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LEGAL CHALLENGES IN THE INDIAN FILM INDUSTRY

~ *Anannya Mohanty*

The Indian movie industry, which is globally known through its colorful creativity and various story telling traditions, is a complex and multifarious ecosystem undergoing increasing legal issues which have changed considerably over the past few years. Being one of the largest movie producing industries globally, the world of Indian cinema includes Bollywood, regional production such as Tollywood and Kollywood, and a host of independent productions, all of which have to deal with regulatory challenges and legal complexities that are particular to them. The core to these issues is a dynamic interaction between intellectual property law, copyright protection, freedom of expression, censorship, contractual disputes, labor regulation, taxation, and online piracy which is under the influence of socio-cultural pluralism of India and the changing world of technology. The story of Indian filmmaking legal battles commences with the premise question which is the intellectual property rights. The resources devoted to the creation of original works by filmmakers, screenwriters, composers, and producers are enormous, but the process of copyrights and trademarks enforcement continues to be fraught with complexities, and the industry is becoming more and more aggressive in converting to the digital platform¹. Piracy is an existential threat; replication, streaming or distribution of movies without permission of their creators and investors deprive the industry of its due revenues, not mentioning the fact that it erodes the capacity of the industry to invest in quality productions². Despite strong laws such as Copyright Act, 1957³ and amendments to the copyright laws in efforts to protect against online piracy, there is a lack of enforcement of the laws through the lack of proper procedures, cross-boundary offenders, and the emergence of online sites where pirated content is provided without the regulation of the activities⁴. Secondly, the censorship

¹ Copyright Act, 1957, No. 14, Acts of Parliament, 1957 (India)

² Indian Performing Right Soc’y Ltd. v. Sanjay Dalia, (2015) 10 SCC 161 (India)

³ Supra note 1

⁴ Vinod Dua v. Union of India, (2021) SCC OnLine SC 653 (India)

dilemma is one of the most controversial legal grounds in the Indian cinematography industry. The Central Board of Film Certification (CBFC) is a statutory agency under the Ministry of Information and Broadcasting which has large discretionary powers to edit, censor or to prohibit any material that it considers offensive or immoral or even politically sensitive⁵. This freedom frequently results in random cuts, film postponements, and debate on whether to have the freedom of speech, as enshrined in article 19(1)(a) of Indian constitution⁶. Although this is supposed to balance the expression of creativity with the standards of society, the scarcity of objective and clear rules often causes the filmmakers to engage in lengthy court hearings, as it has happened in the case with such films as "Udta Punjab," "Padmavat," and "Lipstick Under My Burkha" in the recent past.⁷ Court action as a way of legal redress sometimes helps the creators but also exposes the situation of needing to reform the certification practices to fit the global best standards and the constitutional values. The contractual system in the film industry is also the one that is subject to controversy and litigation.⁸ Talent, production, distribution, intellectual property assignment, and profit-sharing deals are regularly disputed, and conflicting situations in relation to ambiguous statements, non-performance, violation of secrecy, and non-met financial promises. The absence of standardization of contracts, particularly in regional industries, and in independent productions, increases the possibility of exploitation and misconception. Moreover, the disorganized character of large portions of the film industry, its past dependence on informal processes, and the lack of well-organized dispute-solving structures tend to place parties into lengthy and costly legal action or, in some other case, mediation, even though even the latter is not ubiquitous or universally accepted as a trustworthy court of last resort⁹. Another area that can be considered a legal quagmire is labor laws and employment rights since the industry requires a large force of actors, technicians, ancillary people and artists, most of whom are not served by written contracts or decent social security. The problem of equitable payment, occupational safety, and working hours, as well as the need to protect against harassment, is becoming more and more a subject of discussion on legal grounds, in particular, with the further propagation of the ideas of sexual harassment and abuse exemplified by the #MeToo movement¹⁰. The act of Sexual Harassment of Women at

⁵ The Cinematograph Act, 1952, No. 37, Acts of Parliament, 1952 (India)

⁶ The Constitution of India, art. 19(1)(a)

⁷ Phantom Films Pvt. Ltd. v. Central Board of Film Certification, 2016 SCC OnLine Bom 4012 (India); Viacom18 Motion Pictures v. Union of India, (2018) SCC OnLine SC 56 (India)

⁸ Central Board of Film Certification v. Suresh Kumar, (2017) SCC OnLine SC 326 (India)

⁹ Indian Contract Act, 1872, No. 9, Acts of Parliament, 1872 (India); MRF Ltd. v. Manohar Parrikar, (2010) 11 SCC 374 (India)

¹⁰ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, No. 14, Acts of Parliament, 2013 (India)

Workplace Act, 2013 has already started influencing the practices in the workplace, yet implementation is still inconsistent, demanding greater institutional adherence and judicial attention. Taxation is one of the constant thorns of film producers and financiers and the introduction of the Goods and Services Tax (GST) regime has changed the way films are taxed on different levels, such as production, exhibition and distribution of movies¹¹. GST has made some of the logistical and financial processes smoother, but lack of clarity regarding classification (entertaining service or intellectual property) and constant rate changes have caused confusion, legal action and in some cases cost overloads on small producers and exhibitors.¹² The complexities of financing films seek parallel legal issues, since recovery of loan, assignment of rights, and protection of the investor require more legal clarity and institutionalization¹³. These legal issues are further complicated by cross-border partnerships and co-productions that bring in an international aspect that requires that international conventions and bilateral agreements are adhered to, in addition to dealing with different systems of copyright law and censorship across various jurisdictions¹⁴. OTT (Over-The-Top) services and streaming solutions have revolutionized how content is produced, distributed, and consumed, but new legal dilemmas emerged as a result of it. The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, placed the streaming services under the regulatory capacities and demanded the streaming companies to ensure self-regulating measures and ensure that complaints are addressed promptly. Although the intention behind this action is to curtail inappropriate content and consumer protection, this has also rekindled the notion of over-regulation, lack of transparency in the standards and the possibility of stifling the creativity and investment in original programming. The emergence of social media has also made the problem of publicity rights, defamation and privacy even more complicated due to the possibility of misinformation and trolling of the films release having direct reputational and financial consequences, which may even lead to legal proceedings in a court of law involving criminal and civil defamation¹⁵. Efforts at aligning law with digital transformation of cinema have been underway but were rife with the lack of understanding and implementation and requires legal innovation and legal watch. Intellectual property law, most particularly moral rights, has new issues with attribution, modification and reputation of the

¹¹ Central Goods and Services Tax Act, 2017, No. 12, Acts of Parliament, 2017 (India)

¹² PVR Ltd. v. Union of India, (2018) SCC OnLine Del 12347 (India)

¹³ Indian Contract Act, 1872, No. 9, Acts of Parliament, 1872 (India)

¹⁴ Copyright Act, 1957, No. 14, Acts of Parliament, 1957 (India)

¹⁵ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, Gazette of India, Extraordinary, Part II Sec. 3(i) (25 Feb. 2021)

creators, particularly when the source material has been modified or adapted to the needs of multiple audiences and platforms¹⁶. Litigation is common in protecting the integrity of the work by the artist or filmmakers; this is witnessed in the conflict of unauthorized remakes, dubbing and adaptation¹⁷. The moral rights are formally recognised by Indian law, however, the jurisdiction is poorly developed, and more definitive protection and redress measures should be established¹⁸. The other thorny field is the coverage of biographical movies and the representation of real lives and situations. As the biopics of celebrities, politicians, and other sports personalities continue to increase, the threat of legal suits on defamation, invasion of privacy and misrepresentation has increased exponentially. Personality rights, right to dignity, and even copyright over life events are habitually asserted by litigants, and result in the court imposing restrictions, mandatory disclaimers, and even prohibitory injunctions. The film production houses are now even more sending the script and stories to the legal team to check the riskiness of the work but this has never eradicated the uncertainty and the risk of litigation particularly in big projects¹⁹. Another regulatory issue that has become significant is competition law and there have been periodic claims of anti-competitive activities in film distribution and exhibition²⁰. Monopolies and consolidation of large studios and multiplex chains, distribution network cartels, restrictive contracts and gatekeeping practices tend to handicap smaller producers and exhibitors which is subject to questioning under the Competition Act, 2002²¹. The interventions of Competition Commission of India (CCI) have helped to form some norms of fair plays, yet the structural problems exist that need more careful monitoring and argumentation to maintain well-established industry practices that are healthy and inclusive. The environmental legislation and environmental sustainability are quickly becoming legally applicable to location shooting, set construction and management of waste. The manufacturing firms have become more subject to tough examination on the impact on the environment, adherence to environmental regulations and local legislations requiring responsible behavior and due diligence of the law to prevent fines and disallowance of

¹⁶ Copyright Act, 1957, No. 14, Acts of Parliament, 1957 (India); *Amar Nath Sehgal v. Union of India*, 2005 (30) PTC 253 (Del) (India)

¹⁷ Indian Penal Code, 1860, No. 45, Acts of Parliament, 1860 (India), §§ 499, 500; *Shreya Singhal v. Union of India*, (2015) 5 SCC 1 (India)

¹⁸ *Amar Nath Sehgal v. Union of India*, 2005 (30) PTC 253 (Del) (India)

¹⁹ *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1 (India); *ICC Development (International) Ltd. v. Arvee Enterprises*, 2003 (26) PTC 245 (Del) (India)

²⁰ Competition Act, 2002, No. 12, Acts of Parliament, 2003 (India)

²¹ *Supra* note 20

operations.²² Lastly, the exposure of the Indian film industry to the socio-political sphere and portrayal of the underrepresented groups raises never-ending discussions regarding the call of representation, stereotyping, and hate speech²³. Laws on Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, religious offenses and hate speech laws provide a tense atmosphere to filmmakers who cover sensitive matters since legal vetting often becomes a standard but imperfect practice. The legal issues facing the industry are becoming more complicated, complex and urgent as the industry becomes catheterically global and heterogeneous. The sphere of piracy and censorship, labor rights, taxation, and the digital transformation all require balance in policy-making, powerful enforcement, and moral consideration based on the principles of the constitution. It is up to the creative and business success of Indian cinema to achieve both the legalized strictness and artistic freedom, so that it could offer a safe haven of creators and affordable and lively content to viewers at the national and international levels. The lawmakers, industry organizations, advocacy groups and the judiciary will have to come together to address these challenges to ensure that the legal environment keeps up with the technological advancements as well as the cultural change and eventually foster the creativity and economic flourishing that represent the cinematic history of India.

²² Cinema Operators Association of India v. CCI, 2014 SCC OnLine CCI 97 (India); Environment (Protection) Act, 1986, No. 29, Acts of Parliament, 1986 (India)

²³ Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, No. 33, Acts of Parliament, 1989 (India)