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# **PERFORMERS RIGHT UNDER COPYRIGHT REGIME IN INDIA**

*Author –*

**Jatin Bakshi**

Student (B.A. LLB)

Ajeenkya DY Patil University, Pune

## **ABSTRACT**

The author in this paper has aimed to analyze the rights of performer under current and international copyright regime with a purpose of understanding the depth of the problems and whether the laws are in keeping with the current requirement or not. A performance is the creation of the performer's own intellect (skill and labour) and thus must be protected. It is sad to say that under the traditional copyright regime, no protection was given to performers and with the growth of technology it became very difficult to protect the essence of works done by performer and as a result their work suffered gross exploitation. But thanks to 1994 and 2012 amendment which did the needful and recognized performers have certain rights as well. This paper attempt to analyze the evolution of copyright laws in India and what had they all contributed in the Indian copyright regime and the author has also taken the reference of international treaties for a better understanding of the topic.

*The copyright bargain: A balance between protection for the artist and rights for the consumer - Robin Gross*

**INTRODUCTION**

Copyright constitutes an essential element in the development process of a country. The enrichment of the national cultural heritage depends directly on the level of protection afforded to literary, dramatic, musical and artistic works, cinematographic films and sound recording. The higher the level, the greater the encouragement for authors to create; the greater the number of a country's intellectual creations, the higher its renown. In the final analysis, encouragement of intellectual creation is recognized as one of the basic prerequisites of all social, economic and cultural development.

The concepts of “**copyright**” and “**neighboring rights**” or “**related rights**” have gained significance in many contexts specially of contemporary, scientific, economic, social, political and legal environment not only in India but also in the entire world. Technological innovations e.g. computers, audio recording, video recording, reprography, cable television, satellite broadcasting and Internet have posed challenges to copyright laws from time to time and forced the nations to amend their laws.

The copyright law today, not only protects the rights of copyright owner and neighboring rights but also deals with the subject of public interest and tries to strike a balance between the two in this digital environment. The copyright law has thus covered a long journey from its earlier days when it used to protect only literary and artistic works, and has now entered a new world full of technological innovations.

The primary objective of copyright is not to reward the labour of authors, but to promote the progress of science and useful arts. To this end copyright assures authors the right to their original expression but encourages others to build freely upon the ideas and information conveyed by a work.<sup>1</sup> The objectives of copyright law are mainly two folds. Firstly the copyright law is developed by the nations to assure authors, composers, sound recordings, who risk their capital in putting their works before the right to their original expression.<sup>2</sup> This is done by giving to the author, or

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<sup>1</sup> Eastern book company v. D.B. Modak, (2008) 1 SCC 1

<sup>2</sup> In Holy Faith Intellectual v. Dr. Shiv K. Kumar 2006 (33) PTC 456

in some cases his employer, certain exclusive rights to enjoy the benefits off the created subject matter for a limited period of time. The exclusive rights are granted to copyright owner in his work, so that he could exploit his work to the exclusion of others for a limited period of time.

The exclusive rights which are granted to the copyright owners are mostly done for the work done by him with the purpose of protecting it from other for a period of sixty years and after the death of the author.<sup>3</sup> it must be noted that during the said period any other person other than copyright owner is not allowed to take the benefit of the cost of the labour of copyright owner which he has put in producing his work. Other than these exclusive rights or economic rights the copyright Act gives another protection to the authors in the name of moral rights. These are:

1. Right to claim authorship of the work;
2. The right of integrity.

Since the author is creator or maker of the work which is the expression of his personality, he has a right to prevent any injury of his intellectual offspring.

Secondly the copyright law encourages others to build freely upon the ideas and information conveyed by a work. It also allows people to make some free uses of the copyright material. The list of these free uses has been laid down in Copyright Act, 1957.<sup>4</sup> The reason for having provisions relating to free uses in the Act is to strike a balance between the interests of the copyright owner and the interests of the society at large. Thus, the private rights of the copyright owner have been curtailed to a limited extent in the interest of society.

In *Sulamangalam R. Jayalakshmi v. Meta Musicals Chennai*,<sup>5</sup> the Madras High Court stated, “copyright law is to protect the fruits of a man’s work, labour, skill, or test from annexation by other people.” Also, in the case of *Aamir Raza Hussan v. Cinevistas Limited*,<sup>6</sup> the Bombay High Court stated that “the idea in providing the copyright a statutory protection is to encourage art and originality and not to stifle it.”

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<sup>3</sup> Section 22 of Copyright Act 1957

<sup>4</sup> Section 52, Id

<sup>5</sup> 2000 PTC 681

<sup>6</sup> 2003 (27)PTC 425

In *Eastern Book Company v. D.B. Modak*<sup>7</sup>, Supreme Court held “that copyright is nothing but a right which stops other from exploiting the work without owner’s consent. The copyright law is a perfect example of balance between the interest and rights of author the work without the consent of owner of the copyright. The most important ingredient in copyright is its originality which has a direct nexus with author’s interest as well as that of public in protecting the matters in public domain”.

### **OBJECTIVE**

1. To study the rights of performers covered under copyright act.
2. To identify the area of amendment in copyright bill (2012).
3. To study the history of copyright law along with the role of important conventions and treaties.
4. Critical assessment of the Performer’s Right under Indian Law.

### **METHODOLOGY**

Having regard to the nature of the subject and in preparing the same, analytical method has been used. It is entirely based on the secondary sources collected from text-books on Intellectual Property Law, journals, articles, adjudicated cases, and websites etc. The collected sources have been presented in past form in order to make the study more informative, analytical and useful for the readers. Also, in this study the contemporary adjudicated cases on performers right are elaborately explained so that the jurisdiction, rights and obligations of different subjects of copyright law can plainly be understood.

### **HISTORICAL DEVELOPMENT OF THE LAW OF COPYRIGHT**

There is a saying that the best evidence can be traced from the history and if we would look into the historical developments of copyright protection of authors, we can find that it basically emerged with the gradual invention of printing due to which it was possible that the literary works can be duplicated

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<sup>7</sup> Id note 1

by mechanical processes. Before this technology emerged, hand copying was the only mean through which this activity of reproduction can be performed. For the first time in the year 1436 in Gutenberg's convention it was thought necessary of protecting printers and these booksellers and to implement this certain privilege were granted to printers, publishers as well as authors. With time, the art of printing shoots up and so in the year 1483 Europe King Richard III allowed foreigners to import manuscripts and books into England and print them there. With this step much of the book trade came into the hands of foreigners and due to this remarkable step, England emerged as major center of printing in Europe<sup>8</sup>

However, this didn't continue for a longer period of time and restrictions were imposed in the year 1523 and 1528 by Henry VIII which prohibiting the import of books as there were enough printer and book binders in England during 1530s. To support this assumption, Henry VIII brought all 97 London publishers under one ambit and called it as Stationers Company and in the year 1556 a royal charter was granted to this company which authorized the right to administer the system of registration of published works which means all the books which were to be printed or reprinted had to be entered in the register of the Company before being published. The company was also authorized to deal with illegal copies.<sup>9</sup>

Also, in the year 1662 an Act was passed in the name as Licensing Act which prohibited the printing of any book which was not licensed and registered with Stationers Company.

It must be noted here that for the first time a proper law was framed aiming protecting literary copyright and also related to piracy. This Act also authorized for confiscation of unauthorized copies and also for imposing the penalty for the same. However, the said Act was repealed in the year 1679. with time the society became more civilized and this lead to more increase in the significance of copyright

Thus, the remarkable year came and in the year 1709 the Act of the Queen Anne was passed in UK. This was the world's first copyright law and it laid down three basic rules:

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<sup>8</sup> Stephen M. Stewart, International Copyright and Neighbouring Rights(London) p. 20

<sup>9</sup> Ibid

- The authors whose books have not yet published will have the sole right over printing for a period of 14 years from the date of publication and once the said period expires, the sole right of printing will be returned to author (if alive then again for a period of 14 years).
- The infringers will have to forfeit the infringing books if having in their custody and also have to pay a fine for every sheet.
- There cannot be any case until and unless the title of the book has been found in the ‘Register Book’ of the Company of Stationers.

The interesting fact here is that even prior to 1709, the copyright was recognized under common law. After this, numerous Acts were passed and the main reason was to give effect to copyright protection. Common law copyright was also abolished after the enactment of Copyright Act 1911. However, this Act provided that this should not abrogate any right or jurisdiction to restrain a breach of trust or confidence. Talking about the history, in the year 1776 when the revolution started in US and the same gave a test of nationalist essence to the existing concept of copyright and so in the year 1790 the Copyright Act was passed. This law was applicable to all the English-speaking countries.

Talking about India, in India the earliest instance of copyright can be seen as Indian Copyright Act 1847, which was obviously enacted during the rule of East India Company in India. The Act passed was by Governor General of India affirming the applicability of English copyright law in India.<sup>10</sup> This Act was however got repealed by the Copyright Act 1911 and this Act was also made applicable to all the British colonies including India. Again, in the year 1914, the Indian Copyright Act was enacted which modified some of the existing provisions of Copyright Act 1911. Thus, the amended Indian Copyright Act which was passed in 1914 remained applicable in India until it was replaced by the Copyright Act 1957.

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<sup>10</sup> Kala Thairani, How Copyright Works in Practice, p.2

## **PERFORMER’S RIGHT**

The rights of performers, producers and broadcasting organizations are called neighboring rights as they have developed side by side with copyright, and moreover the exercise of these rights is also linked with the exercise of copyright. The performers, record producers and broadcasting organizations all work as one group so with the purpose of disseminating and broadcasting the works of the authors to the public.<sup>11</sup> It is sad to say that the performers used to spend sufficient skill and labour but their rights were not recognized till the first half of the 20<sup>th</sup> century. The reasons for the same can be either social and historical. During the malleable period of copyright, the actors were regarded as ‘unemployed’ by the law. All the performers like players, buffoons, musicians, opera-singers, opera-dancers and the like are classical examples of non-productive labour.

Today it feels satisfied in saying that star performers have reached to the top of the mountain and it would be absolutely wrong to call their performance as ‘non-productive labour’. Further, with the growth of technology and this lead to the rapid development which has enabled to fix a live performance whether the performance is going on the stage or is in the broadcasting studio. The nature of their performance is no more ignored. The law had not shown any concern to this technological unemployment in which was present in India until 1994. Thus, if the case is like if someone records a performance of a performer without his/her consent and reproduced it and sold the records, or performed them in public, then the performer had no remedy against such a person with this regard.

Once a performance was fixed in a record or in a cinematographic film, the record producer or a film producer as the owner of copyright was protected by being given exclusive rights regarding their records or the film. The performer had not been given a right to share the royalties received by the record producer or film producer as the case may be for public performance for broadcasting of records or films. In this way, the performer was put in a pitiable condition without any right in his performance under the Copyright Act 1957.

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<sup>11</sup> A.K. Kaul and V.K. Ahuja, Law of Copyright: From Gutenberg’s Invention of Internet in A.K. Kaul and V.K. Ahuja pg.19

## **DEFINITION OF PERFORMERS:**

The classic definition of a person as performer in international law is "actors, musicians, singers, dancers, and other persons who act, deliver, sing, play in, or otherwise perform literary or artistic works."<sup>12</sup> The definition is not a narrow one and it is as wide as it includes performances of works in the public domain, but somewhere down the line it excludes all those who do not perform "work", for e.g. variety artists, acrobats, sports personalities or extras on stage or in films.<sup>13</sup> The definition of performer under the 1994 did the needful and it provides that "performer" includes an actor, singer, musician, dancer, acrobat, juggler, conjurer, snake charmer, a person delivering a lecture or any other person who makes a performance."<sup>14</sup>

It is rather paradoxical that although of all neighbouring right of owners<sup>15</sup> are close to that of authors like that of literary works or of musical scores who receive full author's rights and their rights are in the international law turns out to the weakest. These neighbouring right owners are nothing but physical persons, like authors, and it is very difficult to see the essential difference between the work of a derivative author and that of a performer. Just as the translator renders the original work as faithfully as possible in another language, so the performer interprets the spirit of the work as truly as he can musically or on the stage.

Many a times the original work adds another dimension to the same work done by the performer, and so due to this the performer and different performances of the same work by different artists varies from one another. Many times, the creativity of the performer is expressed as creator or pionist which represents the personal and originality of the work. There is no doubt that in 'copyright' terms the that performers "spend sufficient skill and labour" to merit the copyright protection for their work.

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<sup>12</sup> Rome Convention, Article 3 (a)

<sup>13</sup> See generally, STEWART, STEPHEN, INTERNATINAL COPYRIGHT AND NEIGHBOURING RIGHTS

<sup>14</sup> Indian Copyright (Amendment) Act 1994, Section 2 (qq).

<sup>15</sup> For details see chapter on "Neighbouring Rights", infra chapter IX.

## **INDIAN SCENARIO UNDER THE LAW OF COPYRIGHT**

Today the technology has grown different level that we can see the broadcasting at home itself and it must be understood that the performers get the broadcasting rights as well and the same is governed and protected under Indian Copyright Act of 1957. This was not present in the original draft and was inserted after the amendment done in the year 1994. Again, in the year 2012 the ambit of these rights was widened which led to the insertion of certain new rights like performer's broadcasting and communication to the public rights under section 38A of Copyright Act 1957. This was done in consonance with Articles 6-10 of the WPPT. The purview of section 38A is vast and it covers numerous rights related to performers.

It must be noted here that Section 38A provides for the exclusive performers right, which talks about certain acts which should be done or not but it must be noted that these rights can be exercised in such a way that any prejudice towards the right of author. It must be noted here that performers are allowed to take the royalties in case they wish to commercialize their performance (section 38A). Earlier the performers didn't get any the royalties for their performance and *Fortune Film International v. Dev Anand*<sup>16</sup> is a perfect example to support this statement. In this case the actor claimed the copyright of his own performance in a movie named Darling Darling. His request was vehemently denied by the court. But it is said that time changes everything and then the time came in which the performers rights were strengthen. All thanks to 1994 and 2012 amendment. Moreover, the 2012 amendment brought the definition of 'communication to the public' under the provisions of section 2 (f) of Indian Copyright Act 1957 and this extended the performers right. Its extension can be seen as now the right which used to be limited only to authors are now made available to performers as well.

The right of communication of work to the public is the key component of the performers' right and the reason to this can be because it helps in protecting the work on the internet as well also. In other words, it can also be said as now the situation has changed and the said protection is available to 'performances' from just mere 'work'. Also, a new section i.e. section 38B was inserted which granted moral rights to performers. The idea behind bringing this right was to prevent all the possibilities of alteration of performances in the digital platform.

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<sup>16</sup> A.I.R. 1979 Bom. 17 (Kantawala C.J. & S.K. Desai J.).

## **RIGHTS OF A PERFORMER UNDER THE COPYRIGHT ACT**

### **The Right of Reproduction**

However the word reproduction is nowhere defined under Indian Copyright Act but it is interesting to note that this right is granted to all the copyright protected entities and on the other hand the performer is granted with the right to prevent the reproduction of these works done by the performer without his/her consent. It is pertinent to note that even the WPPT does not define the term w.r.t. reproduction of performers in its definition clauses<sup>17</sup>but despite this the right of reproduction has been granted to the performer in WPPT. This right can't be ignored just because it is nowhere defined and it gained its importance during Berne Convention 1967. In India, the right to reproduce is granted only to literary authors and artistic works.<sup>18</sup>

Therefore, the infringing use mentioned in Section 38(3)(b)(l) and (ii), where the reproduction was done without the consent of performers is not likely to extend to digital context. So here is a bit ambiguity as performers do not form part of the class which is covered under Section14. Neither reproduction is defined in general terms of the digital technology so for that purpose the law needs amendment and clarity with this regard.

### **The Right of Distribution**

In India, the performer is not authorized with distribution of the performances. WPPT allows performers to make their works to go in public via sales or by transfer of ownership.<sup>19</sup> The right extends to making available of original and tangible copies of the same work. In India, though Section 14(ii) of Indian Copyright Act 1957 allows the performer to issue copies to the public of their literary, dramatic, musical and artistic works. For the rest of the works other than these like cinematographic and sound recordings and it must be noted here that this right is restricted to selling and giving on hire to the public.

### **The Right of Rental**

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<sup>17</sup> See Art.2 of the WPPT.

<sup>18</sup>Section14 (1)(a) of the Copyright Act lays down that in case of literary work, dramatic or musical work, not being a computer program -1. To reproduce the work in any material form including the storing of it in any medium by electronic means.

<sup>19</sup> Articles 8 of the WPPT

Under WPPT the performers are authorized with exclusive right of commercial rental to the public of their work. However, under Indian laws the same was not granted as an exclusive right to the performers.<sup>20</sup> It is pertinent to note that the right which is granted under WPPT is only for fixed copies i.e. tangible objects like compact discs and the like. It was after 1994 amendment which granted right to rental of computer programs, sound recording and cinematographic.<sup>21</sup>

### **The Right of Making Available**

One of the crucial contribution of WPPT in digital context w.r.t. performers can be seen as the when exclusive right was granted to performers for fixed performances.<sup>22</sup> This enabled the public to have access to the performances whenever and wherever they want.<sup>23</sup> There is a lacuna w.r.t the performers and other works which are covered under the Copyright Act. While under WPPT, there is no separate mention of the right of communication to the public whereas in India the right of communication to the public encompasses within the right of making it available. In India, the communication made to the public about the live performance without the consent of the performer is considered to be an infringement under of the special rights guaranteed to the performers. Not to forget, this is available only in the case of live performances and not in cases of recorded performances. The right of making available takes into account fixations in phonograms but the Indian Act deals with only unfixed performances in communications to the public with respect to the performer. There is also a lack of clarity, in words as words have been used in the form as “communication of the performance to the public” and “communicates to the public”<sup>24</sup>. The phrase communication to the public pertains to “works” into which the inclusion of performers is yet to be done. Due to this, the performer cannot avail of the protection against unauthorized digital delivery.

### ● **Moral Rights in India**

The moral rights that we have today under Copyright Act is the gift of Berne Convention. These moral rights are nothing but internationally recognized principles. India also took the inspiration

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<sup>20</sup> Article 9 of the WPPT

<sup>21</sup> See, N.S.Gopalakrishnan, "WIPO Copy Right and Performers and Phonogram Treaties Implications for India", 21 Ac.L.R.12 (1997).

<sup>22</sup> Article 10 of the WPPT.

<sup>23</sup> Article 14 of the WPPT

<sup>24</sup> Section 38(3)(d)

of moral rights from Berne Convention. Indian Copyrights Act 1957 recognizes moral rights of the author, which exists even after assignment of the work. These rights include: - to claim authorship of the work done; restrain and claiming damages in case of any distortion, mutilation, modification which is done before the expiration of copyright term. **Section 57** has been amended with this regard so that the right to integrity subsist even after the expiry of copyright so that not only the author but also his legal representatives can exercise the right to paternity.

### **ROLE OF INTERNATIONAL TREATIES IN PERFORMERS RIGHT**

Copyright is governed by the law of the country in which the work has been created and sometimes where there is no copyright law in a country as such, they face problems of piracy and to meet this problem international conventions were formed. Countries become the member of these treaty and conventions by agreeing to the terms and conditions and the member states offers a minimum copyright protection on reciprocal basis to the works originating in another member country. Berne Convention was the first international convention on copyright which which underwent revisals several times at Berlin in 1908; at Rome in 1928; at Brussels in 1948; at Stockholm in 1967; and at Paris in 1971 and the main reason behind such revisions was to meet the various challenges faced by technological development. **Universal Copyright Convention 1952** was adopted which was also revised at Paris in the year 1971. In 1967, a convention was passed as '**Convention Establishing the WIPO**' which lead to the establishment of WIPO. In 1996, WIPO two treaties were adopted by WIPO– **WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty**. In addition, to these existing treaties, three more treaties were also adopted in the fields of neighboring rights and they are: -

- International Convention for the Protection of Performers,
- Producers of Phonograms and Broadcasting Organizations 1961, which is also known as 'Rome Convention';
- Convention for the Protection of Producers of Phonograms against unauthorized duplication and

Apart from this, **TRIP agreement** was adopted as in 1994 as a part of the final Act to give effect the decisions made in Uruguay Round of Multilateral Trade Negotiations. It is important to note that India is a member of both of these conventions as well as of TRIPS agreement. Members of

Berne Convention are required to comply with Articles from 1 to 21. From Articles 9 to 14 of TRIPS Copyright and related rights are dealt. Article 9 states that Copyright protection shall extend to expression and not to ideas, procedures and methods of operation or mathematical concepts as such. Under Indian Law, Performers' rights were introduced by the Copyright (Second Amendment) Act, 1994 in compliance to the requirements of the Rome Convention.

## **COPYRIGHT (AMENDMENT) ACT, 2012 (PROVISIONS RELATED TO PERFORMERS' RIGHTS)**

### **Performers' Rights**

The performer's right has been restructured; for the most part, the restructuring has not resulted in substantial changes although one striking difference is that performers are now 'entitled for royalties in case of making of the performances for commercial use' under the new Section 38A. Before this amendment, performers were not legally backed for having share in the royalties earned on their 'work' and mostly the producers were enjoying the royalties and performers were only paid once a fixed amount by the producers at the time of completing the 'work'. After the 2012 amendment, producers are no longer allowed to keep all the royalties to songs, lyrics or other works of arts. Now, these rights will have to be shared with the artist who created them Performers have also been accorded moral rights in the new Section 38B. These rights are similar to the moral rights accorded to authors and basically encompass the rights to paternity and integrity. An amendment to the definition of a 'performer' in Section 2(qq) means that, among film actors, only those performers credited in cinematographic films would be entitled to the performer's right and to the right to integrity. All performers in cinematographic films, whether or not credited, however, are granted the right to integrity. The recent development in the Act is the recognition to the rights of the performers. The Copyright Act, 1957 gave recognition to the performers after long time. It was only recently when the technological changes threatened the livelihood of performers that the law intervened to protect performers. Musicians, singers, actors, acrobats etc come in the category of performers. Under Section 2(qq) of the Act "performer" includes an acrobat, musician, singer, actor, juggler, snake charmer, a person delivering lecture, or any other person who makes a performance. The section 38 of the Act confers right to performers' like actors, dancers, jugglers, acrobats etc. Finally, the phrase 'performers' right' comprises all the right that may accrue to a

performer by virtue of his performance. They are hence a bundling three distinct types of legal rights: Economic rights, moral rights and non-tangible rights. Economic Rights include right of reproduction, adaptation, distribution, rental, lending remuneration and communication. The moral rights are the rights of attribution and integrity over the work performed. Non- tangible rights are most difficult to define. They include the right over the persona of performance, the right against the use of likeness or name of the performance, rights over the performer's creativity in execution of performance over his unique and distinct expression and style. These are the three basic rights which a performer has. The performers right subsist for 50 years from the next year in which the performance was made.<sup>25</sup>

### **CRITICAL ANALYSIS OF PERFORMER'S RIGHT IN INDIA**

For the word performer, finally an open-ended and inclusive definition has been provided which is praised considering the restricted approach of various jurisdictions and the international instruments. However, it is mentioned nowhere that creative quality and originality criteria is mandatory to be fulfilled as the term 'performance' under definition clause does not talks about any requirement of fulfilling the need for originality. The statute does not differentiate among performers on the basis of their intellectual labor. In the case of

The duration of the copyright protection is fifty years this duration of protection as has been extended to authors of literary, artistic, musical and dramatic works. The present scenario does not protect the performers in a long run nor his heirs and successors in a sense that they enjoy the taste of fruits of his labor. There is no clue as to why the same extension which is provided for author is not granted to performer.

Also, the definition of the term 'performance' means either visual presentation made live. However, this is just an established understanding and there is no clarity in the Act regarding what is the exact connotation of these terms as such. Further the use of the words in the order as "...acoustic presentation made live" can lead to understanding that suggests the presentation was made before an audience.

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<sup>25</sup> Supra note 3

## **Extent of Rights**

Section 38 of the Copyright Act, 1957 does not provide any positive rights related to authorization of copyright protected entities. There can be alternate interpretations of Section 38(1) as the said section of the Copyright Act grants special rights to the performer and that right is called as Performers' Right.<sup>26</sup> But the confusion here is that no explanation has been provided as to what exactly is Special Right and Performers Rights. This create ambiguities and thus led to confusion in interpretation. The analysis in this context imports two possibilities to the statute and i.e. the first viewpoint is that the version in which it has been ordinarily understood which means to say that the provisions which talks about the infringement also talks about the right of the performers and so the extent of infringement and rights of the performer are somewhat same.

In an extreme sense it can be said that the very Section of the Act would be void for vagueness and for incoherence in arrangement as it provides for remedies and possibilities of exploitation without specifying the rights.<sup>27</sup>

## **Ramifications of Consent**

There is sufficient ground for interpretation that where there is a provided consent, it only regularizes the use of the performance for specific purpose by the user and does not meant a total exhaustion of performers rights of performance. A consent so provided by the performer does not implicate the transfer of property to another person. It simply means right of broadcasting, communication to the public etc. Neither this can be amounted to alienation or licensing. It just diminishes the need for formalities that would otherwise be required. For any further use, a proper consent or a proper assignment or license from the performer would be required.<sup>28</sup>

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26 The Section 38(1) says, "Where any performer appears or engages in any performance, he shall have a special right known as performers' right in relation to such performances"

27 Ibid

28 This brings to the fore an interesting possible situation about the post 1994 audio recordings were in all the singers and instrumentalists would have a continuing right in the recording as most of them would not have assigned the performance envisaged by the Copyright Act by deed. So the same would be the case with respect to any rendition made with respect to radio or other communication to the public

## **CONCLUSION**

Concluding, I would like to say that the legal structure must be modified as to provide more protection to the performer's right. But it is also true that with the advancement in technology and entertainment world, the protection will always be a major concern. Although 2012 amendment took the initiative to protect performers right but some of the provisions of it were a bit confusing. This can be supported by an example as according to section 18 authors of literary and musical works involved in movies shall have the right "*receive royalties to be shared on an equal basis*" but the counter point to this is it is not clear as to how much equal basis amounts to whether is simply means 50% or number of people can also be deciding factor in this. No doubt, 2012 amendments changed the whole scenario and gave the biggest gifts to performers especially artists in the film industry in the form of economic rights over their 'work'. Prior to 2012 amendment, the situation was like the ones who have more money were more powerful than those who actually makes the art but fortunately this was addressed by 2012 amendment and thus a power sharing was done but it is also true that this alone will not resolve the issue in a longer run..

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