

## ARTISTIC AND MUSICAL WORKS UNDER INDIAN COPYRIGHT REGIME :A RESEARCH PAPER

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### Abstract

This paper examines the legal landscape surrounding copyright protection for artistic and musical works under Indian and international law. It traces the historical evolution of copyright recognition from the early 18th century, focusing on milestones such as the Copyright Act of 1911, which marked the inclusion of artistic and musical works as subject matter of copyright. The study delves into the definitions and rights associated with "artistic works" and "musical works" under the Indian Copyright Act, 1957, discussing elements like originality, the idea-expression dichotomy, and the doctrine of authorship. Contemporary challenges are highlighted, particularly the impact of artificial intelligence on authorship and copyright ownership, as exemplified by cases such as *Zarya of the Dawn*, where AI-generated content faced copyright denial. This paper argues that while India's copyright framework aligns with conventions like the Berne Convention, amendments are necessary to address the complexities of AI-generated creations, ensuring clarity and adaptability in modern copyright law.

### List of Cases

1. *Asianet Communications (P) Ltd. v. Surya T.V.*, 2015 SCC OnLine Mad 10366
2. *Aamir Raza Husain v. Cinevistaas Limited*, 2002 SCC OnLine Bom 926
3. *Feist v. Rural Telephone Service Co.*, 499 U.S. 340 (1991)
4. *Baker v. Selden* 101 U.S. 99
5. *Donoghue v. Allied Newspapers Ltd.*, (1937) 3 All ER 503
6. *Baker v. Selden* 101 U.S. 99
7. *Donoghue v. Allied Newspapers Ltd.*, (1937) 3 All ER 503
8. *R.G. Anand v. Delux Films*, (1978) 4 SCC 118
9. *Barbara Taylor Bradford v. Sahara Media Entertainment Ltd.*, 2003 SCC OnLine Cal 323.
10. *R.G. Anand v. Delux Films*, (1978) 4 SCC 118
11. *Bikramjeet Singh Bhullar v. Yash Raj Films Private Limited & Ors.*, 2023 LiveLaw (Del) 1348.
12. *Humans Of Bombay Stories Pvt. Ltd. v. Poi Social Media Pvt. Ltd. & Anr.*, 2023 LiveLaw (Del) 947
13. *Merchandising Corporation of America v. Harpbond*, (1983) FSR 32.
14. *Wham-O-Mfg. v. Lincoln* (1985) RPC 127
15. *Amar Nath Sehgal v. Union of India* 2005 SCC OnLine Del 209
16. *St+Art India Foundation & Anr. V. Acko General Insurance* 2023 LiveLaw (Del) 1127
17. *Wham-O Manufacturing Co. v. Lincoln Industries Ltd.* (1984), [1985] R.P.C. 128
18. *James Arnold v. Miafern* (1980) RPC 397 at p. 403.
19. *American Historical Co. v. Clarke*, 316 Ill. App. 309.
20. *Associated Publishers v. Bashyam* AIR 1964 Mad 114
21. *Fairmount Hotels Pvt. Ltd. v Mr. Bhupendra Singh* 2018 Del
22. *Fairmount Hotels Pvt. Ltd. v Mr. Bhupendra Singh* 2018 Del
23. *Naruto v. David Slater* 888 F.3d 418 (9th Cir. 2018)

24. *Raj Rewal v. Union of India*, 2019 SCC OnLine Del 8716

25. *George Hensher Ltd. v. Restawile Upholstery (Lancs) Ltd.*, (1975) RPC 31

26. *Sulamangalam R. Jayalakshmi v. Meta Musicals*, 2000 SCC OnLine Mad 381

## INTRODUCTION

If one were to claim that something as creative as paintings, sculptures, drawings, or even a soulful composition were to be denied protection under copyright law, then he would, at the drop of a hat, be dismissed or even labelled outlandish. However, something that is, in the modern twenty first century world, considered exceptionally obvious, like granting of copyright protection to artistic or musical works, was not always a norm for the society.

## Historical Background

For instance, Statute of Anne, 1710, which is considered to be the first legislation on copyright, completely ignored artistic and musical works, and subsequent English legislation, The Copyright Act, 1842 and the American law in the form of Copyright Act, 1790, followed suit. This also influenced the foremost legislation in Indian copyright jurisprudence, The Copyright Act, 1847 and it also provided no recognition to both Artistic work and Musical Works as subject matter of copyright. It was, thus The Copyright Act, 1911, passed in England, was the first copyright law that finally recognised artistic and musical works as the subject matter of copyright and the same was incorporated in the 1914 amendment to the Indian legislation and later in the Copyright Act, 1957 post independence.

Therefore, especially post 1911 in England and after 1914 in India, both artists and composers, were granted intellectual property protection, freeing them from the clutches of elite patrons. The authors, thus, have the rights to reproduction, communication to public, issuing copies, adaptation, performance etc along with the rights of paternity and that of integrity over their artistic and musical work.

However, in order to understand and appreciate the scope of intellectual property protection, provided to these works, it becomes essential to understand the nature and meaning of copyright under Indian jurisprudential set up.

## The Jurisprudence Of Copyright

In *Asianet Communications (P) Ltd. v. Surya T.V.*<sup>1144</sup>, the Supreme court observed, "Copyright is a bundle of rights given by the law to the creators of literary, dramatic, musical and artistic works and the producers of cinematograph films and sound recordings. The rights provided under Copyright law include the rights of reproduction of the work, communication of the work to the public, adaptation of the work and translation of the work. The scope and duration of protection provided under copyright law varies with the nature of the protected work."

Thus, copyright acts as a wide umbrella of rights that are conferred upon the authors, safeguarding their economic interests, while ensuring the society as a whole is benefitted from the works, thus produced. Thus, the object of the law of copyright was explained by the Bombay High Court in *Aamir Raza Husain v. Cinevistaas Limited*, "the idea of copyright law is to provide statutory protection and to promote originality and art."<sup>1145</sup>

Thus, originality is considered to be the hallmark of copyright. In *Feist v. Rural Telephone Service Co*<sup>1146</sup>, the US Supreme held that in order to qualify for copyright protection, a work must be original to the author. Hence, the work should be independently created by the author, and should possess at least some minimal degree of creativity. The prerequisite level of creativity required is extremely low and thus, if one's work closely resembles that of someone else, it shall not be considered a copy, but an original work, provided it is not copied from the other work.

<sup>1144</sup> *Asianet Communications (P) Ltd. v. Surya T.V.*, 2015 SCC OnLine Mad 10366

<sup>1145</sup> *Aamir Raza Husain v. Cinevistaas Limited*, 2002 SCC OnLine Bom 926

<sup>1146</sup> *Feist v. Rural Telephone Service Co.*, 499 U.S. 340 (1991)

## Idea Expression Dichotomy

Another important facet about the law of copyright is that it protects the expression of the idea alone and not the right. This concept has been styled by jurists as the Idea Expression Dichotomy and can be explained as a legal doctrine that confines the scope of copyright to the expression alone, and keeping unexpressed or abstract ideas, outside the ambit of intellectual property protection. Elucidated, for the first time in the celebrated American precedent of *Baker v. Selden*<sup>1147</sup>, this doctrine was affirmed in England in *Donoghue v Allied Newspapers Ltd*<sup>1148</sup>, where Farwell J, observed “If the idea, however brilliant and however clever it may be, is nothing more than an idea, and is not put into any form of words, or any form of expression such as a picture or a play, then there is no such thing as copyright at all. It is not, until it is reduced into writing, or into some tangible form, that you get any right to copyright at all, and the copyright exists in the particular form of language in which, or, in the case of a picture, in the particular form of the picture by which, the information or the idea is conveyed to those who are intended to read it or to look at it.”

While, in India, the Supreme Court in the landmark judgement of *R.G. Anand v. Delux Films*<sup>1149</sup> affirmed this doctrine, the High court of New Zealand, rejected this doctrine, labelling the concept of idea expression dichotomy, “probably the most difficult concept in law of copyright” and the concept that law does not protect copyright as “unacceptable”.<sup>1150</sup> However, the position in India has remained unchanged from that of the Supreme Court in *R.G Anand*<sup>1151</sup>. This can be seen in recent Delhi High Courts judgments like that of the Bollywood movie *Shamshera*<sup>1152</sup> and that of the

social media page *Humans of Bombay Stories*<sup>1153</sup>

## Artistic and Musical Work as Subject Matter of Copyright

Therefore, any subject matter of copyright<sup>1154</sup>, including artistic and musical works, needs to meet the minimum standards of creativity as to enable the works as original, along with a mere idea to create a certain artwork or a composition, will not attract copyright protection.

The Indian Copyright Act, 1957 provides an exhaustive definition of the term, ‘work’<sup>1155</sup> to include literary, dramatic, artistic and musical works, along with sound recordings and cinematograph films. The Act also provides independent extensive definitions of both “artistic works” and “musical works”, which shall be discussed in great detail in the subsequent chapters of this research. Also, with reference to musical works, the composers, apart from the set of rights provided under section 13 of the Act, also enjoy neighbouring rights like the right to performance. This has been incorporated after the 1994 amendment to Copyright Act 1957.

## Term of copyright of Artistic and Musical Works

By the virtue of The Copyright Act, 1957, the term of the musical or artistic work published within the lifetime of the author is sixty from the beginning of the calendar year next following the year of the death of the composer or the artist.<sup>1156</sup>

## Artistic and Musical Works in the Age of Artificial Intelligence

In the twenty first century especially with the advent of Artificial Intelligence tools, it has become very easy to create artistic and musical works. While it is possible to argue that there exists certain level of creativity in order to provide the Artificial intelligence software the commands, to produce the desired artistic work or musical work, two set of arguments sprout

<sup>1147</sup> *Baker v. Selden* 101 U.S. 99

<sup>1148</sup> *Donoghue v. Allied Newspapers Ltd.*, (1937) 3 All ER 503

<sup>1149</sup> *R.G. Anand v. Delux Films*, (1978) 4 SCC 118

<sup>1150</sup> *Barbara Taylor Bradford v. Sahara Media Entertainment Ltd.*, 2003 SCC OnLine Cal 323.

<sup>1151</sup> *R.G. Anand v. Delux Films*, (1978) 4 SCC 118

<sup>1152</sup> *Bikramjeet Singh Bhullar v. Yash Raj Films Private Limited & Ors.*, 2023 LiveLaw (Del) 1348.

<sup>1153</sup> *Humans Of Bombay Stories Pvt. Ltd. v. Poi Social Media Pvt. Ltd. & Anr.*, 2023 LiveLaw (Del) 947.

<sup>1154</sup> *The Copyright Act, 1957* (Act 14 of 1957), s. 13

<sup>1155</sup> *The Copyright Act, 1957* (Act 14 of 1957), s. 2(y)

<sup>1156</sup> *The Copyright Act, 1957* (Act 14 of 1957), s. 22

up. The first one questions the very notion of originality in the action of entering the commands on the software and the second ones, although accepts the originality in the command, but doubts whether it satisfies the minimum level of creativity required to enable copyright protection to the work.

Recently, in the case of comic book *Zarya of the Dawn*, by Kristina Kashtanova, the United States Copyright Office denied the author intellectual property protection over the images that were generated by using an artificial intelligence software, stating that copyright can be granted to human authorship alone.

Thus, while The Copyright Act, 1957 is an inclusive piece of legislation that covers various ambits like artistic and musical works in great depth, it is silent upon the creation of such works by an artificial intelligence software or a robot. Also, the fact that there has been no significant judicial pronouncement regarding the same, might result in confusion and chaos being the only writing on the wall. Therefore, a formal amendment to The Copyright Act, 1957 is the need of the hour to usher the copyright law into the modern age, helping navigate the changes posed by artificial intelligence and robots. This paper further deals with Artistic and Musical Works as subject matter of copyright in detail in the subsequent sections:

### ARTISTIC WORKS

The Copyright Act, 1957, includes “artistic works”, in the umbrella of works in which copyright subsists.<sup>1157</sup> Thus it becomes important to understand the meaning and scope of the definition of artistic works, as defined in the legislation.

Therefore, artistic works<sup>1158</sup> include

- a. a painting, a sculpture, a drawing (including a diagram, map, chart or plan), an engraving or a photograph, whether or not any such work possesses artistic quality;

- b. a work of architecture
- c. any other work of artistic craftsmanship

A similar definition can be traced under the English copyright legislation, where, it includes,

- a. a graphic work, photograph, sculpture or collage, irrespective of artistic quality,
- b. a work of architecture being a building or a model for a building, or
- c. a work of artistic craftsmanship.<sup>1159</sup>

Furthermore, the English legislature expands the term “graphic work”, to mean,

- a. any painting, drawing, diagram, map, chart or plan, and
- b. any engraving, etching, lithograph, woodcut or similar work<sup>1160</sup>

The definition of “artistic works”, also correspond to the definition as provided in the Berne Convention for the Protection of Literary and Artistic Works, 1886 according to which literary and artistic works are inclusive of works of drawing, painting, architecture, sculpture, engraving and lithography; photographic works to which are assimilated works expressed by a process analogous to photography; works of applied art; illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science.<sup>1161</sup>

Thus, this paper further explains the various kind of works that are considered artistic, under The Copyright Act, 1957.

### A. 1. Painting

While the term, “painting”, is not defined in The Copyright Act, 1957, if it is construed in its dictionary or literal sense it means a picture that has been painted.<sup>1162</sup> In simpler words, the application of paint on a certain surface, can be construed as a painting, in a general sense.

However, to qualify to be a subject matter of copyright, a painting should possess a certain

<sup>1159</sup> *Copyright, Designs and Patents Act 1988* (UK), s. 4.

<sup>1160</sup> *Id.*

<sup>1161</sup> *Berne Convention for the Protection of Literary and Artistic Works*, 1886, art. 2.

<sup>1162</sup> Oxford English Dictionary, “painting, n.” Available at: [https://www.oed.com/dictionary/painting\\_n?l=true](https://www.oed.com/dictionary/painting_n?l=true) (accessed September 23, 2024).

<sup>1157</sup> *The Copyright Act, 1957* (Act 14 of 1957), s. 13(1)(a)

<sup>1158</sup> *The Copyright Act, 1957* (Act 14 of 1957), s. 2(c)

sense of originality and creativity. Thus, unless it can be proven that the painter has used a certain degree of creativity in painting and has depicted an actual object or abstract design, it shall not be copyrighted.<sup>1163</sup> Also, the surface upon which the painting is made, is also taken into consideration before granting the protection. For instance, the courts have denied copyright to makeup upon the face of a person<sup>1164</sup> and the suits by tattoo artists claiming protection have been dismissed repeatedly.

Recently, the issue of copyrightability of street art was also argued in the Delhi High Court, in the case of *St+Art India Foundation & Anr. V. Acko General Insurance*, however, the court, while granting injunction to the street art owners, did not decide any legal issues pertaining as to the copyrightability of the artwork.<sup>1165</sup> Also, a painting qualifies to be an artistic work, even if it has no aesthetic quality.<sup>1166</sup>

## 2. Sculpture

While sculpture, is not defined in the copyright legislation, the term, “work of sculpture”, is expanded to be inclusive of a. casts, b. models.<sup>1167</sup> Similarly, the English copyright law also defines sculpture to include a cast or model made for purposes of sculpture.<sup>1168</sup> Sculpture, is the product of art of forming representations of things or abstract designs in the round or in relief by chiselling stone, carving wood, modelling clay, casting metal, or similar processes<sup>1169</sup>

However, what it to be understood is that a sculpture, under the law of copyright does not only include majestic and well crafted structures. Since, artistic quality is subjective in nature, just like paintings, copyright subsists in sculptures, irrespective of it's artistic value.

<sup>1163</sup> Hugh Laddie et. al., *The Modern Law Of Copyright* (London, 1980), p. 107.

<sup>1164</sup> *Merchandising Corporation of America v. Harpbond*, (1983) FSR 32.

<sup>1165</sup> *St+Art India Foundation & Anr. V. Acko General Insurance* 2023 LiveLaw (Del) 1127

<sup>1166</sup> MK Bhandari, *Law Relating to Intellectual Property Rights (IPR)* 2021 (Central Law Publication), p. 28

<sup>1167</sup> *The Copyright Act, 1957* (Act 14 of 1957), s. 2(za)

<sup>1168</sup> *Copyright, Designs and Patents Act 1988* (UK), s. 4.

<sup>1169</sup> VK Ahuja, *Law relating to intellectual Property Rights* 2017 (Lexis Nexis) p. 41

Thus, something as basic as wooden models of toys in the form of flying discs have been granted protection under the “artistic works”<sup>1170</sup>

Another example of sculpture being the subject matter of copyright, is the landmark case of Amarnath Sehgal<sup>1171</sup>, in which the defendants, Union of India was ordered to grant the sculptor, Mr Sehgal his mural, that he created for Vigyan Bhawan and a declaration that all rights, including that of recreation of the sculpture vest with the sculpture was also granted, with damages of Rs 5 lakh.

## 3. Drawing

The scope of the term drawing is wide enough to include diagrams, maps, charts, plans etc.<sup>1172</sup> The definition has been expanded to include drawings and sketches used for engineering purposes. While, it is an established position of law that a drawing can not be denied copyright protection based upon lack of artistic quality, but an expression that can not, be called a drawing, can not be granted such protection. For instance, in *Wham-O-Mfg. v. Lincoln*<sup>1173</sup>, the court held that a single strand of line is not a drawing and hence is not protected under the law of intellectual property.

Also, if a drawing is derived from an existing drawing, it can still be granted a copyright, provided the originality in the subsequent work is established. An idea to create a drawing, is however not protected and the concept of idea expression dichotomy also applies to drawings, squarely.

## 4. Engravings

The Copyright Act, 1957, defines “engravings to include, etchings, lithographs, wood cuts, prints and other similar work and specifically excludes photographs.”<sup>1174</sup> This definition is identical to that in the English copyright legislation. Interestingly, it was the Hogarth's Act, 1734 or the Engraving Copyright Act 1734, that became the first legislation in copyright history to include any

<sup>1170</sup> *Wham-O-Mfg. v. Lincoln* (1985) RPC 127

<sup>1171</sup> *Amar Nath Sehgal v. Union of India* 2005 SCC OnLine Del 209

<sup>1172</sup> *The Copyright Act, 1957* (Act 14 of 1957), s. 2(c)

<sup>1173</sup> *Wham-O-Mfg. v. Lincoln* (1985) RPC 127

<sup>1174</sup> *The Copyright Act, 1957* (Act 14 of 1957), s. 2(i)

form of artistic work, as a subject matter of intellectual property protection.

According to Collin's dictionary, An engraving is a picture or design that has been cut into a surface. English courts have also attempted to define Engraving as "it was held that engraving was the art of producing on hard material incised or raised patterns, lines, and the like from which an impression or print was taken."<sup>1175</sup> In a Kiwi judgment<sup>1176</sup>, the definition of "engravings" has been extended to mean the process as well as the resulting product.

Also, in the case involving a the image and the object on which the image was impressed, it was held that the surface or the object on which the image was engrained shall form the part of the engraving.<sup>1177</sup>

## 5. Photograph

Under The Copyright Act, 1957, photographs have been specifically excluded from the category of "engraving", and a separate definition for it has been provided. Thus, photographs include, photolithograph and any work produced by any process analogous to photography.<sup>1178</sup> However, cinematographic films have been excluded from this definition.

In order to attract copyright, a photograph, needs to meet the standards of originality. Thus, if there exists a mountain, and a person clicks it's photograph, then he or she is bound to be the owner of the copyright. However, this does not bar another person, from taking another photograph of the very same object and obtaining copyright on the same. At the same time, if the photograph is a result of certain labour and creativity of the one taking the photograph and the same is repeated by another, to imitate the original photograph, then, the subsequent photographer shall be liable for infringement. Also, a photograph

produced by a photocopying machine, will not be entitled to any kind of protection under intellectual property laws and it lacks any skill or labour.

In *Associated Publishers v. Bashyam*<sup>1179</sup>, the Madras High Court held that if a portrait is based upon a photograph, then it would be a copyrightable only if it bears a result different from the photograph.

Recently, the Delhi High Court, in *Fairmount Hotels Pvt. Ltd. v Mr. Bhupendra Singh*<sup>1180</sup>, Justice Manmohan, recognised the copyright on photos posited on social media websites like Facebook.<sup>1181</sup> Also, in the case of *Naruto v. David Slater*, which is famous called Monkey Selfie Case<sup>1182</sup>, it was held in the District court that, copyright in photograph can be given to humans alone. The District Judge, held, "Congress and the President can extend the protection of law to animals as well as humans, there is no indication that they did so in the Copyright Act"

## B. "Work of Architecture"

Architectural work, be it a building or a structure, is also considered to be a subject matter of copyright. A work of architecture, can be defined to mean any building or structure having an artistic character or design, or any model for such building or structure.<sup>1183</sup>

However, the protection granted by the copyright law is extended only to the artistic character and design of the building and not to the process by which the work is constructed.<sup>1184</sup> Also, internal designs of a building also attract copyright protection. For instance, A garden with a pond, steps and wall work was held to be a structure for the purposes of granting copyright protection.<sup>1185</sup>

<sup>1175</sup> *American Historical Co. v. Clarke*, 316 Ill. App. 309.

<sup>1176</sup> *Wham-O Manufacturing Co. v. Lincoln Industries Ltd.* (1984), [1985] R.P.C. 128

<sup>1177</sup> *James Arnold v. Miafern* (1980) RPC 397 at p. 403.

<sup>1178</sup> *The Copyright Act, 1957* (Act 14 of 1957), s. 2(s)

<sup>1179</sup> *Associated Publishers v. Bashyam* AIR 1964 Mad 114

<sup>1180</sup> *Fairmount Hotels Pvt. Ltd. v Mr. Bhupendra Singh* 2018 Del

<sup>1181</sup> *Fairmount Hotels Pvt. Ltd. v Mr. Bhupendra Singh* 2018 Del

<sup>1182</sup> *Naruto v. David Slater* 888 F.3d 418 (9th Cir. 2018)

<sup>1183</sup> *The Copyright Act, 1957* (Act 14 of 1957), s. 2(b)

<sup>1184</sup> *The Copyright Act, 1957* (Act 14 of 1957), s. 13(5)

<sup>1185</sup> *Vincent v. Universal Housing Co. Ltd* (1928-35) MCC 275

Also, in order to qualify to be protected, the work of architecture should be situated in India<sup>1186</sup>, unless it is covered under section 40 and 41, where the central government has issued a gazette notification to include certain foreign works, under the subject matter of copyright.

This qualification is as per the Berne Convention for the Protection of Literary and Artistic Works, 1886 according to which the copyright protection is required to be extended to authors of works of architecture erected in a country of the Union or of other artistic works incorporated in a building or other structure located in a country of the Union.<sup>1187</sup>

However, copyright law treats works of architecture, slightly differently from other artistic works. For instance, the moral rights of paternity and ownership, as available to the artist for all artistic works<sup>1188</sup>, although available to the author of the work of architecture, are qualified in nature.

For instance, in the case of *Raj Rewal v. Union of India*<sup>1189</sup>, the Delhi High Court dismissed the plea of celebrated architect, Mr Rewal, against the demolition of the Nehru Pavilion, creation of the architect. He argued that, since as the creator of the building, he has the benefit under Author's Special Rights, under the Copyright Act, 1957 and the building thus, can not be broken down. He prayed that in order to compensate him, the government should provide for the construction of the very same building, either in the same location, or at some other location, under his direct supervision.

The Court, held that if such a plea is granted, then the land upon which the building is constructed would be appropriated by the artist. Also, the court observed that, between modernisation and the rights of the owner and that of the architect, the former needs to be preferred.

*"The requirements of urban planning outweigh the moral rights of an architect. The architect cannot demand the intangibility of work because it would violate the right of ownership and the principles of freedom of commerce. Similarly, the functionality of the building has to necessarily outweigh the interest of the architect on the preservation of integrity. Thus, the owner of the building has full power to dispose it off and to destroy it"*

### C. Any other work of artistic craftsmanship

The expression, "Any other work of artistic craftsmanship" also finds mention in the English copyright legislation, but none of the acts, in domestic or common law copyright framework provide a proper definition for the same.

It is an established principle of law that in order to qualify as a work of artistic craftsmanship, the work should meet certain unspoken criterion of artistic quality.<sup>1190</sup> However, to determine whether or not certain work has artistic quality, one needs to take a plethora of factors into account.

For instance, in the case of *George Hensher Ltd. v. Restawile Upholstery (Lancs) Ltd.*<sup>1191</sup>, the House of Lords dealt with the determination of whether a certain product had artistic quality or not.

While some judges were of the opinion, that, if a substantial amount of public recognised and valued the physical appearance of the product, it would be deemed a work of artistic craftsmanship, while others were of the opinion that, artistic craftsmanship is achieved only if the public purchases it, not for its functional but aesthetic qualities.

Certain judges, were of the opinion that if there exists an intent on the part of the craftsman to create a work of art, while others also pointed out that the work, the craftsmanship of which is artistic.<sup>1192</sup>

<sup>1186</sup> *The Copyright Act, 1957* (Act 14 of 1957), s. 13(2)(iii)

<sup>1187</sup> *Berne Convention for the Protection of Literary and Artistic Works*, 1886, art. 8

<sup>1188</sup> *The Copyright Act, 1957* (Act 14 of 1957), s. 57

<sup>1189</sup> *Raj Rewal v. Union of India*, 2019 SCC OnLine Del 8716

<sup>1190</sup> Jermy Philips, *Introduction to Intellectual Property Law* (London, 1990), p. 128.

<sup>1191</sup> *George Hensher Ltd. v. Restawile Upholstery (Lancs) Ltd.*, (1975) RPC 31

<sup>1192</sup> VK Ahuja, *Law Relating to Intellectual Property Rights* 2017 (Lexis Nexis) p. 44

The Delhi High Court, reiterated, the position laid down by the House of Lords, in *Raj Rewal v. Union of India*, observing that, “copyright subsists irrespective of whether or not the work has artistic merit and artistic quality and that artistic merit in the work is irrelevant as a matter of statutory construction and that evaluation of artistic merit is not a task for which Judges have any training or general aptitude”<sup>1193</sup>

### Authorship of Artistic Works

The authorship of artistic work, is granted to the artist<sup>1194</sup>, saving that of the photograph, of which the person taking the photograph is the author.<sup>1195</sup>

Also, if an artistic work is created at an instance of a person, against monetary consideration, then the person at whose instance the artistic work, including the photograph is taken, shall be deemed to be the author.<sup>1196</sup>

Similarly, if an author creates an artistic work under employment for a newspaper, magazine or similar periodical, the employer shall be considered the first owner for the purposes of publication alone.<sup>1197</sup> In case of the creation of an artistic work, during the course of employment, in a contract of service or apprenticeship, when there is no agreement to the contrary, the employer shall be the first owner, except for the incorporation of the work in a cinematograph film.<sup>1198</sup>

Under Indian copyright jurisprudence, once copyright is granted to an artist or a photographer, then he or she is garnered with the rights of Reproduction, which includes the right to store the artistic work in any medium by electronic or other means and depiction of a two dimensional work in three dimensional and that of three dimensions in two dimensions, right of communication, the right to issue copies

to the public, provided they are not already circulating, the right of inclusion of the work in a cinematograph film and that of adaptation.<sup>1199</sup>

### MUSICAL WORKS

#### Meaning of “Musical Works”

The term, “musical works”, under The Copyright Act, 1957 means any work that consists of music and includes the graphical notion of such work, excluding any action or words, that are intended to be sung, spoken or performed with the music.<sup>1200</sup> Thus, it can be construed that the term musical work cannot be equated to a song, as it excludes the lyrics, of which the lyricist has the copyright.<sup>1201</sup>

Under the Berne Convention for the Protection of Literary and Artistic Works, 1886 the expression “literary and artistic works” is inclusive of Musical works which includes “musical compositions with or without words.”

Therefore, it can be construed that the definition of the expression, “musical works” in the Indian copyright legislation, falls well under the wide scope of the subject matter of copyright as defined under the Berne Convention.<sup>1202</sup>

A song is known to have three basic elements, lyrics, music and singing. Thus, the three players, the lyrics, who writes the song, the composer, who puts in music to the song and the singer, who gives the voice to the words, work together to form a song.<sup>1203</sup> Therefore, there exists no separate copyright in a song.

The Delhi High Court explained the distinction between sound and music, stating that music was limited to what can be expressed in the form of notes, while what can be heard, when the notes are played in a musical instrument, is called sound.<sup>1204</sup>

<sup>1193</sup> *Raj Rewal v. Union of India*, 2019 SCC OnLine Del 8716

<sup>1194</sup> The Copyright Act, 1957, s. 2(d)(iii).

<sup>1195</sup> The Copyright Act, 1957, s. 2(d)(iv).

<sup>1196</sup> The Copyright Act, 1957, s. 17(b).

<sup>1197</sup> The Copyright Act, 1957, s. 17, proviso (a).

<sup>1198</sup> The Copyright Act, 1957, s. 17, proviso (c).

<sup>1199</sup> The Copyright Act, 1957, s. 14(c)

<sup>1200</sup> The Copyright Act, 1957, s. 2(p)

<sup>1201</sup> MK Bhandari, *Law Relating to Intellectual Property Rights (IPR) 2021* (Central Law Publication), p. 31

<sup>1202</sup> *Berne Convention for the Protection of Literary and Artistic Works*, 1886, art. 2.

<sup>1203</sup> *Indian Performing Right Society Ltd. v. Aditya Pandey*, 2012 SCC OnLine Del 2645

<sup>1204</sup> *Star India Pvt. Ltd. v. Piyush Agarwal*, 2013 SCC OnLine Del 1030

Therefore, if there exist certain notes, which when played on an instrument, create a tune, then this tune alone, would fall under the category of musical works, and is a subject matter of copyright, neither the lyrics that form a part of the composition nor the voice that actually sings the lyrics.

Similarly, the Madaras High Court, in, *Sulamangalam R. Jayalakshmi v. Meta Musicals, 2000*<sup>1205</sup> held that a tune, that is composed by a composer for devotional music, it becomes a musical work and the composer is entitled to the copyright protection of for the same.

The composer is defined as who composes the music regardless of whether he records it in any form of graphical notation<sup>1206</sup> Thus, it is the composer that is considered the author of a musical work, not the lyricist or the singer.<sup>1207</sup>

Thus, in *Indian Performing Right Society Ltd. v. Eastern Indian Motion Pictures Assn*<sup>1208</sup> Justice Krishna Iyer observed “*copyrighted music is not the soulful tune, the superb singing, the glorious voice or the wonderful rendering. It is the melody or harmony reduced to print, writing or graphic form.*”

### Rights of Composers

The rights that a composer obtains, after composing a musical work, include the right of reproduction, issue copies that are not circulating, right of communication to the public and that to performance, that to make a sound recording or cinematograph film and that of adaptation.<sup>1209</sup>

However, the position of the composers, with reference to cinematograph films, was always, subservient to that of the producer. For instance, when a cinematograph film producer commissions a composer of music against

valuable consideration for the purpose of composing music for incorporation or absorption in the sound track associated with the film, then he becomes the first owner of the copyright therein and no copyright subsists in the composer unless there is a contract to the contrary between the composer and the producer.

For instance, *Indian Performing Right Society Ltd. v. Eastern Indian Motion Pictures Assn*<sup>1210</sup>, , the Supreme Court held that the composer can claim a copyright in the musical work in the cinematograph film, only if there exists an express agreement for the same. The Court observed, “ *If the composer composes music for a film and in the sound track, the producer alone has copyright and the composer has none*”

But, with the enactment of the 2012 amendment to the Copyright Act, 1957, the position has improved. Thus, the rights of the composer of a musical work shall remain unaffected, with reference to the rights of the producer, in case the musical work is incorporated in a cinematograph film.<sup>1211</sup>

Also, the composers, are also entitled to the rights of performers and also to the Author's special rights of paternity and integrity to their work. For instance, the Delhi High Court in the case of *Mannu Bhandari vs Kala Vikas Pictures Pvt. Ltd. And Anr.*<sup>1212</sup>, extended the scope of moral rights to audio visual works as well.

### CONCLUSION

To sum up, the Copyright Act 1957, acts as an exhaustive and comprehensive legislation on the copyright with reference to both artistic and musical works. For instance, both these works of creativity are included within the subject matter of copyright and there exist separate provisions that deal with all the rights included in the

<sup>1205</sup> *Sulamangalam R. Jayalakshmi v. Meta Musicals, 2000* SCC OnLine Mad 381

<sup>1206</sup> The Copyright Act, 1957, s. 2(ffā)

<sup>1207</sup> The Copyright Act, 1957, s. 2(d)(ii)

<sup>1208</sup> *Indian Performing Right Society Ltd. v. Eastern Indian Motion Pictures Assn.*, (1977) 2 SCC 820

<sup>1209</sup> The Copyright Act, 1957, s. 14(a)

<sup>1210</sup> *Indian Performing Right Society Ltd. v. Eastern Indian Motion Pictures Assn.*, (1977) 2 SCC 820

<sup>1211</sup> The Copyright Act, 1957, s. 17

<sup>1212</sup> *Mannu Bhandari vs Kala Vikas Pictures Pvt. Ltd. And Anr.* AIR 1987 DELHI 13

umbrella of copyright granted to the authors of both artistic and musical works, which have been separately defined.

The Copyright Act 1957 also acts in harmony with all the international conventions and treaties, the Indian Republic is a signatory to, like the Berne Convention for the Protection of Literary and Artistic Works, 1886 and the Universal Copyright Convention.

However, with changing times, especially in age of the internet and Artificial Intelligence, with a number of machine learning programmes mushrooming, it is important that the Indian copyright legislation adapts itself and determines the issues regarding the authorship and subject matter of AI software generated musical and artistic works, along with the rights of the authors of the same.

### BIBLIOGRAPHY

#### 1. Statutes

1. The Copyright Act, 1956
2. The Copyright, Designs and Patents Act 1988 (UK)
3. Berne Convention for the Protection of Literary and Artistic Works, 1886

#### 2. Books

1. V.K. Ahuja, Law Relating to Intellectual Property Rights (3rd ed. 2017)
2. MK Bhandari, Law Relating to Intellectual Property Rights (IPR) 2021 (Central Law Publication)
3. Jermy Philips, Introduction to Intellectual Property Law (London, 1990)
4. Hugh Laddie et. al., The Modern Law Of Copyright (London, 1980)