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**THE INFRINGEMENT OF COPYRIGHTS IN MUSICAL WORKS AND ITS  
REMEDIES IN INDIA**

S. Yashwont Kiran

## ABSTRACT

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*This paper deals with the brief study on the infringement of copyrights in musical works and its remedies in India. In India the law relating to the Intellectual Property Rights deals with the copyrights protection relating to the musical works of the original owners. The music is considered as an artistic work which can be heard only through the platforms like technology and live performances. Due to the duplication or the infringement of musical works, the Copyrights Act, 1957 protects the rights of the original owners of their respective work. Infringement occurs when a person intentionally or unintentionally copies the work of another creator. The paper concludes by stating that the technology had made the reproduction of copyright more easy and cheap. The advancement of technology had made the piracy of musical work simple and difficult to control. The Copyright Act, 1957 deals with the remedies against the infringement of the Copyrights. The laws and provisions in the Copyright Act, 1957 are there to protect the originality of the artistic work made by the author and also to respect the efforts and work made by the original author of the work.*

**KEYWORDS:** Copyrights, Music, Technology, Infringement, Remedies.

## INTRODUCTION

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The impact of advanced technology had made the infringement of copyrights in musical work easier than before. Twenty years ago the music was heard through radio, cassettes, theatres, television, stage performances, Walkman, etc., so the possibilities of the infringement of copyrights in musical works were so less in those times especially in India, but today everyone are having the mobile phones, and computers with internet in their hands, so it became very easy to hear the latest music, so absolutely there are more chances for the infringement of copyrights in musical works. The impact of technology had lead to the amendments in the Copyrights Act, 1957. The Copyright Act, 1957 came into effect from January 1958. This Act has been amended six times till date since then, i.e., in 1983, 1984, 1991, 1994, 1999 and 2012.

The Intellectual Property Rights (IPRs) are the rights granted to the creators of intellectual property which includes trademarks, copyrights, patents, Industrial designs, Confidential information, etc. Since the musical works is considered as an artistic work under the Intellectual property law, the provisions for the infringement of the copyrights for musical works comes under the Copyright Act, 1957.

The Copyright for musical works is done by the registration of copyrights under the Copyrights Act, 1957. The registration of copyrights for the musical works is done to protect the work done by the creator from being copied by the others. The copyrights are given only to the original musical works made by the creator. The musical work includes the work that consists of music and includes any graphical notation of such work, but does not include any word or any action, intended to be sung or spoken or performed with music. A musical work must be original in order to qualify for copyright protection.

Moreover there are lots of differences between the copyright for a music and copyrights for a song. A song is basically an output of a team work because usually a song has its words written by one man and its music by another. The words of a song have a literary copyright, and the music of a song have a musical copyright. These literary copyrights and musical copyrights are entirely different from each other and these two kinds of copyrights cannot be merged. However in some exceptional cases, where the words and the music are made by the same person, or in the case where the copyrights in both the words and music are owned by the same person, he or she would own the copyrights in the song. While dealing with a song, the author for the musical work is the composer and the author for the literary work is the lyricist. If suppose the song is used in a cinematograph film by the way of contract with the producer then the producer owns the



copyright. If suppose there is no contract, then the music composer and the lyricist owns the copyrights.

Where the copyright in musical work has been infringed, the owner of the copyright shall be entitled to all such remedies by the way of injunction, damages, accounts or may be conferred by law for the infringement of a right. Generally copying a work is considered as an infringement. Use of any copyrighted work without the permission of the owner amounts to copyright infringement. Infringement occurs when a person intentionally or unintentionally copies/uses the work of another without credit.

The Copyright Act, 1957 also gives rights to the authors to take action against the person who had infringed the copyrights. The defendant may make use of the plaintiff's work, but if he has not copied the substantial or the core part of the music of the defendant and if the defendant had altered the music then it may not constitute an infringement of copyrights. The musical work has its own special features in the field of copyrights because the infringement of copyrights in musical work is not to be determined by each and every single note to note comparison but actually it is determined by the ear. The question whether the defendant has copied the plaintiff's work depends to a large extent on the judge's own discretion and also based on the evidence.

The infringement of copyrights in musical work is sometimes done even by the common people by uploading the copyrighted material in the social media by without any prior permission from the original author of the work. Due to the usage of technology by everyone, now a days its becoming a mandatory thing for the common people to know about the laws and rules relating to the copyrights.

### **OBJECTIVES:**

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- To have a brief study about the infringement of copyrights in musical works under the Copyright Act, 1957.
- To have a brief study about the remedies for the infringement of copyrights in musical works under the Copyrights Act, 1957.
- To have a brief study about the royalties under the Copyrights Act, 1957.

## CHAPTERISATION:

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### **Chapter 1 - “The Infringement of Copyrights in Musical Works under the Copyright Act, 1957.”**

This chapter deals with the provisions regarding the infringement of copyrights in musical works. It also deals with the exceptions for the infringement of copyrights in musical works and it also deals with the landmark case laws regarding the infringement of copyrights in musical works.

### **Chapter 2 - “The Remedies for the Infringement of Copyrights in Musical Works under the Copyrights Act, 1957.”**

This chapter deals with the provisions regarding the remedies for the infringement of copyrights in musical works. It also deals with the different kinds of remedies under the Copyright Act, 1957. It also deals with the landmark case laws regarding the infringement of copyrights in musical works.

### **Chapter 3 - “Royalties under the Copyright Act, 1957.”**

This chapter deals with the brief study on the royalties for the musical works. It also deals with the provisions regarding the royalties for the musical works that are entitled under the Copyright Act, 1957. It also deals with the landmark case laws regarding the royalties that are entitled under the Copyrights Act, 1957.

## CHAPTER I

### THE INFRINGEMENT OF COPYRIGHTS IN MUSICAL WORKS UNDER THE COPYRIGHT ACT, 1957

The Owner of the copyright in a musical work is the composer of the musical work. The owner of copyright in musical work has all the rights to perform his work in public, but without any prior notice given to the original owner if any person other than the owner performs the musical work in public, then it is an infringement of copyrights. Chapter XI of the Copyrights Act, 1957 deals with the infringement of copyrights. Sections up to 51 to 53A of the Copyrights Act, 1957 deals with the infringement of copyrights.

**Section 51** of the Copyright Act, 1957 says that, Copyright in a work shall be deemed to be infringed when any person, without a license granted by the owner of the copyright or the Registrar of Copyrights under this Act, does anything for the monetary profit or gain or makes the work for sale or lets for hire.<sup>1</sup> Where the copyright in musical work has been infringed, the owner of the copyright shall be entitled to all such remedies by the way of injunction, damages, accounts, and otherwise conferred by the law for the infringement of a right.

There is a landmark case relating to copyrights called as *R.G Anand vs M/S. Delux Films*. In this case the Supreme Court of India after considering a number of English, Indian and American authorities have laid down the following propositions relating to the infringement of copyrights.

In this case, the court stated in brief that -

1. There can be no copyright in an idea, subject-matter, themes, plots or historical or legendary facts and violation of the copyright in such cases is confined to the form, manner and arrangement and expression of the idea by the author of the copyrighted work.
2. It has to be seen whether similarities are fundamental or substantial aspects of the mode of expression adopted in the copyrighted work. Copying should be substantial or material one.
3. Test: Whether the viewer after having read or seen both the works is clearly of the opinion and gets an unmistakable impression that the subsequent work appears to be a copy of the original.
4. Where theme is same but presented differently, there can be no question of infringement.

5. If there are material and broad dissimilarities along with similarities, it negatives the intention to copy the original work. If the coincidences appearing in the work are clearly incidental then there can't be infringement.
6. If the viewer after the incident gets the idea that the film is by and large a copy of the original play, violation of the copyright may be said to be proved.
7. Burden of proof is on the plaintiff in cases where a stage play has been infringed by a movie director.<sup>2</sup>

These above mentioned propositions can be applied to all the subject matters of the copyrights and hence these propositions can also be applied to the copyright of musical works.

### **EXCEPTIONS FOR INFRINGEMENT:**

**Section 52** deals with the exceptions for the infringement of copyrights. The object of these exceptions given under the law is to enable the reproduction of the work for certain public purposes for encouragement of private study, research and promotion of education. Section 52 of the Copyrights Act, 1957 deals with certain acts not to be infringement of copyrights and they are briefly stated as follows:

1. Private or personal use, including research.
2. Criticism or review of the content, whether of that work or of any other related work.
3. The reporting of current incidents or current affairs, including the reporting or report of a lecture delivered in a public place.
4. The reproduction of any work for the purpose of a judicial proceeding or for the purpose of a report of a judicial proceeding.
5. The reproduction or publication of any work prepared by the Secretariat of a Legislature of any state or, where the legislature consists of two Houses, by the Secretariat of either House of the Legislature of any of the states, exclusively only for the use of the members of that Legislature.
6. The reproduction of any kind of work in a certified copy which is made or supplied in accordance with any law for the time being in force or in existence.
7. The reproduction of any work by a teacher or a pupil in the course of instruction.
8. The reproduction of any work as for the part of the question to be answered in an examination.
9. The reproduction of any work in answers to such questions regarding examinations.

10. The reproduction of any work for the purpose of the performance, in the course of the activities of an educational institution, of a literary, dramatic or musical work by the staff and students of the institution.
11. The reproduction of any kind of work in an enclosed room or hall meant for the common use of residents in any residential premises (not being a hotel or similar commercial establishment) as part of the amenities provided exclusively or particularly only for residents therein.
12. The reproduction of any work as for the part of the activities of a club or similar organisation which is not established or conducted for profit.
13. The reproduction of work for the performance of a literary, dramatic or musical work by an amateur club or society, if the performance is given to a non-paying audience, or for the benefit of a religious institution.
14. The reproduction of any kind of content in a newspaper, magazine or other periodical of an article on current economic, political, social or religious topics, unless the author of such an article has expressly reserved to himself the right of such reproduction of the work.
15. The reproduction, for the purpose of research or private study or with a view to publication, of an unpublished literary, dramatic or musical work kept in a library, museum or other institution to which the public has access.<sup>3</sup>

These above mentioned acts can be done by any person and these things does not amounts to the infringement of copyrights in musical works. These things are considered as the defenses or the statutory exceptions for the infringement of copyrights.

In *Entertainment Network (India) Ltd V. Super Cassette Industries Ltd*, the first respondent is one of the top most leading music companies engages in the production and or acquisition of rights in sound recordings. It has a copyright over a series of cassettes and CD's commonly known as T-Series. It has copyrights in cinematographic films and sound recordings. The appellant M/s Entertainment Network (India) Ltd. ENIL, broadcasts under the name "Radio Mirchi". It is a leading FM radio broadcaster. The Super Cassettes Industries Limited (SCIL) had an ownership over the copyright and it is also a member of copyright society being Phonographic Performance Limited (PPL), so there had been an infringement of copyrights of Super Cassettes. Royalty was paid by ENIL to PPL at the rate of Rupees 400 per needle hour pursuant to the order passed by the Calcutta High Court dated 28.09.2001.<sup>4</sup>

**Essential Ingredients of Infringement:**

The following acts are the essential conditions for the infringement of a copyright work.

1. Reproduction of any kind of work in a material form
2. Publication of the work
3. Communication of the work to the public
4. Performance of the work in public
5. Making of adaptations and translations of the work and doing any of the above acts in relation to a substantial part of the work.<sup>i</sup>

If any of the above mentioned acts which is done without a valid consent from the original owner, then the act amounts to the infringement of the copyrights. For instance, when we look at musical infringement of copyrights recently the great legend, **Mr. Ilayaraja** had said that if his music is to be used in any films or anywhere, only if he permits only it can be possible. For example, if in any particular movie, if anyone wants to play the music of Mr. Ilayaraja, has to give his approval, therefore, his permission is a must. Film artists and musicians are unable to secure themselves financially despite their brilliance, therefore, getting a copyright means they have a right over their own music.<sup>ii</sup> Generally the infringement of copyright is accepted by the court only when the substantial part of the work has been copied.

In *T. Pandian Arivali V. Kamal Hassan*, it is generally acknowledged by the Madras High Court that the Sections 13 and 14 of the Copyrights act, 1957 do not go beyond the literary work and the musical work and the title ordinarily of any such work is not a part of composition or the work of an author or the composer. His workmanship is confined to the work and not confined to the title of the work.<sup>iii</sup>

The first owner of the copyright in a musical work is the composer but however if the work is composed in the course of employment under a contract of service, then usually the employer will be the first ever owner of the copyright. The person who commissions a musical works is not the owner of the copyright but he gets a licence to use the work for the purpose for which it is commissioned. Thus however when a film producer commissions a musical work for remuneration, he gets the right to incorporate the music in his film and all other rights connected with the film but the composer of the musical work only gets the copyrights for the musical work.

In *Sulamangalam R. Jayalakshmi v. Meta Musicals, Chennai*, the plaintiffs/applicants have made out a prima facie case over the copyright in respect of the musical work for both Kandha Sashti Kavacham and Kandha Guru Kavacham and copyright over the literary work of Kandha Guru Kavacham and those rights have been Infringed by the respondents and consequently, the

plaintiffs would be entitled to interim injunction sought for in the application against the respondents pending disposal of the suit and accordingly, **the application is allowed.**<sup>iv</sup>

## CHAPTER - II

### THE REMEDIES FOR THE INFRINGEMENT OF COPYRIGHTS IN MUSICAL WORKS UNDER THE COPYRIGHTS ACT, 1957

There is a famous saying in a Latin term called as ‘*Ubi Jus Ibi Remedium*’ which means Where there is a right there is a remedy. The intellectual property law deals with the protection of different kinds of rights by the way of remedies. There are three kinds of remedies for the infringement of copyrights in India, they are-

1. Civil Remedies
2. Criminal Remedies
3. Administrative Remedies

1. Civil Remedies:

- Section 55 of the Copyright Act, 1957 deals with the civil remedies for the infringement of the copyrights. Section 55 says that when there is an infringement of copyrights the owner of the work is entitled to the remedies like injunctions, damages, etc. If the defendant proves that the date of infringement he was not aware and had no reasonable ground for believing that copyright subsisted in the work, the plaintiff shall not be entitled to any remedy other than an injunction in respect of the infringement and a decree for the whole or part of the profits made by the defendant by the sale of the infringing copies as the court may be in the circumstances deems reasonable.<sup>v</sup>
- The Court gives an *Anton Piller* Order which means the order requires the defendant to permit the plaintiff accompanied by solicitor or attorney to enter his premises and take inspection of relevant documents and articles and take infringed copies thereof or remove them for safe custody. Such kind of order is called as Anton Piller order in the United Kingdom.<sup>vi</sup>
- The most important remedy is the interlocutory injunction where the order is given to secure immediate protection from a threatened infringement or from the continuance of an infringement.
- The Copyright owner must take civil proceedings for the recovery of possession thereof in respect of conversion thereof. The plaintiff can get compensatory damages which let the copyright owner seek the damages he suffered due to the infringement.<sup>vii</sup>



In *Indian Performing Rights Society vs Eastern India motion Pictures*, the Copyright Board held that in the absence of proof to the contrary, the composers of lyrics and music retained the copyright in their musical works incorporated in the sound track of cinematograph films provided such lyrical and musical works were printed on written and that they could assign the performing right in public to the appellant.<sup>viii</sup>

## 2. Criminal Remedies:

- Sections 63 to 70 of the Copyright Act, 1957 deals with the criminal remedies for the infringement of copyrights. Section 63 says that when there is a infringement of copyrights, the offender can be punished with an imprisonment for a term of not less than 6 months but which may be extended to a term of 3 years with fine which is not less than fifty thousand rupees but which may extend to two lakh rupees. If the infringement is not made with the intention of doing trade or business then the court may with the special reasons in the judgement can impose a sentence of imprisonment for a term which is less than 6 months or a fine which is less than fifty thousand rupees.<sup>ix</sup>
- Section 63A deals with repeated offence or infringement of copyrights. Section 63A states that whoever have already been convicted under section 63 is again convicted under section 63 shall be punished for the second time with an imprisonment of not less than one year but it shall be extended to three years and with fine of not less than one lakh rupees but it may extend up to two lakh rupees. If the infringement is not made with the intention of doing trade or business then the court may with the special reasons in the judgement can impose a sentence of imprisonment for a term which is less than one year or a fine which is less than one lakh rupees.<sup>x</sup>
- Section 64 deals with the power of police to seize infringing copies. Section 64 says that any police officer not below the rank of sub- inspector may seize all the infringed copies without any warrant and those copies must be produced before a magistrate as soon as practically possible.<sup>xi</sup>
- Section 65A deals with the protection of technological measures which says that any person who circumvents any technological measures applied for the purpose of protecting any of the rights conferred by this Act, with knowledge of infringing such rights shall be punishable with imprisonment which may extend to 2 years and shall also be liable to fine.<sup>xii</sup>
- Section 67 says that whoever makes false entries in the register shall be punishable with the imprisonment of one year or with fin or with both.<sup>xiii</sup>

- Section 68 says that whoever deceives any authority for the purpose of execution of the provisions of this Act or makes any false statement, shall be punished with an imprisonment which may be extended to 1 year or fine or with both.<sup>xiv</sup>
- Section 68A says that if any person who publishes a sound recording or a video film in contravention of the provisions of section 52A shall be punishable with imprisonment which may extend to three years and shall also be liable to fine.<sup>xv</sup>
- In *Hridayanada Sharma vs State Of Assam*, There being a conflict of opinion between two learned Single Judges of the high court of Assam. The court on the question as to whether an offence, punishable with imprisonment for a term which may extend to 3 years, is bailable or non-bailable offence, the aforesaid question which has also arisen in this present case, has been referred to a Larger Bench in the court. The learned Judge on hearing the present bail application took the view that as for an offence under the section 68A of the Copyright Act, the punishment may be 3 years, it has to be understood that the said offence is non-bailable. Consequently, the court answered the question raised, holding that the offence under Section 68A of the Copyright Act is a non-bailable offence.<sup>xvi</sup>
- For each and every second two hundred and eighty five Indians visit websites offering pirated music. Apps like Jio Saavn, saavn, wynk Music, I Tunes, Gaana, Amazon Prime music and etc., are paid musical applications and they are properly licensed, but may websites offer pirated music with free of cost.<sup>xvii</sup>

### 3. Administrative Remedies:

- In order to prevent the importation of the infringement copies in India, the Copyright Act, 1957 provides for the administrative remedies to the owner of the copyrighted work. Section 53 of this Act deals with the importation of infringing copies. Section 53(1) permits the owner of the copyright to give notice in writing to the Commissioner of Customs or any other officer authorized by the central Board of Excise and Customs.
- The Commissioner after scrutinizing the evidences furnished by the owner of the copyrighted work can treat the infringing copies of the goods as prohibited goods that have been imported to India.
- The Customs Officer have the rights to release the goods, and they shall no longer be treated as prohibited goods by law, if the person who gave notice does not produce any

kind of order from a court of law having jurisdiction as to the temporary or permanent disposal of such goods within fourteen days from the date of their detention.

The administrative remedies was dealt by the Supreme Court in *Gramophone Company of India Ltd. v. Birendra Bahadur Pandey and Others*, Gramophone Company of India Limited is the owner of copyright in the recordings of performing artists to whom it pays royalties. The company was known of the arrival of a consignment of pirated copies of these recordings at Calcutta. The same were being transported from Singapore to Nepal through India. The action was brought against the consignee for violation of copyright of the Gramophone India. The Gramophone India had sought an action from the Registrar of Copyrights to curb the circulation/import of the pirated recordings. When the Registrar failed to take necessary action, the company filed a writ petition, seeking a writ to compel the Registrar to pass an appropriate order to prevent or prohibit the release of the pirated works from the custody of the Custom officers or authorities. An appeal was made by the consignee against the decision which was made by the single judge bench at the Calcutta High Court on the ground that the consignment was not an importation as it had not been mixed with the local goods of the country. A division bench of the Calcutta High Court had heard the appeal and ruled in favor of the consignee, dismissing the petition of Gramophone India. The Gramophone India had filed a special leave petition (SLP) in the Supreme Court of India under Article 136 of the Constitution.<sup>xviii</sup>

There are some doctrines regarding the copyright. The following are some of the doctrines relating to the copyrights:

- Doctrine of Sweat and Brow- According to this doctrine, an author gains rights through simple diligence during the creation of a work. Substantial creativity or “originality” is not required. This is an English law concept.
- Doctrine of Modicum of Creativity – This doctrine stipulates that the originality of a content subsists in a work where a sufficient amount of intellectual creativity and judgment has gone into the creation of that work. The standard of creativity in a work need not be so high but a minimum level of creativity should be there for copyright protection. This doctrine was introduced by the US Supreme Court.
- The First Sale Doctrine- The first sale doctrine limits the right to control the content after a work has been sold for the first time. The first sale doctrine states that once a copyright

owner sells a copy of his or her work to someone else, then the copyright owner relinquishes all other further rights to sell the copy or otherwise dispose of that copy.<sup>xix</sup>

## CHAPTER - III

### ROYALTIES UNDER THE COPYRIGHT ACT, 1957

The Copyright (amendment) Act, 2012 clearly states that the authors owning the copyrights can claim the royalties for their works made by them. Royalty means the amount of money paid to the copyright holder for using the work for monetary gain or profits. Generally the main aim of getting copyrights in musical work is to safeguard the ownership of the work and also to gain profits by assigning the copyright to other for the purpose of getting royalties from the assignee. Ordinarily the author assigns the whole or part of the rights to others to exploit economically for a lump of considerations. The Madras High Court upheld the validity of Section 31 and 31D in the case of *South Indian Music Companies v. Union of India W.P No. 6604 of 2015* and observed that Section 31 and 31D provides for a mechanism to deal *with public interest via the private interest. Thereby, taking care of public as well as interest of owners. Further, the guidelines as to determination of royalty and provision of providing the owners, a reasonable opportunity to be heard, thereby substantiating section 31D that was also introduced in compliance of Article 11(2) and 134 of Berne Convention and Article 15(2) of the Rome Convention (for sound recordings) and Article 9(1) of the TRIPS Agreement.*<sup>xx</sup>

The following are some of the provisions regarding the royalties under the Copyrights Act, 1957. Section 18 of the Copyright Act, 1957 says that the author of the literary or musical work included in a cinematograph film shall not assign or waive the right to receive royalties to be shared on an equal basis with the assignee of copyright for the utilization of such work in any form other than for the communication to the public of the work along with the cinematograph film in a cinema hall, except to the legal heirs of the authors or to a copyright society for collection and distribution and any agreement to contrary shall be void.<sup>xxi</sup>

Section 19 deals with the mode of assignment, which says that the assignment of the copyrights is valid only if it is in writing and signed by the assignor or by his duly authorized agent . The following are the most important contents which must be included in the deed of the assignment of copyrights.

1. Identity of the work.
2. Duration and territorial extent of such assignment.
3. The amount of royalty and any other consideration payable, to the author or his legal heirs during the currency of the assignment and the assignment will be subject to revision, extension or termination on terms mutually agreed upon by the parties.

4. If the period of assignment is not stated then it will be deemed to be for five years from the date of assignment.
5. If the territorial extent is not mentioned then it is presumed only within India.

Mr. Ilayaraja is one of the top most music directors in India. Off late, he had claimed royalty from music artists who sing and perform his songs on stage for monetary purpose. Ilayaraja had sent a legal notice to several popular playback singers including S P Balasubramanyam and Chitra, and organisers of live concerts to stop performing his compositions, saying he was the copyright owner of the songs. He had also sought payment of royalty for using the songs in live concerts.<sup>xxii</sup>

Section 19(9) of the Copyright Act, 1957 says that no assignment of copyright in any work to make a cinematograph film shall affect the right of the author of the work to claim an equal share of royalties and consideration payable in case of utilisation of the work in any form other than for the communication to the public of the work, along with the cinematograph film in a cinema hall.<sup>xxiii</sup>

Section 19A deals with the disputes with respect to assignment of copyright. Section 19A(2) says that If any dispute arises with respect to the assignment of any copyright, the Appellate Board may, on receipt of a complaint from the aggrieved party and after holding such inquiry as it considers necessary, pass such order as it may deem fit including an order for the recovery of any royalty payable.<sup>xxiv</sup>

Section 38A of the Copyrights Act, 1957 says that the performer shall be entitled for royalties in case of making of the performances for commercial use.<sup>xxv</sup> Performer rights are all about the performer who appears or engages in any performance made in any kind of event, and he shall have a special right to be known as the “performer’s right” in relation to any kind of performance made in the event. The performer’s right shall subsist until 50 years from the beginning of the calendar year and next following the year in which the performance is made. Section 31D deals with statutory license for broadcasting of literary and musical works and sound recording. This section says that the broadcasting organisation shall give prior notice, in such manner as may be prescribed, of its intention to broadcast the work stating the duration and also the territorial coverage of the broadcast which was made in a particular territories covered by the broadcasting channel, and shall pay to the owner of rights in each work royalties in the manner and at the rate fixed by the Appellate Board. The rates of royalties are different in each aspects of fields and especially the rates for the radio broadcasting shall be different

from the television broadcasting and the Appellate Board have the rights to fix separate rates for radio broadcasting channels and television broadcasting channels.<sup>xxvi</sup>

The Calcutta High Court of law in the landmark case of *Saregama Ltd vs. The New Digital Media & Ors*, issued an injunction against the defendant or the respondent by analyzing the fact that the agreement under section 31 D was enforceable and was not a dead agreement. Thus, non-payment of royalty by the defendants leads to violation of agreement as well as section 31D. It is important to note that the Court did not grant any kind of injunction with respect to those sound recording which was being used by the defendants without paying any royalty, as the concerned agreement between the parties has expired due to time lapse, thus, such use of work was not considered as an injunction. However, the Court granted a monetary remedy to the owner of copyright because his work having exclusive right was being used by other party.<sup>xxvii</sup>

### SUGGESTIONS:

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- Due to the advancement in technology the infringement of copyright had become so easy, so the Indian Copyrights Act, 1957 must be amended to make an advanced software called as prevention of copyright infringement software and it should be under the control of the copyright office of India.
- The prevention of copyright infringement software must work with artificial intelligence and also there should be manual checks and balances to prevent the infringement of copyrights.
- Awareness about the laws relating to copyrights infringement must be made in educational institutions.
- The duration of imprisonment must be increased for the infringement of copyrights and no bail should be given to the offender because having the intellectual property rights is a special status and identity of the creator and also the work made by the creator has lots of efforts in it. In spite of various languages and culture, music speaks all around the world, so to prevent the infringement of copyrights in musical work the duration of imprisonment must be increased to make fear in the minds of people who have an intention to infringe a copyright in musical work.
- There must be separate tribunals for the intellectual property rights in each state for the judicial and administrative convenience. Instead of suits and cases moving to high

courts, it must move to special tribunals for dealing the disputes relating to the intellectual property rights. In India the disputes relating to insolvency and bankruptcies goes to the national company law tribunals (NCLT & NCLAT), similarly the disputes relating to the intellectual property rights must go to some special tribunals and those tribunals must be there in each and every state of India.

## **CONCLUSION:**

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The awareness of the copyrights protection in musical work must be made to all kinds of people across India. Music composers make lots of efforts to create an original work of their own. It sometimes involves investment of huge money, so it's really unfair to steal the work of other person for the purpose of monetary gain or profit. There must be more amendments in the Copyright Act, 1957 for the purpose of fighting against the infringement of copyrights in musical works. A separate artificial intelligence technology must be developed by the copyright office of India for the purpose of preventing the infringement of copyrights in musical works especially in the social media like facebook, instagram, and youtube. The day to day advancement of technology is the main cause of the infringement of copyrights in musical works.

Strict laws must be made to protect the intellectual property rights of the music directors. Piracy of music must be controlled because there are lots of unofficial websites which sells music for free of cost and that should be prevented in India. It's not only the duty of the Indian government but it's also the duty of each and every citizen of India to prevent the infringement of copyrights in musical works.



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