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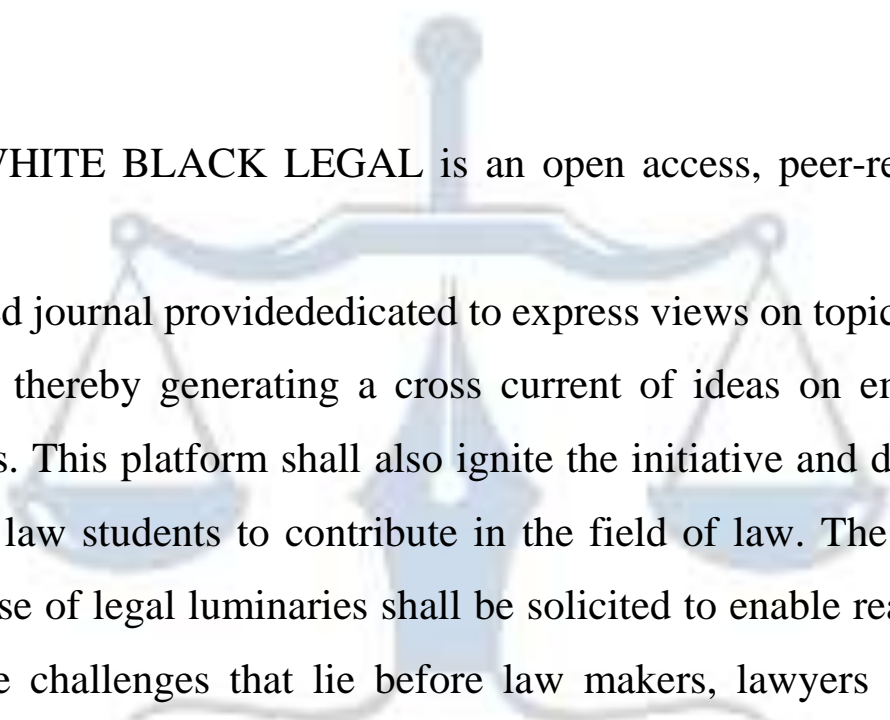


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ABOUT US



WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

COPYRIGHT CONUNDRUMS: CHALLENGES IN CINEMATOGRAPHY AND PERFORMER RIGHTS

AUTHORED BY - DR. BHAVANA SHARMA¹

Abstract: In the Copyright Act, 1957 provisions has been laid down for the protection of creative works but the obscurities in the matter of ownership, limited protections for performers, and evolving digital technologies has posed many challenges and disputes. Difficulties are being faced by the cinematographers, directors, and performers while asserting ownership and securing fair compensation for their contributions, especially in collaborative works like films, however, their rights are being recognised under Indian law but generally they fail to monetise these rights of theirs. In addition to this, the introduction of new technologies such as digital reproduction, AI manipulation of performances, and the global distribution of films have created new complications. However, from time to time Indian Judiciary has played the crucial role in recognition and protection of their rights such as in the cases of **Shri V. R. Srinivasa v. M/s. R.K. Films(1990)** and **Sushila Devi v. State**² and set the parameters, emphasizing the tension between moral rights and economic rights but still gaps are there in the context of digital platforms and global distribution. This article explores these conundrums especially relating to the intersection of cinematography, performer rights, and copyright law in India which India presents a complex landscape of legal challenges, highlighting the need for a more robust legal framework for the rapidly changing entertainment industry.

Keywords: Legal framework, cinematographers, performers, rights, challenges.

Introduction: Recognition and protection of the intersection of cinematography, performer rights, and copyright law is really a big challenge in the complex environment of ever evolving and ever-growing Indian film industry. However, in this direction, the Copyright Act of 1957 is the first step which laid down basic legislative framework governing creative works in India. This Act also laid down the provisions for the protection of different intellectual property, including cinematographic works. But, in the field of cinematography and performer's rights

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² AIR 1976 SC 1774.

especially relating to the ownership and control of creative contributions this does not provide a solution but gave rise to legal complexities.

Apart from this, with the rising developments in the field of digital media, introduction of streaming platforms and rapid increase in the use of AI technologies the question has arose; whether these traditional copyright protections are enough? The continuous developments in the field of technology has gave rise to new concerns such as the unauthorized use of performers' likenesses through deepfake technology, digital manipulation, and the challenges in ensuring equitable royalty distribution for creators. However, some of the Indian cases such as **Shri V. R. Srinivasa v. M/s. R.K. Films (1990)** and **Sushila Devi v. State**³, have addressed some of these issues but still many sides remain unanswered and the result is many creators are exposed to exploitation and undermined their control over how their work is used and compensated.

Understanding Copyright in Cinematography: Section 2 (f) of the Copyright Act, 1957 defines cinematographic work as any work expressed through a sequence of images, whether or not accompanied by a sound. Justice Krishna Iyer's gave a beautiful explanation of Cinematograph films as:

*"A Cinematograph film is a felicitous blend, a beautiful totality- Cinema is more than long strips of celluloid, more than miracles in photography, more than song, dance and dialogue and, indeed, more than dramatic story, exciting plot, gripping situations and marvellous acting. But it is that ensemble which is the finished product of orchestrated performance by each of the several participants, although the components may, sometimes, in themselves be elegant entities."*⁴

Now, the question arises who holds the copyright in a cinematographic films, this has been defined in section 17(b)⁵ of the Copyright Act, 1957. Section 2(uu)⁶ of the Copyright Act defines producer. And it has been clarified by the Supreme Court that who is the author of the film it is to be seen who has taken responsibility for making arrangements, particularly in a

³ AIR 1976 SC 1774.

⁴ Indian Performing Right Society v. Eastern India Motion Picture Association, 1977.

⁵ subject to the provisions of clause (a), in the case of a photograph taken, or a painting or portrait drawn, or an engraving or a cinematograph film made, for valuable consideration at the instance of any person, such person shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein;

⁶ "producer", in relation to a cinematograph film or sound recording, means a person who takes the initiative and responsibility for making the work;

financial sense.⁷

Challenges in determining authorship: Copyright subsists in a film as a whole which means that different creators do not have an independent copyright in a film but it is the producer in whom copyright to the film as a whole subsists. However, sometimes copyright subsists independently in some underlying work of a film such as the novel or biography on which the film is based, music, choreography, screenplay, etc. Many people believe that it is director who should have the copyright.⁸ It is very important to understand what stand has been taken by the courts on this point: in the case of **Sartaj Singh Pannu v. Gurbani Media**⁹, the court said that to decide whether a work of a director in a particular film is a work of artistic craftsmanship as to be decided on the matter of evidence¹⁰. In the case of **Shri. V. R. Srinivasa and Ors. v. M/s. R.K. Films & Ors. (1990)**, the dispute was relating to the ownership of the cinematographic work and the court held that the producer of a film is the owner of the copyright in a particular film. The concept of work-for-hire was reinforced in this case where the producer's rights override the creator's (director or cinematographer's) rights.

In **Kabir Chowdhary v. Sapna Bhavani & Ors.**¹¹, the question was whether any contribution made by a person in a film vests them with the copyright to the film. The court observed that in the context of a cinematograph film:

- i. the author is the first owner of the copyright;
- ii. the author means the producer (and no one else); and
- iii. the producer is he or she who has taken the initiative and responsibility for making the work.

The court emphasised points of “financial investment” and “risk of suffering losses” by the producers and said that even though the director is involved in every stage of making the film, it is the producer who is the author¹².

Performer Rights: When we talk about Performers (actors, musicians, dancers), they do not have full copyright over their performances. However, Section 38A of the Copyright Act grants performers' rights which include the ability to control the reproduction and public performance

⁷ Ramesh Sippy v. Shaan Ranjeet Uttamsingh & Others, 2013.

⁸ Sneha Mahawar, Facets of Copyright in a Film, <https://blog.ipleaders.in/facets-of-copyright-in-a-film/>

⁹ AIR 2022 SC 1287.

¹⁰ Supranote 8.

¹¹ Commercial IP Suit (L) No. 5415 of 2020.

¹² Supranote 8.

of their performances. This section allows them to claim authorship and prevent distortion of their work; also they are entitled to royalties for secondary uses of their performances (like reruns or digital streaming). The issue of the performers' rights and the ownership of their image and voice were raised in the case of **Sushila Devi v. State (1999)** where Delhi High Court ruled in favour of the performer's rights to prevent the unauthorized use of their voice and image but this case fails to provide overall copyright to the performance itself. And then in the case of **Indian Performing Right Society Ltd. v. Sanjay Dalia and Ors.**¹³, the court recognised the moral rights of performers laying down that unauthorized use of a performer's voice or likeness violated their moral rights but full ownership of the cinematic work was not guaranteed to them.

Moral Rights vs. Economic Rights: Section 57 of the Copyright Act guarantees moral rights to filmmakers and performers but does not give right to commercial use or control over the film's distribution thus they do not get fair compensation from film and depends on the producer. This tension between moral and economic rights was raised in the case of **Ramesh Chandra v. Filmistan Pvt. Ltd.**¹⁴, where a cinematographer raised the issue that a film was modified without his consent and thus violation of moral right. But court highlighting the limits of the moral right laid down that the cinematographer does not have ownership of the final work and thus could not prevent the alteration.

Digital Reproduction and AI Technologies: This era of digital technologies has raised new concerns also as the issues of deepfakes, rapid increase in AI technologies has raised new challenges to intellectual property laws also. And these technologies have raised threats to Performers and cinematographers whose work can easily be manipulated by these technologies. And the Indian law on this point is still in infant stages which is another concern to be dealt with. And the case on the point is **A.R. Rahman v. Universal Music and Anr. (2013)**, however this case is not directly related to AI but set a precedent regarding digital rights. In this case, Rahman sued Universal for unauthorized usage and distribution of his compositions and the court ruled in his favour recognising that the demand of the time is for tighter controls over digital reproductions of an artist's work.

¹³ (2015) 10 SCC 161.

¹⁴ AIR 1957 SC 106.

Royalties and Fair Compensation: Section 31 of the Copyright Act clearly lays down that that creators should be fairly compensated for the use of their works. But clearly, in the matter of regulation of royalties, especially in the context of streaming platforms and digital distribution they are lacking. The case on the point is **Ravindra Jain v. Union of India (1989)**¹⁵ where the dispute was relating to royalties for a composer. The court clearly laid down in the favour of performers' rights to fair compensation for the use of their works. But still not covers cinematographers and other film professionals.

Global Legal Variations and International Disputes: India is bound by international copyright standards for the Protection of Literary and Artistic Works as it is a member of the Berne Convention. But still Indian Legal system is not as strong as per global standards in the matters of copyright protection, moral rights, and the rights of digital performers. And when Indian films are being released on international platforms such as like Netflix, Amazon Prime, and others, it poses challenges for protecting the rights of creators. The case on the point is **Star India Pvt. Ltd. v. Piyush Agarwal (2010)**¹⁶, this case involved the issue of copyright infringement in a global context, particularly in relation to the broadcasting rights of films. This case highlighted the need for to adopt international standards in the matters relating to copyright matters.

Conclusion: The Copyright Act of 1957 clearly has laid down legal framework for cinematography and performer rights but this digital era has posed many challenges and time has come to see this Act in new light so that required changes can be brought about in this act. It is clear from above discussion that issues relating to ownership, compensation, moral rights, and digital content manipulation are the biggest challenges which have not been clearly answered which create uncertainty and disputes. Key judgments in the cases of **V. R. Srinivasa** and **Sushila Devi** have clearly gave new direction and shape to legal landscape in this field. As the global entertainment industry is evolving in the digital era, it has raised new challenges for the intersection of cinematography, performer rights, and copyright law in India. We can not deny this fact that with the evolution of AI, deepfake technology, and digital streaming are new concerns in the entertainment landscape and to overcome it India has to update its copyright laws to ensure fairer protection for cinematographers, performers, and other creative contributors.

¹⁵ (1983) 4 SCC 719.

¹⁶ 2013 (54) PTC 222.