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Interpreting "Performers Rights" in The Indian Copyright Act to Appropriately Provide For Singers Rights

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Performers act as a catalyst to communicate the relevant original content in a work. This article seeks to discuss two contentious questions with regard to the interpretation of Performers Rights provided under Section 38 and 39 of the Indian Copyright Act, specifically with respect to Singers' Rights, and offers contrary opinions to the prevailing interpretations in the industry as well as one's argued and accepted by the Delhi High Court. After analysing various doctrinal principles surrounding interpretation of statutes in India, this article firstly concludes that Section 39A of the Indian Copyright Act, and the royalty scheme therein, is applicable with a "*Retroactive"* effect in India; and secondly that every performance rendered in real time, irrespective of it being in front of an audience, on a stage, or in the studio, ought to be covered under the definition of a Performance under Section 2(q) read with Section 38 of the Indian Copyright Act, to effectively provide for Performers Rights, encapsulated within the Indian legislative schema. This article also attempts to harmonize these interpretations with a comparative as well as an international IP perspective.

Keywords: Performers Rights, Statutory Interpretation, Legislative Intent, WIPO Performances and Phonograms Treaty, 1996

Performers rights were introduced in the Indian Copyright Act under Section 38, by an amendment to the Act in 1994.[1] These rights are explicitly provided to Performers, (qualifying under Section 2(qq)), including singers[2] delivering a performance i.e., an acoustic or visual presentation made live.[3] Performers rights are completely independent of ownership of 'works' and are categorized as related rights, protecting interests of those who contribute to making works available to the public.

In order to understand what the law really is, it is essential to know the "why" and "how" of the law. Why the law is what it is and how it came to its present form.[4] The main reason for bringing in this amendment, was to harmonize the Indian Act with the provision of the Rome Convention for Performers, Producers of Phonograms and Broadcasting Organisations.[5] While bringing this amendment, a further important intentional feature was that "*this right will benefit performers*…".[5] The creative intervention of such performers is deemed to be necessary to give life to musical, dramatic and choreographic works and to facilitate their communication to the public. Performers act as a catalyst to communicate the relevant original content in a work and it has been considered justified to recognise the existence of performers rights due to the involvement of skill, creativity and merit, in such transmission.[6] Apart from the same, the consequentialist utilitarian bend of Anglo-Saxon Copyright Principles, as followed by India, recognises the theory of copyrights as incentives for more production of expressions and original works. The end goal of having such a policy present, statutorily, is to ensure more works come into existence. The reason for recognising such neighbouring rights is to ensure that transmitters, who allow for creative works to be communicated to the public, are also incentivised to exist. The purpose of copyright and related rights is to foster a creative expressive environment where the public is exposed to more expressions and perspectives. In lieu of the same, incentives, if considered to be essential, for the same policy to be fulfilled, for authors, also hold extreme relevance in the context of performers as well, for the end goal of such a policy to be fulfilled.

Theoretical Interpretation of Performers Rights

Internationally, scholars have adopted a wide definition of a Performance connoting it to be a transitory activity of a human individual that can be perceived and is intended as a form of communication to others for the purpose of entertainment, education or ritual.[7] The core of this definition revolves around the concept of a performance being a mode of

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communication to the public, by itself or with the aid of technology.[8] Hence the performance in itself is not a subject of copyright, but rather is a mode of communication to the public and involves skills to transit and provide reception to expressions. This skill is what is sought to be incentivised under the act, as a related right. Performances by singers enable conversion of written melodic scripts or an expression conceived by the composers into audible and receptive musical elements, to communicate the expression to the public. It involves substantial investment in learning this art of communication and varies from performer to performer with respect to the effectiveness of communication. Therefore, in order to incentivise them to exist, by according protection against unpaid reproductions, as is done in the case of author-creators, such performers rights are provided in the statutory framework. These rights did not exist in any jurisdiction around the world until the advent of the Musical Performers Protection Act, 1925 in the United Kingdom. The reasoning for the sudden debate on the existence of performers rights in the last three decades or so seems to be influenced by the advent of phonogram technology which enables commercial exploitation of these performances through the "Record-Upload-Download" mechanism. Unauthorized exploitation denies the performer of the economic benefit that would have arisen by virtue of the performance on the event of it being an authorized use and the reward for such an act of performance. It may not seem that performers require such economic incentives to continue performing, however the intention behind the same is to ensure that if there are performers who actually require such monetary incentives, in terms of needs of survival and sustenance in a capitalist society, which is the status quo, they are provided for the same, to ensure that they do not seize to practice and continue to exist, irrespective of privilege.[9] Of course this incentive needs to be balanced with access problems ,and such incentives cannot exist at the cost of access of works to the public, however a rightful balance needs to be drawn, which does not take away reasonable prospects of performers from existing in the society. This theory and reasoning is further supported by the Lockean Concept of "Just Desserts" and the labour theory which seems more relevant in the case of performers rights rather than copyrights[10] and has also been acknowledged in the fundamental precedent of *Sayre* v *Moore*.[11] This precedent seems especially relevant in a capitalist society, wherein by virtue of marginal opportunities to earn better existing, the existence of performers, without due compensation is questionable, at least theoretically. It is imperative to realise that it is the performer, and specifically the singer, whose transitive form of expression creates a lofty expression and leaves a permanent and enriching imprint of the work on the listener's mind, and without which, the copyrighted work is bereft of existence and circulation. Performances have historically been culturally devalued in Copyright Law wherein the body-work and physical labour of creating a performance is discounted against the creative labour of conceptualising a work, even though it may be a product of as much preparation and calculation, as a musical script.[12] Further, the fact that a singer, who is a subset of a performer, faces a range of creative choices when deciding how to perform a piece of music, which can substantially be fixed in a tangible medium, by virtue of a phonogram, needs to be accounted for economically in law by providing a beneficial construction of a statutory provision providing for performers rights. It is a relationship based on co-dependence that a musician and a performer share, which is accounted for by providing for such performer's rights. Hence these rights are to be interpreted in the most beneficial manner in favour of the performers, along with a rightful balance with the question of access.

Internationally, although musical works and performances have been argued to be mutually exclusive,[13] this argument only applies towards the factum of performance being a mode of communication to the public and the musical work being the subject matter of copyright. Every musical performance embodies music within itself and hence a singer who performs music must be accorded performers rights, irrespective of their contribution to the music in itself, to economically provide for the labour involved in a "performance" or the act of communicating the musical content, in a primarily capitalistic jurisdiction like India.

Contentious Issues in the Scheme of Performers Rights in India

This article seeks to discuss the following two contentious questions with regard to the interpretation of Performers Rights provided under Section 38 of the Indian Copyright Act, specifically with respect to Singer's Rights:

(1) Whether Section 39A of the Indian Copyright Act, providing for the application of Section 18 and 19 to performers as well (inalienable right to receive

royalty) in case of assignment, use and broadcasting of the qualifying performances for commercial uses, is applicable with a prospective or a retroactive/ retrospective effect?

(2) Whether Performers Rights are available for performances taking place in the studio as well, or only those conducted before an audience and in a concert- like setting? What is the meaning of "live" under Section 2(q) of the Copyright Act?

There is pending litigation[14] as well as contrary judgments[15] on these questions in India, reflecting a "humpty-dumpty" jurisprudence.

Retroactive or Limited Retrospective Application of Performers Rights

The legislature, through the 2012 amendments to the Copyright Act, furthered a pro-active change towards beneficial protection of performers, wherein Section 39A was introduced. This Section extends the application of Sections 18 and 19[16] to performances and performers rights, with necessary adaptations and modifications.[17] Section 18 and 19 of the Copyright Act provide for "Assignment of Copyright" and the inalienable equitable right to royalty of the authors with the assignee upon exploitation of the work.[18] The extension of the same to performances and performers implies an inalienable right to royalty for the performers on the event of exploitation, assignment and broadcasting of their performances. The question for litigation before the Delhi High Court,[16] concerns as to whether this inalienable provision of royalties extends to performances which have taken place prior to 2012 as well. It is clear that no complete retrospective application can be suggested due to the unimaginable number of claims from prior to 2012 which would come up for litigation, including the royalty claims thereto,[19] however this question concerns with acts of unauthorized reproduction of performances *recorded prior to 2012 (performances that took place prior to the amendment), although reproduced or broadcasted post the amendment.* This issue was also debated and argued by Javed Akhtar, in the Parliamentary debates concerning the 2012 amendment act, and was acknowledged by the Parliamentary Committee.[20]

Intention of the Legislature

To ascertain the true historic intent and inducement of the legislature while bringing in a statutory provision, the Statement of Objects and Reasons are considered to be a valuable and effective tool, although not conclusive due to the debates before the bill is passed.[21] The Statement of Objects and Reasons of the 2010 Copyright Amendment Bill (which went on to be passed as the Copyright (Amendment) Act, 2012), primarily states one of the purposes of this amendment to be conformity and concurrence (to the extent necessary) with the international standards of Performer's protection as specified by the World Intellectual Property Organisation in the WIPO Performers and Phonograms Treaty (WPPT).[22] Further, recent formal accession to this treaty by the Government of India signifies the intention of this provision.[23]

The WIPO Performances and Phonograms Treaty, 1996,[24] in its Preamble, states the intention of this international agreement to be to develop and maintain the protection of the rights of performers and producers of phonograms in an effective and uniform manner. Article 3 of this treaty, under sub-section 1, states that the contracting parties shall accord protection provided under this Treaty to performers and phonograms establishing an obligation upon accession.[25] Further, Article 15 of this treaty provides for the Right to Remuneration for Broadcasting and Communication to the Public which states under sub section (1) that Performers and producers of Phonograms shall enjoy the right to a single equitable remuneration for direct or indirect use of phonograms for commercial broadcasting or communication of such performances to the public.[26] This is in correspondence to Section 39 A read with Section 18 (*proviso* 3 and 4) of the Indian Copyright Act, 1957.

Importantly, Article 17 of the WPPT states in its sub-section (1) that the term of protection to be granted to performers shall last at least until the end of 50 years from the end of the year in which the performance was fixed in a phonogram.[27] This clearly denotes that there is an intention to include performances taking place even prior to the treaty as long as the cause of action (broadcasting) is within 50 years from the origin of the performance and after the enaction of this treaty. An analogous provision can be found even in the Indian Copyright Act, 1957 under Section 38 (2) which also seems to include all performances i.e., before or after the amendment came into force.[28]

Further, the Statement of Objects and reasons also states the clarification and beneficial intention of the Amending Act with regard to the provision of royalties to authors of literary and musical works and performers (by virtue of Section 39 A and the applicability of similar provisions pertaining to

royalties in the case of performers as well) through the copyright societies.[29] The Amending Act states its object to be the acknowledgment and adequate economic as well as moral incentives through compensation for performers and their socio-economic welfare as a class, to promote creation of output.[30]

What is Retroactive or Limited-Retrospective Construction?

The word retroactive has been defined as "*extending in scope or effect (of a statute, ruling etc.) to matters that have occurred in the past, also termed retrospective*."[31] The Indian Supreme Court has, however, gone on to slightly differentiate between the concept of retroactive and retrospective by construing retroactive to be a subset of the retrospective The Court has stated[32] that retrospective means looking backward and contemplating what is part or having reference to acts or facts occurring before the act came into place.[33] Retroactive, on the other hand, refers to creation of new obligations and duties upon transactions or considerations already having taken place in the past, upon performance of a particular new cause of action.[33]

In the case of a beneficial legislation like the one in our case, the purpose of the new rule would be defeated if it accounted for only those agreements that were entered post the enactment of the rule.[34] In an instance concerning the SARFAESI Act, the Supreme Court had held that "*In case of retroactivity, Parliament takes note of the existing conditions and promulgates the remedial measures to rectify those conditions."*[35]

The basic point is that in a statute involving a retroactive construction, the cause of action or incidence of liability arises post the enactment/ amendment of the statute (as opposed to a completely retrospective construction), however it takes into account and includes the extended class of people affected or transactions entered into even prior to the enactment/amendment. Hence it insinuates the principle of limited retrospectively benefitting and not discriminating against two people- one who completed the transaction prior to the act as well as one who has completed the transaction post the act, as long as the cause of action takes place post the statutory stipulation.

This construction is relevant in the context performers in order to provide for the payment of royalties for performances that have taken place prior to the amendment as well as post the amendment, provided that the reproduction or broadcasting (incidence of liability) has taken place post 2012. There seems no reason to not provide for royalties to singers whose labour was recorded and fixed prior to the amendment and continues to be played and exploited for commercial uses. Making a distinction and providing for a prospective enaction of the statute will be violative of Article 14 of the Constitution of India i.e. Right to equal and fair treatment of equals and similarly placed members of the society in law,[36] as these performances are being excluded from the purview of royalty payments upon no basis whatsoever and continue to be exploited, rendering stipulated incentives to be arbitrary.

Why Retroactive? The Case for Beneficial Construction

While interpreting a statute, the inhibition against Retrospective or Retroactive construction is not an unalterable rule and varies *secundum materium*.[37] Courts in India have repeatedly established that this universal assumption of prospective construction of a statute is applicable with low insistence in cases involving welfare legislations or a remedial statute.[38] The presumption against retrospective enaction can be done away with due to necessary implication. This necessity is implied when the object of the statute is to cure an acknowledged evil and provide for a remedy in lieu of mischief or denial of a certain right to a community or a class of individuals as a whole, or the lack of an equitable treatment thereto.[39] The courts in India have held that if an amending act has a beneficial provision providing for compensation which accrues by virtue of a prevalent mischief or exploitation or uncompensated labour, it shall be interpreted with a retrospective or retroactive effect as is practically feasible, providing compensation to all beneficiaries.[40] Further, a statute which provides for imperative benefits to a class or certain similarly placed people must be read in consonance to expand the effect of such benefit to all intended beneficiaries, irrespective of the date of them attaining the status of a beneficiary. In such situations, unless the statute specifically provides for no retrospective/retroactive construction, it cannot be implied.[41]

Further, in case of a statute being brought into effect in order to comply with international standards or due to experience gathered by the parliament realising a need to further provide certain imperative rights and incentives, an application with retroactive effect, covering beneficiaries who entered into transactions pre-amendment, which continue to be exploited as well, is highly recommended.[42]

While interpreting Section 39A of the Copyright Act or Clause 28 of the Copyright (Amendment) Act, 2012, the intent of the legislation is to provide for a right to compensation to the performers on the event of broadcasting or communication to public, in the form of royalties, to incentivise the specialised skill and labour involved in the performance. Before this amendment, there has been no such provision of royalties or any form of compensation for the labour induced by the performers.[12] This beneficial amendment to the Copyright Act was introduced in order to avoid a deprivation of the merit, labour and creative choice employed by these performers in a performance. Therefore, in light of the beneficial construction of this statute providing for the welfare and economic benefit of performers and to conform with the principal policies laid down by the WPPT, Section 39A of the statute must apply retroactively and cover performances which came into existence prior to the amendment (2012) as well. Even the 1994 amendment to the Copyright Act, which within its purview, introduced this concept of Performers Rights in India, provides in its statement of object and reasons that this amendment to the act is for the benefit of the performers.[4]

Analysing the International Position

The UK High Court has acknowledged the retrospective application of Performers Rights to the extent of including performances, which took place before its enaction, within its purview, in a decision that states that performances that took place decades before the enaction of the legislation are also covered and an act of broadcast or reproduction post enactment would result in accrual of royalties to the performers.[43] Further, importantly, as a policy benchmark, the UK CDPA within itself expressly states the inclusion of all performances within the purview of performers rights, irrespective of them coming into place before or after the act bringing in those rights.[44]

Following UK, Ireland[45] as well recognises this position and such a construction has also been advocated by the Ministry of Economic Development of New Zealand[46] with respect to its national statute concerning performers rights.

As far as the United States is concerned, the Music Modernization Act, 2018, has under its *Title-2* mandated the provision of royalties for performances and recordings which took place before the enactment of the Copyright Act as well. The legislation stipulated this beneficial intention.[47] The Title providing for the same has appropriately been named as the "Compensating Legacy Artists for their Songs, Service and Important Contributions to the Society or CLASSICS Act, upon extensive lobbying by pre-1972 artists and performers.[48] In light of this, it is essential for the Indian Judiciary to take into account this policy consideration while interpreting the 2012 Amendment Act.

Broad Construction of a "Live Performance" in the Copyright Act

The definition of a "Performance" under Section 2(q) of the Copyright Act,[3] specifically includes the requirement for the act to be "live". Further, statutorily, explanation 3 of Rule 68 in the Copyright Rules, which is a delegated legislation enacted by the Central Government, provides that the definition of "Live" includes a performance given in a studio.[49]

The Debate Around the Interpretation of "Live"

There has been a debate around the meaning of Section 2(q) of the Indian Copyright Act and the term "live" in the Indian Courts, yielding contrary judgments and *per-incuriam* usage of a High Court precedent by a Lower Court.[17] The argument against *Rule 68* is that the explanation was brought in post the 2012 amendment through an executive clarification, and seeks to bring unplugged performances, plays and interviews which are generally conducted in the studio under the purview of "live". Extending the same to all studio performances including those of songs which are recorded and then produced and presented in a sound recording or a visual format has been vehemently opposed by record labels.[50] In the case of *Sushila* v *Hungama Digital Media Private Ltd*., the Delhi District Court at Patiala House, has restricted the meaning of live to only those performances made before an audience or in a concerted atmosphere, be it in a studio or otherwise.[51] It has followed the strict literal rule of construction relying on tools like the Oxford Dictionary.

Such a narrow construction is without any application of mind has been rightly rejected by the Delhi High Court in the case of *Neha Bhasin* v *Anand Raj Anand*[52], as it goes against the purposive nature of Performers Rights and the rights exist in the first place.[10] It also is extremely arbitrarily when viewed from the point of such rights to be incentive. The author often wonders – why would the legislature want these performers to be incentivised to perform on stage and not in a studio? What can be the reason for such a difference in thought? The author can't

think of any, and it is a completely arbitrary interpretation when looked at from the perspective of why these rights exist as a tool to incentivise more performances. Performers, including singers, through a performance, irrespective of directly before an audience or through a recorded medium, act as a catalyst to transmit the musical/dramatic/literary content from the composer or the author to the perceiver or the audience.[6] This transmission involves an element of ingenuity, labour, judgment and skill, and there is a need to economically incentivise the same for the society to experience more expressions in a consequentialist sense especially in a capitalist society.[11] Even in a song performed in a studio, there is this element of labour involved on the part of the performer, although the performance may be edited prior to being communicated to the audience. This in no way implies for a differential treatment denying these artists any incentives.

The Delhi High Court in the case of *Neha Bhasin*, has rightly stated that every performance has to be live in the first instance, irrespective of it being before an audience or in a studio.[52] The Court further stated that irrespective of the forum involved, once the instance of the performance takes place, certain amount of skill and labour is inputted which requires ingenuity and judgment, and hence must be protected, for incentives to be ensured.[52] The intention of bringing in the word "live" in the definition of the "Performance" through the 1994 amendment to the Copyright Act seems to be avoid inclusion of acts solely developed by the use of technology and computer without any body-work or labour. Even a performance in a studio by a singer, is first performed and sang (inducing labour and creative acumen), which is recorded and worked upon.

The Court in the case of *Sushila* has denied the application of the reasoning in Neha Bhasin and has passed a per-incuriam decision relying upon the Division Bench judgment in the case of *IPRS* v *Aditya Pandey* wherein it was stated that, "*Performers Rights introduced by the 1994 amendment, required a division of the subject pertaining to live performances while communicating the work to the public and when communication was by way of diffusion*[53]," hence interpreting the intention of the legislature to segregate such performances as "live". There are two problems with the reliance on this judgment and this particular interpretation.

Firstly, this was an assertive argument by IPRS in this case and was not a question of dispute which the court has delved or pronounced upon. Secondly, even if there is a difference in communicating live to the public and by the act of diffusion, the act of communication by diffusion does not preclude protection for a performance which is firstly recorded and then diffused. There has been a performance, which is perceived by the audience due to the act of diffusion and must be accounted for when according incentives. The performance of the musical content took place in the instance and thereafter was communicated by the medium of diffusion. The difference in the "communication to the public" by diffusion or display as mentioned in Section 2(ff), in no way is to affect the definition of a performance and the ambit of a "live" performance under Section 2(q). Such a distinction in a performance shall be baseless, as both an input of skill and labour which is either communicated to the public by diffusion or direct display. It is to be noted herein that the creative intervention of performers is deemed necessary to give life to musical, dramatic and choreographic works and to facilitate communication to the public and this catalytic role and investment must be incentivised for the existence of more and diverse expressions.

Purposive Interpretation of the Provision

The strict literal interpretation of "live" by the Court in the case of *Sushila* goes against the principle of purposive construction of a statute. It has been recognised by the Supreme Court of India that "*The words of a statute, when there is a doubt about the meaning, are to be understood in the sense in which they best harmonise with the subject and object of the enactment. Their meaning is found not so much in a strict grammatical or etymological propriety of language, nor even in its popular use, as in the object to be attained or the subject on the occasion of which they are used*."[54] When two interpretations are possible, one which advances the remedy and the object envisioned by the legislature in the most efficient way must be preferred, to avoid the legislative futility and vagueness.[55]

In the statute at hand, the purpose behind enaction as has been established in the initial part of the article is to provide for an imperative socio-economic benefit to all performers who expend skill and labour in transmitting content to be perceived by the audience.[56] Therefore, this statute must be construed purposively to give effect to the rights of all performers who contribute the requisite skill and labour in a performance.

Various restaurants and music venues gain immense commercial benefit and have a huge customer base because of the kind of music which they play. This results in direct commercial benefit to these venues due to the skill and labour invested by the singers and performers of the musical work used, who are accorded no benefit for the usage and broadcast of their performance. This is an absurd construction and goes against the primary object of performers rights, as there is no justifiable reason to discriminate between those performances in the studio and on a stage setting, while according incentives. The Supreme Court of India has further held in principle that the court while interpreting a statute must hold the construction which is just, reasonable and sensible[57]and least offensive to the sense of justice.[58] Justice Venkatrama Aiyar has further established the sound legal principle of statutory interpretation stating, "*Where the language, meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some absurdity, presumably not intended and unjustifiable, a construction maybe put upon it which modifies the meaning of the words or expands or limits it, as suitable…*"[59]

Ergo, to avoid the absurdity and the unjustifiable anomaly which the narrow definition of the word "live" purports, it is imperative that this provision should be purposively interpreted to include all performances taking place in the instance, irrespective of it being in a studio or before an audience, providing for a broad meaning of "live". Further, such a purposive construction of a statutory provision has often been employed by courts internationally, while interpreting provisions passed to implement international agreements or conventions as has specifically been done in this case of Performers Rights.[32,60]

The International Position

Justice Richard Arnold has argued that providing a narrow and limited definition of live, restricted to performances before an audience, will result in denying performers rights to a lot of performers including film actors who essentially perform before the camera itself, and would result in a chilling effect on these rights.[61] The definition of live can only be restricted to not include such performances which have parts of a pre-recorded song in a new performance (mashups or remixes) or if the performance is totally and effectively computer generated (Electronic music).[61]

Additionally, a limited interpretation of "Live" would reverse the Queen's bench decision in the case of *Rickless* v *United Artist Corps*.[62] where essentially the performances in question were that on a film and not on a stage before an audience. Yet the Court went ahead and provided for performers rights to all the performers. Even specific to the case of a performance in a studio, such a limited interpretation of a live performance has not been indulged in by the courts.[63]

Hence every performance rendered in real time, irrespective of it being in front of an audience, on a stage, or in the studio, ought to be covered under the definition of a Performance under Section 2(q) to effectively provide for Performers Rights and the right to royalty to singers upon exploitation of their performances by virtue of electronic diffusion as well as direct display.

Conclusion

In the backdrop of this theoretical discussion surrounding the interpretation of Section 39A and Section 2(q) of the Copyright Act, and their intended meaning with light to the international practice, the utilitarian cum-personhood bent of the Indian position on copyright, the author, through this article, conclusively argues that it is the most prudent that:

(1) Section 39A of the Indian Copyright Act, be given a retroactive effect, to accommodate the performances that took before the amendment to the provisions of this act and,

(2) The definition of a live performance be construed to be broad enough to include all performances which were rendered in real time, inspite of them being before an audience or not. This is a departure from the literal interpretation of the provisions, but rather towards the progressive contextual and harmonious construction of the provisions of the Indian Copyright Act.

References

1 Clause 14, Copyright (Amendment) Act, 1994, Act No. 38 of 1994.
2 Indian Copyright Act 1957, Section 2(qq).
3 Indian Copyright Act 1957, Section 2(q).
4 *Novartis* v *Union of India* (2013) 6 SCC 1 [29].
5 Statements of Objects and Reasons, Clause 14, Bill No. 105, 1992, Copyright (Amendment) Act 1994.
6 *Understanding Copyright and Related Rights* (2016) WIPO, 27-28.
7 Morgan, *International Protection of Performers Rights* (Hart, 2002), Chapter 2, drawing on Schechner, *Performance Theory*, (Routledge, New York, 1988).
8 Arnold R, *Performers Rights*, (2008 Sweet and Maxwell ed. 4), 1.03.

9 Morgan, *International Protection of Performers Rights* (Hart, 2002), Ch. 3 and Towse, "*Copyright and Economics*" in Frith and Marshall, *Music and Copyright*, (2nd ed. Edinburgh University Press, 2004).

10 Locke J, "Labour" (published 1693), in M Goldie (ed.) *John Locke: Political Essays* (Cambridge University Press, 1997) 326-328: referring to the importance of Labour in "useful and mechanical art".

11 (1785) 1 East 361.

12 Rebecca Tushnet, 'Performance Anxiety: Copyright Embodied and Disembodied' (2013) 60 J Copyright Soc'y USA 209, 214.

13 *Hadley* v *Kemp* (1999) EMLR 589 (5-11).

14 CS (Comm) 1546/2016, CS (Comm) 1547/2016, CS (Comm) 1623/2016, CS (Comm) 1624/2016, CS (Comm) 487/2016, CS (Comm) 896/2017, Delhi High Court.

15 *Neha Bhasin* v *Anand Raj Anand* (2006) 132 DLT 196 in comparison to *Sushila v Hungama Digital Media Entertainment Pvt. Ltd. & Super Cassettes Industries Private Limited (2018) C.S 426/18 (ADJ-01, Patiala House Court, New Delhi).*

16 Only Section 18 and 19 are relevant within the scope of this article. This Section applies to other sections including Section 30, 30A, 33, 33A, 34,35,36,53,55, etc. as well.

17 Indian Copyright Act 1957, Section 39 A (inserted by Copyright (Amendment) Act 2012, Clause 28.

18 Indian Copyright Act 1957, Section 18 (1) proviso 3 and 4; Section 19 (9), (10).

19 Parliamentary Debates on the Copyright Amendment Bill 2010, LP/6:30/4d, 29-30, <http://iprmentlaw.com/wp-content/uploads/2018/03/Sibal-Speech-1-18.00pmTo19.00pm.pdf>.

20 Parliamentary Debates on the Copyright Amendment Bill 2010, LP/6:30/4d, 22, <http://iprmentlaw.com/wp-content/uploads/2018/03/Sibal-Speech-1-18.00pmTo19.00pm.pdf>.

21 *The Gujrat University* v *Shri Krishna RanganathMudholkar* (1963) AIR 1963 SC 703 [20]; *Oriental Fire General Insurance* v *Shantabai S. Dhume* (1986) 1987 ACJ 198 [5].

22 Statement of Objects and Reasons, Copyright (Amendment) Bill, 2010, 14,15 [3(i)(ii)].

23 Govt. of India, 'Cabinet approves accession to WIPO Copyright Treaty,1996 and WIPO Performers and Phonograms Treaty, 1996' (*Press Information Bureau*, 4 July 2018) http://pib.nic.in/newsite/PrintRelease.aspx?relid=180389 (accessed on 10 July 2018).

24 Adopted by the Diplomatic Conference on December 20, 1996.

25 WIPO Performers' and Phonograms Treaty (1996), Article 3(1).

26 WIPO Performers' and Phonograms Treaty (1996), Article 15(1).

27 WIPO Performers' and Phonograms Treaty (1996), Article 17(1).

28 Indian Copyright Act 1957, Section 38(2).

29 Statement of Objects and Reasons, Copyright (Amendment) Bill, 2010, 14,15 [3(ix)].

30 Statement of Objects and Reasons, Copyright (Amendment) Bill, 2010, 14.

31 Black's Law Dictionary (9thedn. 2009).

32 *Shanti Conductors* v *Assam State Electricity Board*, (2019) SCC Online SC 68, 57.

33 *Shanti Conductors* v *Assam State Electricity Board*, (2019) SCC Online SC 68, 58 citing *Jay Mahakali Rolling Mills* v *Union of India* (2007) 12 SCC 198.

34 *Shanti Conductors* v *Assam State Electricity Board*, (2019) SCC Online SC 68, 54.

35 *MD Frozen Foods Exports (P) Ltd.* v *Hero Fincorp Ltd.* (2017) 16 SCC 741, 755 [39].

36 The Constitution of India 1950, Article 14; *Western UP Electricity Power and Supply Co. Ltd*, v *State of UP*, AIR 1970 SC 21, 24.

37 *Barber* v *Pigden* (1937) 1 All ER 126: (1973) 1 KB 664 (CA) (Scott, LJ).

38 Guru Prasanna Singh, *Principle of Statutory Interpretation* (10thedn Wadhwa and Co., 2006) 804.

39 *Mithilesh Kumari* v *Prem Bihari Khare* (1989) AIR 1989 SC 1247, 1254; *Zile Singh* v. *State of Haryana* (2004) 8 SCC 1, 9; Guru Prasanna Singh, *Principle of Statutory Interpretation* (10thedn Wadhwa and Co., 2006) 476.

40 *Oriental Fire & General Insurance* v *Shantabai S. Dhume* (1986) 1987 ACJ 198 [5]; *A. Vilasini and Ors.* v *K.S.R.T.C and anr.* (1988) AIR 1989 Ker 95 [15].

41 *Bharat Singh* v *Management of New Delhi Tuberculosis Center.*, (1986) AIR 1986 SC 842 [11] [16- 17].

42 *Pratap Singh* v *State of Jharkhand and Ors.*, (2005) AIR 2005 SC 2731 [100], [109].

43 *Experience Hendrix LLC* v *Purple Haze Records Ltd and anr.* [2005] EWHC 249 (Ch), 5.

44 Copyright Designs and Patent Act 1988, Section 180 (3): "The rights conferred by this Part apply in relation to performances taking place before the commencement of this Part; but no act done before commencement, or in pursuance of arrangements made before commencement, shall be regarded as infringing those rights".

45 Robert Clark, MáireNíShúilleabháin, *Intellectual Property Law in Ireland* (Kluwer Law, 2010) [194].

46 ManatuOhanga, *Performers Rights- A discussion paper* (Crown Copyright 2011) [48].

47 115th Congress Report, 2nd Session House of Representatives 115-651, *Music Modernization Act* (April T 25, 2018) [To accompany H.R. 5447] 88.

48 115th Congress Report, 2nd Session House of Representatives 115-651, *Music Modernization Act* (April T 25, 2018) [To accompany H.R. 5447] 15-16.

49 Copyright Rules 2013, Rule 68: Explanation 3 - For the purpose of this article, performance includes recording of visual or acoustic presentation of a performer in the sound and visual records in the studio or otherwise.

50 Rauta A, Guest Interview: Ankit Relan- IT, Media and Entertainment Attorney, Partner- Mason and Associates, *IPRMENT Law*, 11 March 2008, <http://iprmentlaw.com/2018/03/11/guest-interview-ankit-relan-it-media-entertainment-attorney-mason-associates/>

51 *C.S 426/18 (ADJ-01, Patiala House Court, New Delhi) (2018).*

52 132 DLT 196 (2006).

53 SCC Online Del 2645 (2012) [19].

54 *Workmen of Dimakuchi Tea Estate* v *Management of Dimakuchi Tea Estate*, AIR 1958 SC 353, 356; *Santasingh* v *State of Punjab*, AIR 1976 SC 2386, 2389; *Ashok Singh* v *Assistant Controller of Estate Duty*, AIR 1992 SC

1756,1761; Maxwell on Statutes (12thEdn.), 76; Guru Prasanna Singh, *Principle of Statutory Interpretation* (10thedn Wadhwa and Co., 2006) 113.

55 *Carew and Company* v *Union of India*, AIR 1975 SC 2260, 2270; *Bipinchandra Parshottamdas Patel* v *State of Gujarat* (2003) 4 SCC 642, 657-658; *Busching Schmitz Private Ltd.* v *P.T.Menghani*, AIR 1977 SC 1569, 1575-1576; *SP Jain* v *Krishan Mohan Gupta* (1987) 1 SCC 191,201.

56 Statements of Objects and Reasons, Clause 14, Bill No. 105, 1992, Copyright (Amendment) Act 1994; *Shanti Conductors* v *Assam State Electricity Board*, (2019) SCC Online SC 68, 57; Raghbir Singh, *Iyengar's Commentary on the Copyright Act* (8thedn, Universal 2013).

57 *Nasiruddin* v *State Transport Appellate Tribunal*, AIR 1976 SC 331, 338.

58 *Madhav Rao Jivajirao* v *Union of India*, AIR 1971 SC 530, 576; *Union of India* v *B. S. Agarwal*, AIR 1998 SC 1537, 1546.

59 *Tirath Singh* v *Bachitar Singh*, AIR 1955 SC 830, 833 cited in Maxwell, *Interpretation of Statutes* (11thedn), 221.

60 *James Buchanon and Co. Ltd.* v *Babco Forwarding and Shipping UK Ltd.* (1977) 3 All ER 1048; *Horvath* v *Secretary of State for the Home Department*, (2000) 3 All ER 577, 580 (HL).

61 Richard Arnold, *Performers Rights*, (2015 Sweet and Maxwell ed. 6), 2.26.

62 1988 QB 40.

63 *Mad Hat Music* v *Pulse 8 Record* (1993) EMLR 172; *Bassey* v *Icon Entertainment plc* (1995) EMLR 59.