

LACK OF RECOGNITION OF DIRECTORS OF FILM IN THE COPYRIGHT ACT OF 1957 AND ITS IMPLICATION***MUTHUMANI SOMASUNDARAN¹***Analysing the need for statutory recognition of the intellectual labour of directors of Indian films***Introduction**

Film is a collaborative art form; wherein various works worthy of copyright protection are incorporated in the right way and a new work worthy of copyright protection is created. All films are collaboration of various art forms, however the proportion and the style of such a collaboration is purely the call of the Director. Director is the key contributor and creator of film.² Director creates the ultimate style, structure, and quality of a film. Despite the indispensable role played by Directors, still our law is not providing any copyright protection to the Directors of Indian Cinema. According to the Copyright Act of 1957, the producer is the author of the work³ and there is no right for director over the film he created. One may say that at the inception stage of the Copyright Act of 1957 'Directors' were not considered as Authors of films because of the world-wide practice and hence only producer was recognised as the Author of the film, with total copyright protection.⁴ However, the world-wide practice widely changed as film and film industry evolved. With growth of auteurism⁵ & Auteur theory⁶, the indisputable position of directors in the creation of film was recognised and rewarded by all major jurisdictions. By the end of 20th century all countries in the European Union statutorily recognised the contribution of Directors in the creation of film by making them a co-author of film.⁷ They recognised Directors as authors/co-author/joint author of Film along with the producer. US is not having statutory recognition for directors; however, the director's interest are being protected by means of strong parallel legal arrangements by

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² World Intellectual Property Organization, *Rights, Camera, Action! Intellectual property rights and the filmmaking process*, 2022, 2nd Ed. Geneva. P.96

³ S.2(d)(v), the copyright Act of 1957

⁴ In US Motion Picture, ie the film, were treated as a work made under 'Work for Hire'. This made Producer the Owner as well as Author of film, unless there was a contract to the contrary. In UK from 1956 to 1988 'the maker', ie the Producer was deemed as the Author and Owner.

⁵ Andrew Sarris, *The American Cinema: Directors & Directions- 1929-1968*, (Perseus Books Group, 1968).

⁶ A theory propounded during the French New Wave of Films during 1950s, first published in *Cahiers du Cinéma*

⁷ For Eg: The Copyright, Designs and Patents Act, 1988 (CH. 48) (United Kingdom), The Copyright, Designs and Patents Act, 1988 (CH. 48) (United Kingdom) etc

means of standard terms of contract⁸ and collective bargaining. By the 1990s it was a settled position in major jurisdiction with prominent film industries, that Directors are vital presence in the film making process and their creative labour is to be recognised and protected.

Author of film

The author is the person who creates something that is worthy of copyright protection, creativity, originality and expression of the same plays a crucial role in fixing authorship. Even though the Indian copyright was enacted in Independent India, it had striking similarity to the Copyright Act of UK, 1956. The Copyright Act of 1957 was drafted in a period wherein Director of the film was not recognised as the author/co- author of film, along with the producer in UK.⁹ The intellectual efforts of the Director who is the key person for the creation of the film was left unrecognised, and they weren't recognised as the author while Copyright Act of 1957 was enacted in India. The law as it was enacted in 1957 identified the owner of film at the time of completion of film as the author of film. In practicality the law was identifying the producer as the author and owner of Films. However, this provision¹⁰ lacked clarity and was creating confusion in determining who is the actual author of the movie that shall be deemed as the author of film. Thus, the interpretation clause pertaining to authorship of the film was redefined in 1994¹¹. The amendment of 1994 was a right opportunity for the law makers to redefine authorship of film in India by recognising both the 'maker'¹² and 'creator'¹³ of film as the authors of film. However, the 1994 amendment did not recognise authorship status of Directors, instead it redefined the authorship clause of film and specifically stated that producer of the film shall be the author of the film. S.2(uu)¹⁴ was inserted to provide more clarity to who shall be a producer. This approach is not addressing any aspect of 'creativity and its protection' which is one of the cornerstones of copyright mechanism. Even when most of the Common law countries started recognising joint authorships in the case of films, we are considering producer as the sole author of films totally ignoring the creative contribution of the Director. There is hardly any difference between the concept of Authorship and Ownership when it came to films in India,

⁸ In US, the Directors Guild of America negotiated collectively for the director's fraternity and ensured what was due is secured by means of Contracts.

⁹ S.13- Copyright in Cinematograph Films, The Copyright Act 1956, (4 & 5 ELIZ. 2 CH. 74) (United Kingdom).

¹⁰ Subs. by Act 38 of 1994, s. 2, for sub-clauses (v) and (vi) (w.e.f. 10-5-1995).

¹¹ S.2(d)(v) of the Copyright Act of 1957

¹² 'Maker' of a film is the 'Producer' of the film, means the person by whom the arrangements necessary for the making of the film.

¹³ 'Creator' of a film is the 'Director' of the film, means the person whose intellectual contribution and creativity is being transferred to create a film.

¹⁴ The Copyright Act of 1957

the statute is recognising producer as the author, and author becomes the first owner of the work. The 2012 Amendment extended copyright protection to authors (writer, lyricist, composer) and performer (singers) for their respective contribution and no contract can take away their royalty, thus ensuring economic interest of the selected authors and performers. The Amendment of 2012 was yet another golden opportunity to recognise Directors as authors/co-authors of Cinematographic film. The amendment of 2012¹⁵ was a game changer for the authors of work incorporated in the film, like the writer, composer, lyricists etc. On one hand the 2012 amendment is victorious to achieve the proposed agenda of 'Protect Creative authors in films and music industry' but it miserably failed in incorporating Directors in the amended provisions. Even after recognising and protecting the rights of scriptwriters, lyricists, music composers and performers no recognition were given to directors.

There was recommendation in the Copyright (Amendment) Bill, 2010 to amend the authorship clause relating to film and thereby extending copyright protection the directors of film. Recommendations to amendment of Authorship clause of film¹⁶ and explanation to the joint authorship in the case of film¹⁷ were entirely rejected. For substantiating the move of rejection, the Parliamentary standing committee (PSC) quoted the US practice¹⁸, wherein the Director is not treated as the author of a film. PSC came to the conclusion that there needn't be a statutory recognition for rights protection of Director, it shall be well managed by contractual arrangements between the Director and producer.¹⁹ In reality Indian film industry is unprepared when it comes to contractual arrangements and distribution of intellectual property through contracts²⁰. Even established and legendary directors are having a tough time in negotiating for their rights and protection of their intellectual labour.

Though the lawmakers quoted the example of US practice of contractual arrangement is sufficient for protecting the creative labour of the directors, the Judiciary observed the importance of revamping the Copyright Act to bring the directors also under its

¹⁵Proviso of S.18, The Copyright Act, 1957. Ins. by Act 27 of 2012, s. 8 (w.e.f. 21-6-2012)

¹⁶S.2d(v), The Copyright Amendment Bill 2010.

¹⁷S.2(z), The Copyright Amendment Bill 2010.

¹⁸ The Directors Guild of America does the collective bargaining for the director's community in ensuring that the Film directors are getting their due on copyrights even when the statute is not explicitly conferring rights upon the Directors of Film.

¹⁹ 227th Report On The Copyright (Amendment) Bill, 2010 By The *Department-Related Parliamentary Standing Committee On Human Resource Development*, (2010), (Presented To The Rajya Sabha On 23rd November, 2010) (Laid On The Table Of Lok Sabha On 23rd November, 2010), Rajya Sabha Secretariat, New Delhi, full copy of the report available At <http://www.prsindia.org>, P.114

²⁰Neeraja Ramesh, *A fight between creative rights and legal protocols*, Times of India (April 23, 2021, 2:29 PM IST) <https://timesofindia.indiatimes.com/blogs/tracking-indian-communities/a-fight-between-creative-rights-and-legal-protocols/>

purview²¹. While making this observation, the Court quotes the rights of directors as mentioned in the Copyright Design and Patent Act, 1988 of UK²², and criticized the Amendment of 2012 for not recognising the rights of Directors. The Court further quotes from a book on Bergman,²³ states that the work of director is equivalent to that of a craftsman. This observation made by the court gives a clear indication that there should be provisions for protecting the creative labour and effort of director.

If film is to be treated as a 'Work' worthy of copyright protection, the Director should also be identified as the 'Author' or one among the authors of film because of their intellectual and creative contribution. But Indian law always failed to recognise this effort of Director, instead authorship vested upon the person who is contributing purely on financial and entrepreneurial terms. Naturally the judiciary is also bound by the wording of statute when it comes to identifying the author of film, ie producer is the author and owner of film.²⁴

Role of film director of India

Generally, a film is kick-started by a producer or a production house, but that is not the case in India, barring a few Bollywood films and a handful of regional films. The functioning style of Indian film industry is unique as against other film industries. The Director is in charge of the three main phases, which are pre-production, production and post-production²⁵. In India essentially pre-production stages are initiated, guided, monitored and anchored by the Director, unlike in the foreign film industries. Mostly a Director would identify a story that shall be filmed. There is no hard and fast rule for this selection process. Once the story plot is finalised, the writer-Director duo, essentially lead by the Director, shall gear towards the ideal lead casting of the movie. Getting a producer/production house/investor for a film without any commercially bankable artist is still a herculean task in Indian film industry. Unlike the major foreign film industries, we cannot come to the conclusion that a film is initiated by a producer. The role of the Director is not confined to scene capturing, artist training, character grooming etc alone in Indian way of filmmaking. In India, filming process demands spontaneity and to a large extent crisis management skills, it is the Director plays the role of an administrator and even that of a crisis manager in the film making process. This is very

²¹ *Sartaj Singh Pannu v. Gurbani Media Pvt Ltd & Anr* 2015 (4) ARBLR 176 (Delhi).

²² S.9, S.77, S.93B of the CDP, 1988,

²³ Birgitta Steene, *Ingmar Bergman: A Reference Guide*, Amsterdam University Press, 2005

²⁴ *Ramesh Sippy v. Shaan Ranjeet Uttamsingh & Ors*, 2013 (55) PTC 95 (Bom), *Kabir Chowdhry v. Sapna Bhavnani & Ors* Interim Application (L) No. 5420 of 2020 in Commercial IP Suit (L) No. 5415 of 2020

²⁵ MICHEAL RABIGER, *DIRECTING FILM - TECHNIQUES AND AESTHETICS*, p.57 (Focal Press, 3rd ed. 2003).

unlikely of foreign production pattern, where the shoot happens strictly in term of the schedule prepared at the time of pre-production. Role of Director in post-production stage is also much more demanding than what is in foreign film industries. Director's creative intervention is required in editing, mixing (both audio and video), dubbing etc. In India the involvement of the Director is way higher compared to his counterpart in foreign nations, and still the Indian Directors are denied of economic and moral rights.

Rights missed out by directors of India

Since law is not recognising the Directors as co-authors or joint authors of film, along with the producer, the directors are missing out both economic and moral rights they are rightfully entitled to. In 2012, while rejecting the recommendation to recognise the Director as the Co-Author of film²⁶, the US practice was quoted as the example by the Parliamentary standing committee. In US there is no statutory recognition of directors, instead the collectively bargained contract is covering all practical aspects of both economic and moral right. The film making arrangements existing in India is yet to get structured like the US film industry. In India producers and directors venture into a project without an agreement, this leaves lots of ambiguity as to the remake rights, right to refusal, profit-sharing for revenue beyond theatre hall etc²⁷. This scenario ultimately helps the producer to enjoy whole of the revenue generated from sale of remake rights, dubbing rights, satellite and digital rights etc.

Major economic rights missed out by the directors are the royalty from the satellite rights, Digital rights, Remake rights, dubbing rights etc. The revenue generated by the sale of satellite right and digital rights largely depend upon the popular names associated with the film or its box office performance. There are many instances wherein the satellite right is sold because of the brand value of the director also. In such situations directors are directly contributing to the revenue generation of the movie. However, there is no benefit sharing from the side of producers for revenue generated from the sale of satellite and digital rights. If there was statutory recognition as in UK, all directors could have claimed their share of royalty from the sale of satellite and digital rights.²⁸

²⁶ S.2(d)(v) The Copyright Amendment bill of 2010

²⁷ Neeraja Ramesh, *A fight between creative rights and legal protocols*, Times of India (April 23, 2021, 2:29 PM IST) <https://timesofindia.indiatimes.com/blogs/tracking-indian-communities/a-fight-between-creative-rights-and-legal-protocols/>

²⁸ EC- Directive 93/83/EEC (Satellite and Cable Transmission), EC- Directive. 93/98/EEC (Harmonizing the Term of Copyright and Certain Related Rights)

India has more than 25 regional language which makes the sale of dubbing and remake rights a lucrative source of revenue beyond theatre halls. Due to lack of statutory recognition the directors are missing out on their rightful claim over the remake rights and dubbing rights. Remakes rights are bought by people who wish to remake the film in a later stage in the same language or to a different language. This essentially happens after people watching the movie, which is essentially the creative work of a director. But the directors are excluded when the 'rights of remake' is appropriated, since they are not recognised as the author of the film in our law. The norm regarding the remake rights is now determined by industry practice, and it is made valid by entering into a contract. In some cases, a share from the sale of remake rights is shared with the director, but in majority of the cases the remake rights are sold even without the knowledge of the directors. The directors are left in this darkness since they are not having any legal status to claim it. Despite being the director of a sensational film like 'Aranyakandam' and winner of National award for best debut director, the plaintiff (director) couldn't get any relief when the dubbing rights of his film was sold by the producer without his knowledge²⁹. Similarly, when the dispute relating to remake of Tamil film, 'Valee' came up, remake and dubbing right was totally taken away by the producer without any benefit sharing with the director cum writer of the film³⁰. Even the popular directors of film industry are struggling hard to get their economic and moral interests protected, this throws light to the fact that there needs statutory recognition of moral and economic rights of the director and the same shall not be left to mere contractual arrangements.

In India moral rights over the films are enjoyed by the producer, not by the director, as the former is the author of film. The moral rights as provided under S.57³¹ of the Copyright Act presuppose authorship. Producer is the "Entrepreneurial Author" of films, and at no stage we can call them as the "creative author" of film. Still Indian copyright law is conferring Moral rights of films to the producers alone, and neglecting the actual creative author of Film. This lack of recognition has serious economic and moral impact on the director. There are umpteen examples wherein the altered, edited, and mutilated version of film is circulated in theatres without the permission of the director this is a clear violation of right to final cut. Right to final cut is a practical application of Right to integrity. Final Cut is the final version of film viewed

²⁹*Thiagarajan Kumararaja v. M/S. Capital Film Works (India) Pvt. Ltd &Anr.* C.S. No. 93 Of 2012, Madras High Court, decided on Sep., 09 2016, full text access from <https://indiankanoon.org/doc/45684202/>

³⁰*S.J Suryah (a.k.a. S. Justin Selvaraj) v. S.S Chakravarty &Anr*(OSA 138/2021), Madras High Court ,decided on Sep., 12.11.2021

³¹S.57. The Copyright Act, 1957

by the audience on screen. The 'right to the final cut' is the right to determine the final version of the film and this right is enjoyed by the directors of other prominent jurisdictions. However, in India right of final cut and right to integrity over the film is enjoyed by the producer alone.

A film is the external manifestation of the intellectual labour and creativity of the director and they are entitled to incentives from the work they created. It is an undisputed fact that the film is a collaborative art form, but for the audience, the film is essentially known as the work of the director. A director has every right to be known as the creator of the film. The director of a film has the right to be identified whenever the film is shown in public, this includes the theatre run, broadcast, internet release, cable program services or even on the copies of the films that are issued to the public. This is a practical application of right to paternity. In countries like US the director's right to be known as the creator of work is non-negotiable and the same is being protected through collectively bargained union contracts. In UK there is statutory provisions protecting the moral right of director³². However, in India there is no mandate to display the name of the director in the title card, posters or other publicity events; which means that a director can be denied of his right to be known as the director of the film. Even National award-winning movie is released without the name of its Director and it is a clear violation of an artist's paternity right. In *Sartaj Singh Pannu v. Gurbani Media Pvt Ltd & Anr*³³. the film Director was the petitioner and he sought orders restraining the producer from releasing the film in dispute, without giving him credit as the 'sole Director' of the film. The Court declined the relief sought by the petitioner, since there is no statutory provision to honour the prayer of the petitioner. Right to paternity is not just connected to the prospective economic benefit an author may derive from exhibiting their name as the author of a work, it has a self actualisation and recognition element attached to it. Recognition is a stronger desire than remuneration for artists many a times, hence denying their right to be recognised as the author of their work is a highly testing affair.

Conclusion

By the wake of 1990s major industries across the world started recognising the film Directors as a co-author /joint author of film. Subject experts of India also attempted to bring in this

³² S.77, Copyright, Designs and Patents Act, 1988

³³ 2015 (4) ARBLR 176 (Delhi)

change in our country. This was clearly reflected in the proposed amendment submitted on 2010. The proposed amendment bill of 2010 treated Directors as Joint authors of film along with the producers and it had provisions for recognising and protecting the rights of Directors³⁴. However, the recommendation to redefine film authorship to make director of film a co-author along with the producer was summarily rejected by quoting the US practice. Collective bargaining is a successful tool used in US system for managing the copyright, but that is not the case in India. In US there are specialised agents and representative of unions and guilds to negotiate the terms and conditions for and on behalf of the director and producer. This American way of settling businesses in the entertainment sectors is still not familiar for Indian Producers and Directors. There is no standardisation of even basic terms of contracts and in most of the cases Directors enters into contract without due knowledge and awareness about the implications of the terms mentioned in there. The terms of contracts are often one sided, supporting the interests of the Producers. The industry has to evolve and travel long way to reach the stage wherein contract can protect what law failed to recognise and protect. As opined by the Honourable court in *Sartaj Singh Pannu v. Gurbani Media Pvt Ltd &Anr*³⁵. The copyright law relating to Films are anomalous in nature, director of a film is a moving force behind the creative work that goes into film making. The court further highlighted the need for statutorily recognising the creative work and effort a director by recognising him as an author or even as joint author. The role of a Director in the creation of film is cardinal and Director is the one who conceives, conceptualise and create a film, the film is essentially the Directors creative labour and effort, it is unjustifiable to alienate them from authorship of the film. One cannot deny the role played by the producer in realisation of film. Film is an art form that demands huge capital investment, and that is realised by the producer, but no film can be made with Capital investment alone, it needs intellectual and creative investment as well, and that portion is realised by the Director, hence both the Director as well as the producer are important to the completion of a film. It is pertinent to recognise the creative contribution of director by recognising them as the co-author of film. The economic and moral rights are to be recognised through statute rather than leaving it to the contractual arrangements.

³⁴Two provisions were mainly focused by this bill for providing co-authorship/joint authorship status to the Director, namely s. 2(d)(v) and s. 2(z), the former defining authorship status and the later defining joint authorship.

³⁵ 2015 (4) ARBLR 176 (Delhi)