright disputes as ‘commercial disputes’ subject to its jurisdiction where the ‘specified value’ of the dispute exceeds the prescribed threshold.¹⁵ The Act also introduced, under Section 12A, a mandatory pre-institution mediation requirement for commercial disputes not involving urgent interim relief an innovation with direct relevance to copyright enforcement.¹⁶

The institutional landscape was substantially altered by two legislative interventions. The Finance Act, 2017 transferred the functions of the Copyright Board constituted under Section 11 of the Act as a specialist forum for certain copyright disputes to the Intellectual Property Appellate Board (IPAB).¹⁷ The Tribunals Reforms (Rationalisation and Conditions of Service) Act, 2021 then dissolved IPAB entirely, transferring its jurisdiction to the respective High Courts.¹⁸ The cumulative effect was the elimination of the only specialist copyright forum below the High Court level in India, concentrating copyright jurisdiction in courts whose costs, procedural complexity, and geographical concentration are the highest in the enforcement landscape.

4.2 Structural Cost Barriers: Court Fees, Legal Costs, and Duration

The Court Fees Act, 1870 imposes ad valorem fees on suits for recovery of money and suits to enforce rights to moveable property categories under which copyright infringement claims for damages are often valued.¹⁹ A creator seeking to recover damages for the infringement of a screenplay or musical composition must value the suit, and that valuation attracts court fees that scale with the claimed amount. For a screenwriter whose work has been commercially exploited without authorisation in a film generating substantial revenues, a realistic damages claim may attract court fees that individually constitute a significant financial burden relative to the claimant’s means. The Court Fees Act provides no specific carve-out for intellectual property matters and no reduced-fee regime for individual creators.

Beyond court fees, the professional costs of copyright litigation in India are substantial. Copyright infringement cases typically require specialist IP counsel. The standard of proof in civil infringement proceedings, as established in foundational cases such as *R.G. Anand v. Deluxe Films*²⁰ and elaborated in *Eastern Book Company v. D.B.*

¹³*Ibid.* s. 62.

¹⁴*Ibid.* s. 63.

¹⁵Commercial Courts Act, 2015 (India), s. 2(1)(c)(xvii).

¹⁶*Ibid.* s. 12A.

¹⁷Finance Act, 2017 (India).

¹⁸Tribunals Reforms (Rationalisation and Conditions of Service) Act, 2021 (India), Schedule.

¹⁹Court Fees Act, 1870 (India), s. 7.

²⁰*R.G. Anand v. Deluxe Films*, AIR 1978 SC 1613.

*Modak*²¹, requires careful doctrinal analysis of originality, substantial similarity, and causal nexus legal questions that resist self-representation. The practical result is that copyright litigation in India is counsel-dependent, and counsel-dependence is cost-dependent.

The duration of proceedings compounds the financial barrier with an opportunity cost barrier. The Law Commission of India's 245th Report documented the scale of judicial backlog in the Indian court system, noting pendency of cases running into tens of millions across all levels of the judiciary.²² Even Commercial Courts designed for expedited disposal are subject to delays that can extend proceedings over years. For an individual creator whose commercial window for the work in question may be measured in months, a remedy that arrives years after the infringing use has generated its commercial value is not meaningfully equivalent to timely enforcement. The deterrent effect is prospective as well as retrospective: the awareness of these barriers discourages creators from asserting rights they formally possess.²³

4.3 Institutional Deficit: The Post-IPAB Landscape and the Small-Claims Vacuum

The Copyright Board, as originally constituted under Section 11 of the Copyright Act, 1957, was a specialist forum with jurisdiction over, inter alia, disputes concerning licences and the determination of royalties matters of particular relevance to creators in the media and entertainment industry.²⁴ Its specialist character, lower procedural formality relative to a High Court, and dedicated IP jurisdiction made it, in principle, a more accessible forum than the civil court hierarchy for individual creators.

The Finance Act, 2017 transferred Copyright Board functions to IPAB.²⁵ The dissolution of IPAB by the Tribunals Reforms Act, 2021 transferred appellate IP jurisdiction to the respective High Courts.²⁶ From the perspective of individual creators in the media and entertainment sector, this change was substantively regressive: High Courts are geographically centralised, procedurally complex, and cost-intensive in a manner that specialist tribunals are not. The transfer of jurisdiction from a specialist tribunal to a generalist superior court increases rather than reduces the cost and complexity of enforcement for the individual creator.²⁷

The consequence of this institutional trajectory is the absence of any accessible forum for copyright disputes of modest financial value the category that describes the majority of individual creator disputes in the media and entertainment sector. A screenwriter whose screenplay has been plagiarised in a low-budget production, or a lyricist whose composition has been commercially used without authorisation in a regional film, faces a choice between a High Court action whose costs are disproportionate to the value of the claim, a criminal complaint under Section

²¹*Eastern Book Company v. D.B. Modak*, (2008) 1 SCC 1.

²²Law Commission of India, *245th Report on Arrears and Backlog: Creating Additional Judicial (wo)manpower* (2014) 3.

²³Padmanabhan, *supra* note 8, at 215.

²⁴Copyright Act, 1957, s. 11.

²⁵Finance Act, 2017 (India).

²⁶Tribunals Reforms Act, 2021, *supra* note 16.

²⁷Ahuja, *supra* note 7, at 325.

63 whose remedies do not include compensation, or abandonment of the claim. The third option is, in practice, the most common outcome.²⁸

5. DISCUSSION

The doctrinal analysis in Section 4 establishes that India's copyright enforcement architecture, considered as a system, produces outcomes that are systematically skewed against individual creators. Cappelletti and Garth's third-wave framework characterises this as a structural access to justice failure: the formal right exists, the remedy is prescribed, but the cost of reaching the remedy exceeds the expected benefit for the most vulnerable class of rights-holders.²⁹ The implications of this finding operate at three levels.

For individual creators, the immediate implication is that copyright operates in practice as a deterrent only when held by well-resourced institutional rights-holders—studios, production houses, music labels—who possess the litigation infrastructure and financial capacity to enforce at scale. The individual screenwriter or composer is not so placed. Her copyright, while formally identical to that of a production house, is materially inferior in terms of practical enforceability.

The comparative picture identifies two institutional innovations directly relevant to Indian reform. The United Kingdom's Intellectual Property Enterprise Court (IPEC) with a costs cap and a streamlined small claims track for IP disputes valued at under £10,000 represents the most directly applicable model.³⁰ It addresses the cost barrier at the level of court fees and legal costs simultaneously by capping recoverable costs and providing a simplified procedure that reduces counsel-dependence. The United States' Copyright Claims Board, created by the Copyright Alternative in Small-Claims Enforcement Act, 2020, constitutes an even more targeted innovation: a voluntary administrative tribunal within the Copyright Office with jurisdiction over copyright claims not exceeding \$30,000 in damages, operating online and permitting self-representation.³¹ Both models demonstrate that specialist, low-cost copyright dispute resolution is institutionally feasible and operationally effective.

Within existing Indian institutional resources, Section 12A of the Commercial Courts Act, 2015 mandating pre-institution mediation for commercial disputes not requiring urgent relief offers an underutilised reform lever.³² The Arbitration and Conciliation Act, 1996 provides a framework for arbitral resolution of copyright disputes by party agreement,³³ but the costs of institutional arbitration are comparable to litigation for small claimants. India's obligations under TRIPS Article 41 require that enforcement procedures be available so as to permit effective

²⁸Narayanan, *supra* note 6, at 245.

²⁹Cappelletti and Garth, *supra* note 3, at 195.

³⁰Cornish, Llewelyn and Aplin, *supra* note 5, at 52.

³¹Copyright Alternative in Small-Claims Enforcement Act, 2020 (CASE Act) (United States).

³²Commercial Courts Act, 2015, s. 12A.

³³Arbitration and Conciliation Act, 1996 (India), s. 7.

action against infringement.³⁴ The current enforcement architecture with its high cost structure, post-IPAB institutional vacuum, and absence of a small-claims mechanism is inconsistent with this obligation as it operates in practice for individual creators, even if it formally satisfies it in terms of statutory provision.

6. CONCLUSION

This paper has demonstrated that India's copyright enforcement architecture, while formally adequate at the level of statutory provision, fails individual creators and small rights-holders in the media and entertainment sector through four compounding structural barriers: ad valorem court fees under the Court Fees Act, 1870; the cost and complexity of counsel-dependent proceedings; the duration of litigation and its associated opportunity costs; and the post-IPAB institutional vacuum that eliminated the only specialist copyright forum below the High Court level. The application of Cappelletti and Garth's access to justice framework to this analysis confirms that the deterrent effect of these barriers is not incidental but systemic a predictable consequence of an enforcement architecture that was not designed with the individual creator as its primary user.

Four reforms are proposed. **First**, Parliament should establish a Copyright Small Claims Tribunal modelled on the UK IPEC Small Claims Track and the US Copyright Claims Board with jurisdiction over copyright disputes not exceeding a prescribed monetary threshold, simplified procedures, and permission for self-representation. **Second**, the court fee structure for copyright infringement suits brought by individual natural person authors should be revised to provide a reduced flat fee rather than an ad valorem fee, removing the disproportionate upfront cost that currently deters small claims. **Third**, the mandatory pre-institution mediation mechanism under Section 12A of the Commercial Courts Act, 2015 should be strengthened by providing for specialist IP mediators trained in copyright disputes, with mediated settlements enforceable without the requirement of a consent decree. **Fourth**, a specialist copyright bench should be reconstituted within the Commercial Court framework at the District Court level in cities where the media and entertainment industry is concentrated. Future research should quantify the deterrent effect of enforcement costs through empirical fieldwork with creators in the Indian media and entertainment sector, transforming the structural argument advanced here into a documented evidentiary foundation for legislative reform.

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