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DIRECTOR'S CUT: A NEGLECTED (COPY)RIGHT

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Abstract: The Indian Copyright Act, 1957, as revised in 2012, defines rights for numerous parties, including music composers and producers. The breadth and degree of directors' moral and economic rights are critically examined in this research, emphasising their moral and economic rights. The research compares India's situation to worldwide practices, outlining opportunities for development and change. The findings point to a balanced strategy that values director contributions while maintaining economic viability and industry growth. The article closes with proposals for strengthening the recognition and protection of directorial authorship rights in India, therefore building a more fair cinematic ecology. This research study explores the legal status of director authorship rights in Indian cinematographic films.

Index Terms - Copyright, Cinematographic Film, Director, Authorship, Ownership

I. INTRODUCTION

“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”
² - Honourable Justice Krishna Iyer.

A movie is a mirror of society that portrays the status quo and influences people to revamp it.³ While some appreciate movies as a tool for social progress, others decry them as bribes to corrupt youth.⁴ Cinema is an artistic expression of ideas, stories and often opinions, sometimes inspired by reality, occasionally set to music, designed to enthrall, enchant, or entertain.⁵ Fundamentally, a movie expresses one's freedom to propagate one's view subject to constitutional restrictions.⁶ It is essentially a person's Intellectual Property (IP), i.e., the author. IP includes various rights such as copyrights, trademarks, patents, and designs, to name a few. A movie is a copyrightable work where the nature and authorship of the movie vary from country to country. Some countries grant it the status of joint authors' work, and some countries consider it a single authorship work; however, irrespective of the authorship of cinema, the producer remains the owner in almost every country.⁷

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² **Indian Performing Right Society Ltd. v. Eastern Indian Motion Pictures Association and ors.**, [AIR (1977) SC 1443]

³ Time to change, *Film report screening madness*, Time To Change Lets End Mental Health Discrimination (2009), <https://www.time-to-change.org.uk/sites/default/files/film-report-screening-madness-time-to-change.pdf>

⁴ Aparna Singh, *Social Change Through Hindi Cinema Special Refence Rajkumar Hirani*, SHODH GANGA (Jan. 25, 2017)

⁵ Satyam Rathore, “A Critical Overview Of Censorship In Indian Cinema In The Light Of Role Of Cbfc”, *Bharati Law Review*, July-Sept., 2016, Pg., 218

⁶ *Id.*

⁷ Lokesh Vyas, “Director's Authorship: The Revival Of A Dead Debate?”, Pg., 2

A movie is a pluralistic concept⁸ from the standpoint of IP authorship because it is a product of joint efforts. It includes the labour of numerous contributors, including screenwriters, lyricists, singers, musicians, performers, broadcasters, editors, cinematographers, etc.⁹ Different protection is provided to these people with respect to the legislation of their respective countries.

A movie can be divided into two categories: on-screen and off-screen work. On the screen, the work qualifies for copyright protection because of its undeniable screen presence.¹⁰ The actors, performers, etc., are all regarded as the on-screen artists, whereas the director, scriptwriters, lyricists, etc., are the off-screen artists. It is vital to note that where all on-screen artists are given protection under the IP laws, it is not the same for off-screen artists. One such worker who frequently works outside the boundaries of copyright is a principal director. Such an exclusion disregards the director's creativity, shifting the authorship from the director to the producer/ financier. A producer owns the copyright over the film through a contract between him and the authors.¹¹ In the USA, where an author ceases to be the author of their work once they start working as an employee, producers' contractual dominance over other authors is the main reason why directors are left without copyright.¹² In India, a producer is the presumptive author of the movie¹³, so the question of the director does not arise. Critically, it implies the dominance of private rights (contract) over statutory rights (copyright) or the eclipse of contractual solidarity over intellectual property law.¹⁴ This division of granting copyright protection to the creators of cinematographic films can be understood by two concepts: the *droit d'auteur* system and the common law system. While the former focuses on the author's moral rights, the latter propagates the big pocket theory and protects the author's economic interests.¹⁵ India, therefore, being a common law country, follows the latter and, thus, disregarded the proposition proposed by the 2010 Copyright Amendment Bill to accord joint authorship to the director of the cinematograph film.¹⁶

II. STATEMENT OF THE PROBLEM

Cinematographic films are a complex art form involving various creative individuals' collaborative efforts. In India, the question of authorship rights in films has been a subject of debate and legal scrutiny for years. While the Copyright Act of 1957 provides protection to various contributors to a film, the authorship rights of the director need to be clarified and more adequately defined. The Act does not explicitly delineate the rights and responsibilities of film directors in terms of ownership. Therefore, unlike France and the United Kingdom, in India, the concept of joint authorship of a cinematographic film remains in question. This paper traces the director's need for ownership and authorship rights in a cinematographic work.

III. RESEARCH QUESTIONS

1. How do directors contribute to the creative process of filmmaking, and what aspects of their work should be considered for authorship rights?
2. To what extent do ambiguities in directorial authorship rights affect directors' creative expression and artistic freedom in Indian cinematographic films?
3. What legal precedents and court cases in India have shaped the discourse around directorial authorship rights, and how have they influenced the existing legal framework?
4. How can the Indian film industry learn from International practices and models for defining and protecting directorial authorship rights?

⁸ C. Paul Sellors, "Collective Authorship in Film." *Journal of Aesthetics and Art Criticism*, 2007, 65 (3):263–271.

⁹ *Id.*

¹⁰ *Supra* Note 7

¹¹ *Supra* Note 2

¹² Copyright Act of 1976, 17 U.S.C. § 201 (2012).

¹³ S. 2(d) of the Copyright Act, 1957

¹⁴ *Supra* Note 7, Pg., 3

¹⁵ Alwyn Sebastian, "Joint Authorship In Cinematographic Films: The Conundrum Of The Primary Director", *The Indian Journal of Intellectual Property Law*, 2014-15, Vol. 7, Pg. 69

¹⁶ *Id.*

IV. RESEARCH OBJECTIVES

1. To analyse the existing legal framework in India regarding directorial authorship rights in cinematographic films, including the Copyright Act of 1957 and related legislation.
2. To assess the effects of ambiguities in directorial authorship rights on the creative expression of directors and their influence on the quality and diversity of Indian films.
3. To identify and examine the creative contributions and roles of directors in the filmmaking process, with a focus on aspects that merit recognition as authorship rights.

V. AUTEUR THEORY

There are primarily three theories with respect to cinematic authorship¹⁷, namely (i.) Schreiber's theory¹⁸, (ii.) Auteur theory¹⁹, and (iii.) Collaborative theory²⁰. Each of these theories has its own arguments in support of the authorship of the film. David Morris Kipen is credited with creating Schreiber's idea, a writer-centric perspective that views the screenwriter as the film's author.²¹ The Auteur Theory comes in second, viewing directors as the primary authors of the films.²² It is based on the notion that each movie is a manifestation of the director's individuality and bears the director's imprint. Thirdly, collaborative theory places films as the collaborative efforts of many individuals rather than the work of a single author.²³ None of these theories have gained recognition universally in their genuine sense. Schreiber's Theory and Collaborative Theory are considered under different works, such as the scriptwriters are given the rights of authorship and protection under literary works. On the other hand, as per the auteur theory, directors have no universal recognition under the Copyright Law.

The American film critic Andrew Sarris coined the term "auteur theory," which emerged in France in the late 1940s as a result of André Bazin and Alexandre Astruc's cinematic theories.²⁴ The theory of the director as author was primarily advocated in Bazin's journal *Cahiers du cinéma* (established in 1951), which became a cornerstone of the French cinematic movement known as the *nouvelle vague*, or New Wave. François Truffaut and Jean-Luc Godard, two of its theorists, went on to become influential French New Wave directors.²⁵

The "auteur" approach became popular in English-language film criticism in the 1960s. While Andrew Sarris launched auteurism in the United States with his essay "Notes on the Auteur Theory in 1962," the movie adopted it in the United Kingdom. The phrase "Auteur theory" was first used in this essay. Sarris defined an "auteur" as a filmmaker who satisfies three requirements: technical proficiency in technique, personal style regarding the film's appearance and atmosphere, and internal meaning (albeit many of Sarris's auteurist criteria were left vague).²⁶ The American Cinema: Directors and Directions, 1929–1968, written by Sarris later in the decade, swiftly rose to prominence as the unofficial auteurism bible.²⁷

Truffaut, Jean-Luc Godard, Claude Chabrol, and Éric Rohmer were among the auteurist critics who mainly wrote about directors, though they also provided some astute analyses of performers. Later on, Truffaut stated that the auteur idea "was started by *Cahiers du Cinéma* and is still discussed in American periodicals, but is forgotten in France."²⁸

The reason for the slightest recognition of this theory is that it gives the director sole authorship rights of the cinematographic films, ignoring other creators contributing to the work. The theory can be revitalised if the directors are given authorship rights based on their originality and artistic expression in the film.

¹⁷ David Tregde, "A Case Study On Film Authorship: Exploring The Theoretical And Practical Sides In Film Production", The Elon Journal of Undergraduate Research in Communications, Vol. 4, No. 2, Fall 2013, Pg., 5

¹⁸ DAVID KIPEN, *THE SCHREIBER THEORY: A RADICAL REWRITE OF AMERICAN FILM HISTORY (MELVILLE MANIFESTOS)* (1st ed. 2006)

¹⁹ Andrew Sarris, *Notes on Auteur Theory in 1962*, in LEO BRAUDY & MARSHALL COHEN, *FILM THEORY AND CRITICISM: INTRODUCTORY READINGS* 451 (7th ed. 2009).

²⁰ *Supra* Note 8

²¹ *Supra* Note 18

²² *Supra* Note 19

²³ *Supra* Note 8

²⁴ Auteur Theory, <https://www.britannica.com/art/auteur-theory> (visited on 25th Oct., 2023)

²⁵ *Id.*

²⁶ Aneek Chaudhuri, "Auteur Theory And Its Implications", International Journal of Advancements in Research & Technology, Vol. 2, Issue 11, Nov. 2013, Pg., 81

²⁷ *Id.*

²⁸ *Supra* Note 26

VI. JOINT AUTHORSHIP

Filmmaking is an art, and the filmmaker is an artist. However, ‘who is a filmmaker’ and ‘what is required to become a filmmaker’ are two debatable questions in copyright law.²⁹ Countries like the European Union regard that follow the auteur theory regards the director as the author of the film. In contrast, countries like the USA, which is based on the capitalist ideology, consider the funds provider or commonly considered as the risk-taker, i.e., the producer as the author of the film. India follows the same concept and therefore, the director is often neglected from his rights as he is considered as the work-for-hire under the contract of service. Thus, making him only an employee employed by the producer. In the case of **Aalmuhammed v. Lee**³⁰, the author was defined as a person who really represents, creates, or gives an effect to the idea. Going by this notation, it is the director who should be considered as the author of the film, hence, making him the first owner³¹ of the work.

There’s a difference between co-ownership and joint ownership of copyright in legal sense. Co-ownership can be of two types - owners in common or joint owners.³² Therefore, co-ownership is an umbrella term that consists of joint ownership. Joint owners are those who own the copyright, jointly and severally.³³ One owner cannot divest any right in the property owned without the consent and permission of the other.³⁴ This ensures the protection of the work with respect to the other owner.

Since the author of a work is typically the owner of the copyright in that work, authorship and ownership are closely linked. When a producer is designated as the film's author, he also typically becomes the owner of the copyright to the work. In these situations (common in nations with common law), all other contributors to the work who contributed their intellect to its creation are subordinated.³⁵

VII. LEGISLATIVE DEVELOPMENTS IN INDIA

The international community has long supported preserving literary works from being distorted, mutilated, illegally copied, adapted, reproduced, and translated, dating back to the Berne Convention in 1886 to the TRIPS Agreement in 1994. India, therefore, to protect the creative and intellectual expression of various works, passed the Copyright Act of 1957. It was under this Act that ‘cinematographic films’ were included as copyrightable work within the meaning of Section 13 of the Act. Moreover, the owner of the cinematographic film is an author, who is regarded as the ‘producer’ of the film.³⁶ A producer of the film is the one who takes the initiative of making the film, or commonly known as the fund provider of the film. They are the financial pooling of the film and play a minuscule role in the making of the film. Instead, their focus is more on the marketing of the work. However, they are still regarded as the ‘author’ of the film.

The rights of actors, directors, performers, and other creatives involved in the film are not recognised in many nations. Nonetheless, some countries—like the United States—have robust union representations that back these contributions. The Screen Performers Guild, for instance, fights for non-star performers' rights to a fair wage and rewards associated with the film's commercialisation.³⁷ The 2012 Amendment did safeguard the rights of different authors who contributed to the movie to obtain royalties.³⁸ It did not, however, address the directors' concerns and continued to treat them as the producer's contractual employees.

A director plays a critical role in the making of the film as he is the one who assembles all the components involved in the filmmaking. Therefore, he is required to be appreciated in a legal sense for his contributions. The Parliament introduced a Copyright (Amendment) Bill, 2010 to ensure the producer and the principal director are made the first owners³⁹ of the film. An explanation for this effect was introduced under Section 2(z) of the Act, giving cinematographic film a work of joint authorship. However, this Bill was never accepted

²⁹ Lokesh Vyas, and Akshat Agarwal, “Director’s Authorship Under Indian Copyright Law: An (Un) Indian Approach”, Journal of Intellectual Property Studies, Vol. 4, Issue 1, Pg., 48

³⁰ **Aalmuhammed v. Lee**, 202 F.3d 1227 (9th Cir. 2000)

³¹ Section 17 of the Copyright Act, 1957

³² **Lauri v. Renad**, [1892] 3 Ch 402

³³ **Harshad Govardhan Sondagar v. International Assets Reconstruction Co. Ltd.**, (2014). 6 SCC 1

³⁴ *Supra* Note 15, Pg., 76

³⁵ Srujan Nirkhee, “Copyright Issues In The Indian Entertainment Industry”, conference paper, 2023

³⁶ Nandita Saikia, “The Bollywood Amendments - Film, Music and Indian Copyright Law (2010 to 2012)”, Pg., 3

³⁷ *Rights, Camera, Action! IP Rights and the Filmmaking Process*, World Intellectual Property Organization, Pg. 53

³⁸ Section 19(8) of the Copyright Act, 1957

³⁹ The Copyright (Amendment) Bill, 2010, Clause 5

by the authorities. A script writer, composer, lyricist, recording label and producer are considered authors⁴⁰ under the Act, thus giving them all moral and economic rights. Still, the director is not considered an author. Instead, he is regarded as an employee by the contract or a hired employee, and hence, all his rights arise from the contractual agreement entered by the producer and the director.

The seminal ruling in **Najma Heptulla v. Orient Longman Ltd.**⁴¹ held that the final product was the outcome of an intense and close intellectual collaboration between the two authors and that their work could not be severed.⁴² As a result, the court determined that the result constitutes a "work of joint authorship." However, the court did not lay down any guidelines to determine the work as the product of joint authorship.

The Amendment Bill of 2010 sought to rectify this injustice towards the directors. It drew its inspiration from various directives passed by the European Union. The Directive on Rental and Lending Rights⁴³ and the Directive on Satellite Broadcasting and Cable Retransmission⁴⁴ made provisions for directors to be considered the author of the film.⁴⁵ Under the EU Law, the director is considered as the first owner of the film. This was stated in **Martin Luksan v. Petrus van der Let**⁴⁶, which upheld the principal director's moral right—under Indian copyright law—to be shielded from the film's exploitation.⁴⁷

The 2010 Bill aimed to incorporate these directives and bring harmonisation to the Indian copyright regime; however, in the Parliamentary revision of the Bill in 2011, on the recommendations of the Parliamentary Standing Committee, the proposition above was removed.

VIII. CRITICAL EVALUATION OF THE RECOMMENDATIONS OF THE PSC

Before the removal of the proposition given by the Amendment Bill of 2010, the Government needed to analyse the recommendations given by the PSC properly.

8.1 Defining Principal Director

The 2010 Bill did not define the phrase 'principal director'. However, this cannot be the reason for the Parliament to scrap the whole amendment proposition as every movie is clear on the fact that who is the Principal Director of the movie. Although 'principal director' is not a commonly used term in the film industry, the director who plays the most prominent role in the making of the film can easily be identified as the principal director. He may be assisted by other directors, commonly known as the assistant directors (AD), therefore leaving no ambiguity on the fact that who is the principal director of the film.

8.2 Role of the Director

The PSC recommended that since the producer plays a central role in the making of the film, he should be considered as the 'author' of the film. However, the reality remains that the producer is nothing but a fund provider of the film, i.e., his interest is purely monetary. On the other hand, it is the director who adds to the creativity of the film. It is his image that can be reflected through the film. For instance, in Indian cinema, the viewers can differentiate amongst the prominent directors of the movies like Sanjay Leela Bhansali, S. Raja Mouli, Imtiaz Ali, Rohit Shetty, Zoya Akhtar, Karan Johar, Anurag Kashyap and many more from the way the movies are projected. Therefore, reiterating that the film are the reflection of what a director visualises as he is the one who brings all the elements and components of the making of the film together. Hence, it is opined that the director of the film should be given his due credit for the authorship and ownership of the film.

⁴⁰ Section 2(d) of the Copyright Act, 1957

⁴¹ **Najma Heptulla v. Orient Longman Ltd.**, AIR 1989 Del 63

⁴² *Id.*

⁴³ Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property.

⁴⁴ Council Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission.

⁴⁵ *Supra* Note 15, Pg., 76

⁴⁶ **Martin Luksan v. Petrus van der Let**, Case C-277/10 Judgment of the Court (Third Chamber) of 9 February 2012

⁴⁷ *Supra* Note 15, Pg., 76

8.3 Remedies

As per the recommendation given by the PSC, the directors have sufficient safeguards. However, what needs to be understood is that the producer usually employs a director through a contract of service. Therefore, he is under the control of the producer, and his employment can be terminated at the whims and fancies of the producer. Moreover, since the moral rights of the copyrightable work vest only with the author of the work and the director not being considered as the author of his work, he is subjected to the rights provided by his contract of service. Also, when it comes to royalty being provided to the author of the film, i.e., the producer or other contributors of the film for their respective work, the director is at a loss on both ends. He is neither given moral rights nor economic rights over his work. Therefore, he does not have the paternity over his work.

8.4 Employment Issues

The director is employed by the producer under the contract of service, hence putting him in a weaker bargaining position. The Amendment Bill of 2010 proposed the producer and the director to be considered as the joint authors of the film, which would eventually bring them to an equal footing in terms of their rights. Hence providing the directors with more economic rights in terms of the publication, adaptation, distribution and other elements of their work. The recommendation given by the PSC did not consider this aspect of the rights being given to the director. Moreover, the need for union representation has been increasing gradually. As seen in the USA, the directors negotiated the final cut clause in their contract of service. However, the same has no reflection in the Indian system.

IX. SUGGESTIONS

In India, the rights of a film director can be complex and may involve various legal aspects. The director should be given the title of joint authorship to uphold their creative aspect and artistic freedom. To revive the auteur theory, the directors who follow the originality and the artistic expression should be considered as the authors of the film. This is essential to ensure the moral and economic rights of the directors. Like in the USA, there is a need of union representation for the directors in India so that they can seek the final cut clause in their contract. Moreover, this debate of joint authorship can only be brought to rest if the Amendment Bill of 2010 is brought into the picture again.

X. CONCLUSION

A film, as stated earlier, is the reflection of what the director wants to portray. The director, though, hired through the contract for service, is involved in the script-to-screen process of the filmmaking. The author, as given under the Copyright Act, of 1957, the producer, is majorly focused on the marketing aspect of the filmmaking process as he is the risk-taker in the industry. Thus, the original author should be the director of the film as he is the one who brings all the components of the film together making it one complete product. Therefore, it is vital to understand that the directors of the film are the creators of the cinematographic work and therefore, they should be considered as the joint owners of the film. Recent controversy, over the proposed trilogy based on the iconic film Mr. India has revived the debate over director's rights in India.⁴⁸ All the directors are looking forward to the fight brought in by the director, Shekhar Kapoor as they are in believe that the rights of the directors can be sought the same way Javed Akhtar sought for the rights of the writers. Therefore, this ongoing debate of the joint authorship can be brought to rest if the directors are given what they earn through their work.

⁴⁸ <https://spicyip.com/2020/03/auteurship-implications-of-mr-india-directors-plight-without-right.html> (visited on 25th Oct. 2023)

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