SOB DOCTRINE, JOHN LOCKE LABOUR THEORY AND GUINNESS WORLD RECORDS

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INTRODUCTION

This is an analysis of the statement, 'sweat of the brow doctrine representing John Locke's labour theory flouts the basic copyright principles' (here on referred as, the statement). The statement consists of three components in it, which are sweat of the brow doctrine, labour law theory and basic principles of copyrights. This article provides the background of the sweat of the brow doctrine (here onwards, the SOB doctrine) and John Locke Labour theory which results in flouting the basic principles of copyrights. Further it is analysed by drawing an analogy between the doctrine, principles of copyrights and Guinness World Records.

BACKGROUND OF SOB DOCTRINE AND JOHN LOCKE LABOUR THEORY

'Originality' as mentioned in Section 13(1)(a) of Copyrights Act, 1957 , which is referred to as basic principle throughout the article, that is being disregarded via the SOB doctrine. The object of Copyrights is to grant rights and protect and benefit the author by exclusion of usage of others from copying or reproducing the author's work and monetising it. The legal protection is provided not to the 'idea' but to the end-product or outcome of idea in a tangible format. In other words, it intends to protect the rights of the author over his 'expression' of thoughts.[1] Originality refers to the expression of thoughts, throughout this article unless otherwise mentioned. Under Section 14 of Copyrights Act, 'exclusive rights' acts as a positive right to the author and negative right to all others, since it is prohibitive in nature. Originality can be determined based on presence of three essential factors – labour, skill and judgement. In Ladbroke v William Hill (Football) ltd case, it was held that the verbatim reproduction of an oral speech is also copyrightable which was a result of his labour and skill.[2] Sweat of the brow doctrine in short, was formulated claiming that copyrights can be awarded based on the physical labour invested by the author.[3]

[1] Dr. B. L. Wadehra, Object of Copyright, Law Relating to Intellectual Property, Fifth Edition, Page 270
[2] Walter v Lane, (1900) AC 539
[3] Terry Hart, Rehabilitating Locke: The Labor Justification of Copyright, Copyhype, 2012.

In Feist publications case the court has explained the 'sweat of brow' doctrine since its inception and why was it decided to be scrapped off from usage in Copyright regime. The court held there were numerous flaws in the said doctrine because the application of labour theory alone to determine originality lacks the intellectual contribution to the extent that the work would look like a mere mechanical reproduction (such as selection and arrangement) and no amount of creativity, invested in the same. The rejection of the doctrine gave birth to another doctrine called Modicum of Creativity. As a result, "the Court stated unambiguously that the 1909 Act conferred copyright protection only on those elements of a work that were 'original' to the author".[4] Modicum of creativity is beyond the scope of this article, but essentially the definition of 'Originality' was modified by introduction of modicum of creativity into it, then onwards any work which lacked minimum creativity in it, despite being 'copied' was deemed *not to be original*.[5]

John Locke's labour theory justifies the extraction of labour from the employees,that they are to be treated as property of the employer. Peter P. Cvek says that, "The Labour of his Body and the Work of his Hands, we may say are properly' his.. Consequently, whatever a man mixes his labour with, he removes from its natural- state and makes it his own property. The application of one's own labour, thus transforms a right to use what is common into an exclusive property right. The labour that was mine, removing them out of that common, state they were in, hath fixed my property in them".[6] This theory convinces that, the efforts invested with the help of labour in creating a work is flagged as a property. If this theory is applied to intellectual property laws then it compromises the 'expression of ideas' which lacks originality. Under IPR regime, originality (in other words distinction, unique) plays a significant role in Trademarks, Copyrights and Patents, which cannot be compromised.

ANALYSIS

The Indian and English Copyright law has always been the protection of fruits of a man's skill, labour and judgement. The author explains his idea through the concept of Guinness World Records and justifies his criticism over the doctrine in favour of the statement. If the protection of copyrights is awarded based on the labour, it negates the crux of copyrights because, the intention is to protect the expression of thoughts and not the idea provided the

https://www.copyhype.com/2012/03/rehabilitating-locke-the-labor-justification-of-copyright/#:~:text=Yet%20the%20Court%20explicitly%20approved,the%20mistake%20scholars%20have%20made.

[4] International news service v Associated press, MANU/USSC/0212/1918

[5] Feist publications, Inc. v Rural telephone service company, Inc., MANU/USSC/0089/1991

[6] Peter P. Cvek, John Locke, Social Welfare and the U.S. Constitution, 1990, page 105

work is more than mechanical reproduction of an already existing work. However, by providing copyrights based on labour alone, even the expression of thoughts are abandoned.

Initially the rationale behind providing such rights was to allow the author to utilize his produce (work) for his economic benefit, if he wants to commercialize it. When we compare it with Guinness World Records, in Mumbai there was a largest gathering of 4999 people wearing helmets in the year of 2019[7] and in UK there was a largest gathering of 867 people wearing Superman costume in the year of 2013.[8] The idea here is, the largest gathering. If the idea is protected through copyrights, then only one such record of that nature could be created. Whereas, if different ways of expression is protected, like gathering with Superman costume to be distinguished from that of safety helmets gathering, then it signifies expression rather than mere reiteration in different quantity (or more labour). The application of creativity is evident from the way of expression, as it did not create mere reproduction involving a different number of people in the gathering under the same concept.

Interpretation of copyrights and John Locke's theory via lens of the doctrine was critiqued by various scholars like Hettinger, Mossoff [9] and Nozick[10]. Nozick contends that the intellectual property rights used only through labour as mentioned John Locke labour theory is justified but only as far as it does not harm others. However, John Locke's labour theory expands beyond just emphasizing 'labour, it is restricted to labour only when viewed in combination with the doctrine of SOB.[11] The representation of Sweat of the brow doctrine is interpreted as beyond the scope (far more liberal, in sense of interpretation and superfluous in its applicability) of copyrights, by the author. Because it would not be economically beneficial as envisaged by the courts, for the brainchild of such expression of thought or the actual person from whom the concept was brought into existence in tangible form, if reiterated mechanically.

For example, if there was a similar gathering of people in 2014 in superman costume but larger in number; then according to the doctrine - this also must be given copyrights, as there is larger time, efforts and labour involved in making such event happen. Rather than

[7] Largest gathering of people wearing helmets, Guinness World Records
https://www.guinnessworldrecords.com/world-records/largest-gathering-of-people-wearing-helmets
[8] Largest gathering of people dressed as Superman, Guinness World Records
https://www.guinnessworldrecords.com/world-records/largest-gathering-of-people-dressed-as-superman
[9] Supra, Note 2
[10] William Fisher, Theories of Intellectual Property
https://cyber.harvard.edu/people/tfisher/iptheory.pdf
[11] Supra, Note 2

providing exclusive rights and benefit, the person who introduced such expression of thoughts would be clearly jeopardized based on various other factors like the contacts, capital, in short 'resources to monetise from the work created'. Consequently, it fails to not only provide rights but even acknowledge the intellectual creation. This is similar to the 'quality versus quantity' discussion in Ladbroke case, in which the quality was given primacy to determine originality of the work.[12] The outcome of the discussion is that, when viewed through the lens of creativity, by mere mechanical reproduction the work emphasises only on the quantitative aspects than the quality of the work produced (quality - "intellectual contribution"). Also, one could note that this example resembles closely to the Eastern Book case, where the courts rejected to consider the mechanical process as a substantial criterion (which expected skill and judgement along with labour).[13]

In effect, the doctrine not only places the 'labour' in higher pedestal, but it also undermines 'creativity'. In University of London case the court held that, creativity in a work is immaterial, as it originates from the author and not by copying.[14] This ignorance of creativity was opposed by many, and the proposal or the commonly accepted practice would include labour but, in conjunction with 'skill and judgement' or 'skill or judgement'.[15]

CONCLUSION

By comparing the application of copyrights apropos to the statement with an example of Guinness World Records the author intends to imply that the 'narrow interpretation'(via the doctrine) of labour theory of John Locke with sweat of brow doctrine disregards the basic principles of copyrights. Inference from article would be that the basic principles does not serve the purpose when interpreted with only a single aspect of copyrights but when interpreted in conjunction or in wholesome manner that involves all three factors skill, judgement and labour.

[12] Ladbroke v William Hill, (1964) 1 WLR 273
[13] Eastern book co. v D.B. Modak (2008) 1 SCC 1
[14] University of London press ltd v University tutorial press ltd, [1916] 2 Ch 601
[15] David Langwallner, Originality in Copyright Law after Feist and CCH Canadian, Volume 2, Heinonline.