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MUSIC AND COPYRIGHT IN INDIA

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INTRODUCTION

Over the many years of humanity, music has been with us at every corner of our journey. It has always been regarded as the one language that needs no translation across all cultures and societies of our world. India, in particular, is rich in essence with its cultural heritage of music. Great Kings and Emperors such as Akbar have provided patronage to this art which in turn led to the rise of countless famous *gayaks*¹, ranging from the venerable *Mia Tansen* and the esteemed *Dagar* lineage. Therefore it comes as no surprise that even today music stands as the backbone of our society, whether it is in education or in the entertainment sector.

As a nation of diverse ethnicities and cultures, India produces varying genres of music ranging from folk songs to Persian influenced melodies, the Hindustani and Carnatic classical singing and since recent times, to pop as well as many well-known Bollywood tunes. This evolution of music is not without its issues. One of the major contentions that have increased with such progress is the issue of copyrights of musical works. In earlier times, music could predominantly be found in stage performances, cassettes, radios or in theatre and television. However, the dynamic shift in technology has provided many more virtual platforms and internet services that allow for easy access of music to all. Such easy reach, in turn, makes the stealing of music much more possible. In order to prevent such acts, the laws of our society ensure that the rights of persons in their intellectual property shall remain protected.

MUSICAL COPYRIGHTS IN INDIA

Copyrights refer to a collection of *exclusive rights* that are afforded to the author/composer of the work. This copyright allows the composer to exploit the work as they wish. Moreover, it prevents others from stealing or copying such work of the author. Copyrights, while they also protect the expression of an idea, they cannot protect the idea itself. In India, as per the Copyright Act, 1957, the copyright privilege is extended to *original literary, dramatic, musical*

¹ A common Hindi term for singers.

*and artistic works.*² According to the Copyright Act 1957, musical work is:

“A work consisting of music and includes any graphical notation of such work but does not include any words or any action intended to be sung, spoken or performed with the music.”³

This definition has been adapted from the now repealed Music Copyright Act 1902 of UK, according to which any blend of harmony and melody which would either be printed or graphically produced or was written would constitute as musical work.⁴ A plain glance at the provision shows that in order to attract a copyright the work must be reduced to a material form and should be permanently recorded. The same was reiterated in the case of *Madhu vs. Ramesan and Ors*, where the Court held that the Act only recognizes musical work when “it is notationally written, printed or graphically produced.”⁵

In the case of musical works, there are two types of copyrights that arise, one of them pertains to that of the lyrics or the words and is in the nature of literary work and the other is assigned to the melody or the tune as the musical work. Under section 22 of the Copyright Act 1957, the term of a musical work copyright is the lifetime of the composer plus an additional sixty years.

There have been many instances in India, where the works of artists were stolen by others. The music director Ilaiyaraja had coaxed the need for better protection of musical works⁶. When a musical work is stolen or is exploited without the consent of the composer, it is an infringement of the copyright. Unfortunately, more often than naught when there is a composition, there is a high chance of Infringement. As per Indian laws, infringement is defined as, “*a reproduction of thereof otherwise than in the form of a cinematograph film*”⁷. In case of an infringement taking place, the composer of the work is allowed to claim damages or place injunctions as per the statute. An infringement may take place intentionally or unintentionally and always arises when the original composer is unacknowledged or their credit is taken by some other person. Sometimes an infringement can also take place due to subconscious copying. These too are actionable as willful copying. ⁸ A defendant's good or bad motives are irrelevant.⁹

² Section 13, CHAPTER III, Copyright Act 1957.

³ Section 2(p), Copyright Act 1957

⁴ Reference to Musical (summary proceedings) Copyright Act 1902

⁵ [1988]2 KLJ 566

⁶ Harini Ganesh, *The need for originality: Music Infringement in India.*

⁷ Section 2(m), Copyright Act 1957

⁸ Robert Kirk Walker, *Ghosts in the Hit Machine: Musical Creation and the Doctrine of subconscious copying* March 2017, *Landslide*, Vol. 9. No. 4

⁹ *Fred Fisher, Inc. v. Dillingham*, 298 F. 145, 148 (S.D.N.Y. 1924).

As per section 51 of the Copyright Act 1957, an infringement arises when the other person, without licence from the original composer or the registrar under the statute, does anything for the purpose of monetary profit or lets for hire.¹⁰ In such cases, the Court in India applies a test which must show that there is a substantial similarity between the original work and the copied work.¹¹ Once this is established, infringement exists. In the landmark case of *RG Anand vs. M/s. Deluxe Films*¹² certain points were established regarding substantial similarity and burden of proof, including the above mentioned test, in order to decipher a case of infringement. Section 52 of the Copyright Act, 1957 provides for certain exceptions to infringement for the purpose of public interest in order to encourage research and education.

In *T Pandian Arivali vs. Kamal Hassan*¹³, the Court held that section 13 of the Act, only pertains to the musical work and the title of the same is not included in the composition of the composer.

“Generally it is the composer of the musical work who is entitled to the copyright. However, if the composition of the piece took place due to a contract scenario, then the employer of the contract becomes the first holder of the copyright. Similarly when it comes to musical works under commissions, the person who commissions the work is not the owner of the copyright, but can use the work for the purpose it was commissioned under a licence to do the same.”¹⁴

In *Sulamangalam R. Jayalakshmi vs. Meta Musicals Chennai*¹⁵, the court allowed for an interim injunction in case of infringement of copyrights.

Aside from the aforementioned rights, there exist certain special rights which are inherently vested with the author of the work. These rights are known as moral rights which safeguard the non-commercial rights of the author. Under this doctrine, the author retains the right to paternity and integrity of his or her works. In musical works, moral rights are applicable to the lyrics and the music of the work but they cannot be exercised with respect to the sound recordings of a musical work. There have been rare instances of judicial disputes regarding

¹⁰ sec 51, Copyright Act 1957

¹¹ K.M. Gopakumar & V.K. Unni *Perspectives on Copyright: The 'Karishma' Controversy*, 38 *ECON. & POL. WKLY.* 2935, 2935 (2003)

¹² 1978 AIR 1613, 1979 SCR (1) 218.

¹³ O.S. Appeal No. 63 of 1994

¹⁴ Reference: Yashwont Kiran, *The Infringement of Copyrights in Musical Works and its Remedies in India*. (2020) *Lex Forti Legal Journal-I Issue III* pg.(14)

¹⁵ AIR 2000 Mad 454

infringement of moral rights with respect to musical works in the Indian industry. The Sambalpuri folk song 'Rangbati' and the Javed Akhtar 'Ghar se nikalte hi' were two instances in which the concept of moral rights had been extensively discussed.

Beyond the domestic plain, India's Copyright Act aims to protect the foreign works that are the creation of any of the countries mentioned in the International Copyright Order.¹⁶ This order protects the works of all the countries included in the Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement, the Berne Convention as well as the Universal Copyright Order. The TRIPS Agreement strives to protect its member nations' intellectual property rights by necessitating each member nation to give an associate member country's nationals the same treatment as it would to its own nationals with regard to IPR protection.¹⁷

LEGAL EFFICIENCY OF THE COPYRIGHT ACT AND MUSICAL WORKS IN INDIA

Over the years, there have been many cases that show us the process of protection for musical and artistic works.

- ❖ *Indian Performing Rights Society (IPRS) vs. Eastern India Motion Pictures Association*,¹⁸ this landmark case was regarding section 17(b) of the Copyright Act 1957, according to which Eastern India would be the owner of the copyright and as such IPRS could only claim the same if there was an agreement to that effect between the parties.
- ❖ *Gramophone Company of India Ltd. vs. Super Cassette Industries Ltd*¹⁹, here the issue was that could the act of the defendant of fashioning version recording of the plaintiff's works without his consent, when he was the owner of such artistic and musical works be infringement? The Court held that since under section 14(e) the making of sound recordings is permissible however there must have been an intimation of the intention to make such recording and the royalties should have been paid to the owner of the work. It was held that section 52(1) (j) of the Copyright Act must be properly complied

¹⁶ Govt. of India Ministry of Hum. Res. Dev., a handbook of copyright law 13 (1999) [hereinafter handbook of copyright law] 13.

¹⁷ Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organisation, Annex IC, Part I, art. 3.1, Legal Instruments

¹⁸ AIR 1977 SC 1443

¹⁹ 010(44)PTC 541(Del)

with in consonance with the whole statute and due to the noncompliance of the provision, no protection could be offered under this section.

- ❖ In *Super Cassettes Industries Ltd. v Hamar Television Network Pvt. Ltd. And Anr*²⁰, the court held that since substantial extracts were taken there was an infringement of copyright and the court granted the injunction.
- ❖ In *Ram Sampath v Rajesh Roshan & Ors*²¹, the plaintiff contested that the track for the movie 'Krazzy 4' was copied from his jingle, however the parties settled the matter outside the court in a settlement of approx. Rs 2 crore.
- ❖ In the case of *Saregama India Ltd v Balaji Telefilms Ltd & Ors*,²² the plaintiff filed for an injunction. He contended that the movie 'Ooh lala ooh lala' and its songs were copied from an old Bollywood movie known as Miwali and were similar to its song 'Ui Amma Ui Amma'. The court considered the case and ruled in favour of the plaintiff as there was a case of infringement.

Despite the examples given above, it can still be seen that India has a long way to go before it reaches the standards of the other developed countries. A comparison with the United States easily shows us the weaknesses in our legal system. Although India is a party to many universal treaties and conventions, and has amended its copyright laws in 1983 and 1994 it falls short of its efforts more than often. This is evident from the fact that the United States has enlisted India in the 301 "priority watch list" owing to the less than satisfactory protection of intellectual property rights. This report notes the foreign protection offered to IPR in order to tackle such concerns when the protection is weak²³. The United States addresses issues such as sampling where certain portions of a composition create their own pieces. In *Bridgeport Music vs. UMG Recordings*²⁴ it was held that even using small parts of a work can amount to substantial in nature and as such it can be a copyright infringement. The court here held that if a jury consisting of lay persons could identify the similarities between the two songs, then there had been an infringement. The Act of 1976 allows for all well-known and unknown singers to protect these rights against sampling.

²⁰ [2010] ILR 6 Delhi230.

²¹ 2009(40) PTC 70 (Bom).

²² (2006)32 PTC 12.

²³ Office of the US trade rep., 2010 **special 301** report 26 (2010); Harini Ganesh, *The need for originality: Music Infringement in India*. 2011 Pg. 175.

²⁴ 585 F.3d at 275-77

However, this cannot conclude our discussion. The 2012 amendment has brought about many amendments in the copyright law in India. Amendments have been made in section 31 in order to broaden the scope of compulsory licences. Section 31A allows for un-published Indian work and section 31B for disabled persons. Moreover section 31C allows for statutory licence in order to make covers, including those of musical works. This is a massive induction and can really help the talents in our country.

There have been new amendments to expand the fair use concept under section 52. Clause 1(a) now covers musical works as well. Section 21 now allows for an easier way to relinquish a copyright. There have been agreeing reformations made in the copyright board.

The above mentioned examples are only a few of the many changes being inducted. These prove for a very promising future in the field of intellectual property rights.

CONCLUSION

In light of the above discussion, it is evident that intellectual property rights play a large part in our lives and when it comes to music and musical works it is more than necessary to safeguard them thoroughly.

Although India has not yet met the international standards required by the changing world and times, we are still moving forward valiantly. In order to ensure less music copyright infringement we must propose more changes apart from the pragmatic amendments of 2012.

India should place higher penalties or harsh punishments on the high profiled music infringement cases. If the famous musicians who copy works from outside sources are punished then it will lead to public recognition. Stealing of works is something that is frowned upon and if a high profile person is caught doing the same, then it can increase awareness. Many music directors copy music off already created works and go off scot free.²⁵ Currently, these cases are not a high priority, however if they are also brought into scrutiny it can increase the trust of all those unpublished and unrecognised authors who are in the Indian Legal System.

These recognized cases might even help India achieve a healthy stance on copyright cases.

²⁵ Pratap Ravindran, *Hey! That's My Track*, Bus. LINE (India) (Nov. 13, 2002),

India can also look at the infringement system of Malaysia and Taiwan. Both have managed to leave the priority watch list. Furthermore, India can always take support and guidance from the United States. This may even help India to ensure not only the foreign copyrights but also better its own domestic system. It is always beneficial to look towards a settled system when your own is at fault. Most laws in India have been based on the original drafts since the colonised era and have only become better as we have understood our people and amended those laws. In the same spirit it only makes sense that we look at those countries that can help us in providing better protection to the music industry.

