

**VARIED FACETS OF COPYRIGHT LAW: SPECIAL REFERENCE TO  
PERFORMER'S AND CELEBRITY RIGHTS**

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**INTRODUCTION**

The powerful human mind is an epicentre of lot many creations of various forms of properties which refer to as Intellectual property rights. These properties take various forms which are classified as varied intellectual property like copyright, patent, trademark etc. These are to be protected in the same manner as any physical form of property for the value attached to the same. These creations can generate a fortune for some people and be one of the best ideas of business which can make a country grow. The power is endless, but it requires protection from the countries and Governments to ensure that there is no dearth of the innovation and creation in the society for the reason of not enough protection from and widespread infringement. Thus, the countries have two main reasons to protect the IPs. Firstly, to keep the reward theory in place and not let the economic justification face any setback by way of infringement. Secondly, to keep the innovation and creativity intact in the society that leads to the developed society.

Intellectual Property is divided into two broad categories i.e., the Industrial property and Copyright. When we refer to Copyright, we are specifically referring to author's rights. The rights in the form of creations like books, music, painting, sculptures etc. The main feature of copyright is the originality and the form of expression. Unless something created is original and expressed in a tangible form and not just an idea there will be no protection granted for the same. The ideas cannot always be original, but the form of expression should always be original to gain the protection. Thus, these things make the features to create a copyright that can be protected by law. The copyrights are considered as bundle of rights and not just mere single form of right. Copyright in itself has two important rights economic and moral. The moral form of right is not available in any other form of intellectual property; this is a unique feature which remains attached to the copyright no matter it gets transferred to any other

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person through license or assignment. Thus, copyright is called the right given to the author and importantly referred as author's rights. Even if the author dies the moral rights in the form of right of paternity and right of integrity. It's not always the economic advantage that these properties create but it is also the direct link to the author and the name and fame that is to be protected in these forms of copyrights. The etymological origin of the word "moral rights," was taken from the French term "droit moral", which denotes the non-commercial or intrinsically attached rights to the author. This concept reduces the original economic approach to copyright with indefinite character rights.<sup>2</sup>

The basic difference when it comes to invention and literary or copyright is the form it takes the creation of mind transferred in a form of book, music, sound, painting etc and an invention would take a different form of technology that is utilised in the industries and in the market by individuals to ease the problems of the humans.

### **PERFORMER'S RIGHTS UNDER INDIAN COPYRIGHT ACT**

The Copyright Act, 1957 that was one of the first legislation drafted in by Indian framers as per the needs but the need of changing it and altering it came very soon and thus the alteration happened in 2012. A very important amendment was related to the Performers' right in India. The effect came in the Chapter 8 of the Copyright Act and was also in consonance with Article 14 of the TRIPS agreement and the similarity can also be seen in Article 5 to 10 of WPPT Treaty.<sup>3</sup>

When we specifically talk about the rights attached to the cinematograph movies and the cinema, all the bundle of rights attached like the music, acting, singing, dramatics everything becomes the sole economic right of the producer of the cinematography film and the original authors are just left with minimum rights mainly the moral right not to use the work in a manner that derogates the original author. The commercial exploitation of the creative process is useful for the original authors, and it was discussed at various world forum meets but they were not recognised until the Rome Convention 1961.

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<sup>2</sup>PAUL GOLDSTEIN, INTERNATIONAL INTELLECTUAL PROPERTY LAW: CASES AND MATERIALS, 295 (University Casebook Series, 2001).

<sup>3</sup>SELVAM & SELVAM(Dec 10, 2020), <https://selvams.com/blog/judicial-recognition-of-performers-rights/>

The international treaty had an intention of providing the protection against any usage that is without permission from the authorized author and thus the broadcasting of the performances which are outside the purview of use or permissions not granted needed to be protected so that the performers are the content creators have their performing rights intact. These rights are essentially very important for the copyright owners.<sup>4</sup>

Indian intellectual property laws are mostly derived from the international legislations which are either the British laws or the international treaties that India becomes signatory to. The actual laws in India related to the performer's right were nonexistent before the amendments made in the IP laws specifically the Section 38 of the Copyright Act. After this amendment the royalty or the imbursement for the performance was being recognised in the Indian laws as well.<sup>5</sup>

If we look at the specific Section of the Act related to the performer, section 2(qq) of the Act defines performer which includes wide variety of people showcasing their talent like an acrobat, a music composer, a singer, actor etc just to name a few. There are the societies also that have now taken the role to highlight these rights like the PRS i.e. Performing Rights Society which acts as an intermediary in supporting the rights and managing the royalty collections for the copyright holders.<sup>6</sup>

To understand the outlook, the importance of the performers is very remarkable in the whole entertainment industry. Nothing works if it is not performed and thus the economic gains are to be protected for the ulterior importance of proper functioning of the same. The performers have lost considerable amount till date for non-recognition of these rights but now protecting and recognising these rights is an important step towards the apt protection of IPs in India. These form a part of not the original form of copyright but the related or the neighbouring rights that are the ancillary rights attached to the main original rights.<sup>7</sup>

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<sup>4</sup>Nithin V. Kumar, *Performers Rights under Indian Copyright Act*, (Dec 9, 2020) <https://www.bananaip.com/ip-news-center/ip-blog-a-thon-performers-right-under-indian-copyright-law-part-i/>

<sup>5</sup> Swetha, *Delusion Over Indian Performance Rights Society Being A Part Of Copyright Society*, (Dec 11, 2020), <https://www.mondaq.com/india/copyright/709542/delusion-over-indian-performance-rights-society-being-a-part-of-copyright-society>

<sup>6</sup> Id.

<sup>7</sup> Aashita Khandelwal, *Performers Rights in India*, *Fastforward Justice law Journal*. Vol. 2 (1) 2018.

Related or neighbouring rights form an ancillary part of the copyright, and they add to the overall enjoyment of the rights. Intellectual property law generally adheres to the theory that performers shall be provided the rights in relation to their performances. Performers shall have the right to manage not only the performing episode but also any further form of utilization of such performances. These kinds of occurrences need to accord noteworthy protection to the rights of performers came about with the expansion of technology that allowed performances to be recorded and broadcast.<sup>8</sup> The early judgments that came in India never recognised the performer's rights and favoured the producer rather than the original author of the work. Like in the case of *Fortune Films International v Dev Anand*<sup>9</sup> it was said by the court that the actors in a movie do not possess the performers' rights and it is the producer that enjoys the ultimate rights. But with the international recognition of the same and gradual acceptance of the same in the Indian Copyright Act changed the view of the judiciary as well which led to the wider interpretation and the addition to Section 38 and 39 of the Indian Copyright Act. *The Super Cassettes Industries v. Bathla Cassettes Industries*<sup>10</sup> this case and decision in it marked an important step towards the recognition of the performer's rights which in a way stated that the re-recording of any song cannot be done without the proper approval and consent of the author would amount to violation of the copyright and the related right attached to it. Original performer has all the rights to consent for any usage that is done of the copyright, and it was duly recognised in this particular case and it became a precedent to then recognise and protect the performer's rights under the Indian Copyright Act 1957 as well.

Another important case in the same line is *Neha Bhasin v. Anand Raj Anand*<sup>11</sup> the main issue here was of what would constitute "live-performance", it was held in this case that every performance has to be live at the first instance if it is live or if it is recorded in the studio, both have to be performed by the performer in the first instance. If the copyright created in

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<sup>8</sup> Michael Seadle, *Copyright in the Networked World: Moral Rights*, Vol. 20(1) 124-127 HI-TECH LIBRARY. 2017.

<sup>9</sup> AIR 1979 Bom 7

<sup>10</sup> 107 (2003) DLT 91

<sup>11</sup> 2006 (32) PTC 779 Del.

such a manner is exploited without the prior consent of the performer than in such a case, it would be infringement of the performer's right.

### **CELEBRITY RIGHTS: GLOBAL PERSPECTIVE**

In our country we do not have specific rights identified as celebrity rights, but it is an issue which requires some attention from the public at large. The celebrity life is considered as public life in lay parlance and there is widespread infringement of privacy rights attached to their copyrights. The wide misuse of photographs and morphed images is a day-to-day activity which a celebrity has to be immune with to survive the industry. Tabloids and news reports without prior permission of the celebrity is also massive infringement. The cost of being famous is paid with losing the privacy rights and complete denial of privacy in certain matters. The celebrity at home or walking out in public is always at the risk of losing some repute and information which in normal circumstances would not be used unless a proper consent is sorted. In the famous case of *Martin Luther King Jr Center for Social Change v American Heritage Products Inc*<sup>12</sup> in the present case the facial sculpture of the famous leader was being sold by a company without the official and prior consent of the family members. The use of such art for financial gain without permission does infringe the IP right gained in the form of personality rights being infringed. The damages in such cases are to be calculated as per the fame the celebrity enjoys. The case also identified the right of publicity which was considered as distinct from the privacy. The right of publicity identifies that the name and likeness of the celebrity cannot be used for economic purpose without consent.<sup>13</sup>

Looking at the current Copyright Act that we have, the celebrity rights are not identified but the rights of performers are recognised which can be considered as similar to the above ones. The contributions of a few well-known intellects cannot be neglected like Kant and Hegel who have understood the concept of private ownership and property and the theory the not only the labour but the will of a person can also be instrumental in owning the property rights.<sup>14</sup>

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<sup>12</sup> 250 Ga. 135, 296 S.E.2d 697, 1982 Ga.8 Media L. Rep. 2377

<sup>13</sup> Tabrez Ahmed & Satya Ranjan Swain, *Celebrity Rights: Protection under Copyright laws*, Vol. 16 JOURNAL OF INTELLECTUAL PROPERTY RIGHTS 7-16 (2011).

<sup>14</sup> G.W.F. HEGEL, *PHILOSOPHY OF RIGHT* (Oxford Univ. Press 1952).

This view leads us to the consideration of personality linked to the ownership of any privately owned object or the IP rights. The artist leaves a specific personality in making an art form which can be any form like a song, painting etc and thus creating that kind of extension of personality needs to be protected and even paid adequately so that these authors are motivated to create more such art forms and are not de-motivated by the unauthorized usage of such work.<sup>15</sup>

In the case of *Sonu Nigam v. Amrik Singh*<sup>16</sup> the case arose when the pictures of famous Indian singer were used to promote an upcoming music award function without the consent. The official award pictures used were consented for but the various billboards that were placed across the city for the promotion were not consented to by the singer and thus violated the publicity rights attached to the fame of the singer. Bombay High Court recognised and identified the existence of the personality and publicity rights attached with the fame of celebrities and thus ordered removal of the hoardings.

In yet another such case *D.M. Entertainment v Baby Gift House*<sup>17</sup> the case arose when the defendants in the present case started selling dolls that were the miniature imitations of likeness of Daler Mehendi. In addition to resemblance of the personality of the singer the doll can also sing few lines of the famous composition of the singer. Aggrieved from the conduct, the singer had filed for a case with the help of his company, the Delhi High Court held that this was the clear infringement of the personality rights that singer Daler Mehendi has gained because of the celebrity status achieved and thus the consent and approval of the singer is pre-requisite before using the personality features for commercial activities.

In the case of *Shivaji Rao Gaikwad v. Varsha Productions*<sup>18</sup> the superstar of the south, Rajnikant had filed for this case in which he alleged that his personality/ dialogue delivery / persona and his intrinsic celebrity features are to be mocked and copied in a cinematography filmed named “Main hoon Rajnikant”, which he objected and also stated that the story line

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<sup>15</sup> Neil Weinstock Netanel, *Copyright Alienability Restrictions and the Enhancement of Author Autonomy: A Normative Evaluation*, (Dec 1, 2020), [https://www.mondaq.com/india/trademark/777368/celebrity-rights-is-it-important-in-india#\\_ftn25](https://www.mondaq.com/india/trademark/777368/celebrity-rights-is-it-important-in-india#_ftn25)

<sup>16</sup> MANU/MH/0517/2014.

<sup>17</sup> MANU/DE/2043/2010

<sup>18</sup> (2015) 2 MLJ 548.

and depiction of his name and character in the movie would be derogatory. The court here held that there is no doubt in the level of fame that the celebrity has gained and the rights attached to it and thus the facts in the present case and material evidences are easy to prove the infringement and thus the same were being stopped.

In *Rajat Sharma and Another v. Ashok Venkatramani and another*<sup>19</sup> in the present case the Zee Media house in promotion of their new anchor-less news channel “Zee Hindustan” has made an advertisement where they used the name of the famous news anchor “Rajat Sharma” with a few others and stating that who would want to listen to the famous shows that they telecast once this channel is on Air. This was being alleged as an infringement of the personality rights that are attached to the famous news anchors. The court relied on the earlier decisions passed on the same line and principles and identified the celebrity rights that are a part and parcel of the people who acquire the fame and the use of their name and personality traits or famous things attached to them have to be done only with the prior consent.

## **CONCLUSION AND SUGGESTIONS**

The Copyright, considered as bundle of rights, provides varies facets to the intellectual property. The recent trend and addition to these bundles have been the performers or the recognition of the celebrity rights. This facet is unique in its sense as it would focus on the neglected relates to the neighbouring rights which are very important and form a very important form of IP. It is the right time looking at the blatant breach of privacy, performance and celebrity rights in our country that a separate legislation or much improved form of the current laws need to be in place to protect the innovative creations and stop the misuse that is done of the rights which these performers/celebrities acquire by the skill and art that they have.

The secondary set of rights in the form of the performer and celebrity right and its protection is the need of the hour and the growing litigation in this matter shows the importance and the

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<sup>19</sup> CS(COMM) 15/2019

awareness in this relation which the celebrities have gained, and the courts have also given decisions in the line to protect the same which can be seen as a positive step towards the full realisation and protection of such rights.