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For the essay

*“Director’s Authorship under Indian Copyright Law: An (Un)Indian Approach?”*

# **DIRECTOR'S AUTHORSHIP UNDER INDIAN COPYRIGHT LAW: AN (UN)INDIAN APPROACH?**

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## **I. Exordium: Director and the Innominate work?**

A movie is collaborative work of various efforts and entails a bundle of copyrights. It involves many stakeholders such as screenwriters, producers, performers, editors, director, cameraman, etc.<sup>1</sup> These stakeholders get independent copyright for their work yet the ultimate authorship vests with the producer in India.<sup>2</sup> However, the director remains out of the purview of the authorship and his rights remain at stake with the producer. The authorship of the producer is rationalized under Section 2(uu) which defines a producer as “a person who takes the initiative and responsibility for making the work.”<sup>3</sup> The same is also applicable on the sound recording however, the present essay is only limited to the cinematic authorship.

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<sup>1</sup> C Paul Sellors, *Collective Authorship in Film*, 65 JAAC 263, 265 (2007).

<sup>2</sup> The Copyright Act, 1957, No. 14, Acts of Parliament, 1957, § 2(d) (India).

<sup>3</sup> The Copyright Act, 1957, No. 14, Acts of Parliament, 1957, § 2(uu) (India).

Interestingly, the authorship of the director is not a recent debate in India and has also arisen in the legislative phase of Copyright Amendment 2010 wherein Sections 2(d), 2(z), and 17 were sought to be amended. The said amendment endorsed the joint authorship of the movie and espoused to make principle director an author of the movie. The amendment was not accepted owing to its inherent flaws. It is noteworthy that Parliamentary Standing Committee only discussed it from the perspective of producer authorship dilution and never heeded to the creative contribution of the director.<sup>4</sup> The original debate over the authorship of the director arose in France in the 1940s by Andrew Austruc where he analogized a director with a novelist.<sup>5</sup> He argued that the way a novelist uses a pen to create his work, a director uses a camera to create a movie. The theory was further developed by François Truffaut, a French director in 1954 who called a director as the true author of the film.<sup>6</sup> The rationale behind the same was that director was the central authority of film whose vision is portrayed thorough the film. Finally, the idea was crystalized and Americanized by Andrew Sarris as '*Auteur Theory*'.<sup>7</sup>

He elaborately argued for the director's authorship and regarded movie as an expression of its director's personality. Sarris gave a three-pronged test to determine an auteur.<sup>8</sup> The first premise of auteur theory is the technical competence of a director focusing elementary skills in craft and technique. The second premise of the theory espouses consistency in the work of director exhibiting his distinguishable personality. Third limb endorses interior meaning which is extrapolated from the tension between the director's personality and the material he has to work with. Simply, he emphasized the independence of the director in creation of movie. Notably, Sarris' theory provided a singular authorship of a movie and seemed to disregard the efforts of other creators. The theory acted as instrument to valorize certain directors such Ophuls, Renoir, Hitchcock etc. by naming them auteurs with no legal implications.

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<sup>4</sup> PARLIAMENT OF RAJYASABHA, DEPARTMENT-RELATED PARLIAMENTARY STANDING COMMITTEE ON HUMAN RESOURCE DEVELOPMENT TWO HUNDRED TWENTY-SEVENTH REPORT (2010).

<sup>5</sup> Alexander Astruc, *The birth of a new avant-garde: la camera-stylo*, NEW WAVE FILM.COM (Mar. 30, 1948), <http://www.newwavefilm.com/about/camera-stylo-astruc.shtml>.

<sup>6</sup> John Hess, *La politique des auteurs* (part one) worldview as aesthetics, JUMP CUT A REVIEW OF CONTEMPORARY MEDIA (1974),

<https://www.ejumpcut.org/archive/onlinessays/JCo1folder/auturism1.html>.

<sup>7</sup> Andrew Sarris, *Notes on Auteur Theory in 1962*, in LEO BRAUDY & MARSHALL COHEN, *FILM THEORY AND CRITICISM: INTRODUCTORY READINGS* 451 (7<sup>th</sup> ed. 2009).

<sup>8</sup> *Id.*

While the theory played a pivotal role in shaping the cinematic debates and culture,<sup>9</sup> it was not powerful enough to justify director's authorship in every country. This can be seen from the varied interpretation of cinematic authorship in countries. For instance, EU and Nordic countries which support author-centric approach, regard director as the author<sup>10</sup> whereas India and USA<sup>11</sup> do not subscribe to this idea. The theory promotes an objective test of cinematic authorship and comprehends the author only from the pre-given tests. Such objectivity dwindles the artistic nature of cinema which necessarily involves a subjective concept. It also coincides with the concept of aesthetic neutrality which regards art as a subject phenomenon and posits that what is aesthetic art for one may not necessarily have same aesthetic reverence for the other.<sup>12</sup> It depends upon the person reading or seeing the art. Illustratively, the interpretation of an art by an Indian may not be same as that of a rustic American. Such difference of opinion about the Art discomforts the applicability of Sarris' auteur tests. Irrespective of these inherent loopholes of theory, the underlying idea of theory i.e. personality should be given authorship provides a strong basis for the authorship of director.

## II. 'Personhood' Justification of Directors' Work

From the creativity and copyright perspective, moviemaking has three stages namely, pre-production, production, post- production.<sup>13</sup> In every stage, the creative authority lies with certain stakeholders namely, directors, screen writer, producer, and actors to an extent. The pre-production stage is a planning stage where the the director sits with the script writer and producer to decide the production stage. At this stage, casting, budgeting, scouting and selection of shooting locations, drafting of essays and script

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<sup>9</sup> *Supra* note 7.

<sup>10</sup> Adolf Dietz, *The Moral Right of the Author: Moral Rights and the Civil Law Countries*, 19 VLA J.L. & ARTS 199, 203 (1995).

<sup>11</sup> *The Effect of the 1886 Berne Convention on the U.S. Copyright System's Treatment of Moral Rights and Copyright Term, and Where That Leaves Us Today*, 23 MICH. TELECOMM. & TECH. L. REV. 169, 173 (2016).

<sup>12</sup> *Bleistein v. Donaldson Lithographing Co.*, 188 U.S. 239, 249–51 (1903).

<sup>13</sup> Eileen Morley & Andrew Silver, *A Film Director's Approach to Managing Creativity*, 55 HAR. BUSS. REV. 59, 61 (1977).

preparation (subject to final redaction) are decided.<sup>14</sup> This is crucial stage of filmmaking as it is the stage where a director develops the visual conception of a movie and plans to eventuate it in envisaged manner.

In the production stage, the planning comes into action and the film 'making' begins.<sup>15</sup> At this stage, a director guides the technical crew and controls all the creative and dramatic aspects of the movie. Notably, the director's role is not only limited to managing creative efforts of various individuals but also includes the harmonization of various works to create cohesive whole i.e. movie.<sup>16</sup> Interestingly, all these coordination and management in the line of the visual conception or aesthetic vision of the movie as developed in the pre-production stage.

Finally, in the post production stage,<sup>17</sup> all the works produced and shot during the production are synchronized as per pre-conceived vision. In practice, a producer acquires a decisive authority at this stage.<sup>18</sup> This stage entails picture and sound editing, music scoring and sound synchronization, special effects and titles, rerecorded dialogue etc.<sup>19</sup> It is heavily influenced from the market needs and the investors' view. Thus, capitalistic cannons become the guiding principles here.

All these stages are interdependent and carry the personality of the director. For e.g. directors such as Alfred Hitchcock who focus more on the planning and well-organized shooting are more heedful to the pre-production stage.<sup>20</sup> Conversely, directors such as Ingmar Bergman<sup>21</sup> and Arthur Penn<sup>22</sup> who prefer spontaneity and responsiveness pay special attention to the production stage. This highlights that all directors have a unique personality which they imbibe in a movie. Such imbuing of personality in the cinema make provide a strong justification for giving copyright protection.

Given this genealogy, the personhood theory provides a strong justification for director's authorship. As per the personalists especially Hegel, an intellectual property

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<sup>14</sup> PRODUCTION HANDBOOK (5<sup>th</sup> ed. 2012).

<sup>15</sup> *Supra* note 13.

<sup>16</sup> *Supra* note 14.

<sup>17</sup> *Supra* note 15.

<sup>18</sup> *Supra* note 13.

<sup>19</sup> *Supra* note 15.

<sup>20</sup> ALFRED HITCHCOCK'S PSYCHO: A CASEBOOK 97 (Robert Kolker ed., 1<sup>st</sup> ed. 2004).

<sup>21</sup> ROBIN WOOD & RICHARD LIPPE, ARTHUR PENN: NEW EDITION (Barry Keith Grant ed., 2014).

<sup>22</sup> Gavin Extence, Cinematic Thought: The Representation of Subjective Processes in the Films of Bergman, Resnais and Kubrick (Sept. 2008) (Ph.D. Thesis, University of Sheffield).

["IP"] is an expression of one's personality.<sup>23</sup> Hegel vehemently argued that when a person externalizes his ideas using his mental faculties, he actually expresses his will.<sup>24</sup> Such expression should be regarded as his property and given protection by the state.<sup>25</sup> Pertinently, per David C Funder "Personality refers to individuals' characteristic patterns of thought, emotion, and behavior, together with the psychological mechanisms --hidden or not --behind those patterns.<sup>26</sup> This definition is important in current context as the decisions of the directors while making a movie directly emanate from their personality and get externalized in the movie. Therefore, such deliberate effort of director to externalize his personality deserve protection.

Further, it also coincides with the theory of J.G. Fichte who provided strong arguments for the literary authorship.<sup>27</sup> He argues that a work has two parts namely physical form and ideational part. The former can be alienated however, the latter remains inseparable once it is created.<sup>28</sup> In the case of director, the economic rights over the movie including distribution and reproduction might lie with the producer. However, the personality and unique aspects of the director imbued in movie cannot be separated from him. Illustratively, a movie directed by X can be owned by Y Production but it does not cease X's identifiably with the movie as his personality is deeply embedded in its creation. Thus, it is imperative for the law to differentiate the author and owner of the movie. The contract between the director and the producer suggests the transfer of ownership entitlement and does not cease the authorship of the of work.

### III. Hegel And Maslow Vis A Vis Director's Needs: A Convergence?

Psychologist Abraham Maslow postulated a theory of motivation wherein he proposed five hierarchical needs of motivation for every individual namely Physiological, Safety needs, Love and belongingness needs, Esteem, Self-actualization.<sup>29</sup> Later, Maslow

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<sup>23</sup> Justin Hughes, *The Philosophy of intellectual Property*, 77 GEO. L.J. 287, 290 (1988).

<sup>24</sup> Kanu Priya, *Intellectual Property and Hegelian Justification*, 1 NUJS L. Rev. 359, 361 (2008).

<sup>25</sup> *Id.*

<sup>26</sup> DAVID C FUNDER, *THE PERSONALITY PUZZLE 2* (7<sup>th</sup> ed. 2015).

<sup>27</sup> Mario Biagioli, *Genius against Copyright: Revisiting Fichte 's Proof of the Illegality of Reprinting*, 86 Notre Dame L. Rev. 1847, 1849 (2011).

<sup>28</sup> *Id.*

<sup>29</sup> A.H. Maslow, *A theory of human motivation*, 50 PSYCHOLOGICAL REVIEW 370, 379 (1943).

expanded the list and added cognitive, aesthetic and transcendence needs.<sup>30</sup> He argued that satisfaction of every need promotes an individual to the next level of hierarchical need. Initially, the theory was construed as adopting the “one or none” approach which means the complete satisfaction of one level in order to achieve the next level. However, he later clarified that these needs need not be in the strict order owing to different external circumstances for individuals.<sup>31</sup> A person can satisfy one or more needs at the same time.

It is to be noted for Maslow, these needs are ‘motivation’ for individuals to work. Similarly, intellectual property advocates emphasize on ‘incentivization’ of individuals to create IP. Thus, it can be validly concluded that ‘motivation/incentivization’ is the crucial element for an individual to engage in an activity. Going deeper in the theories shows that for both Maslow and personality theorists especially Hegel, self actualization is the ultimate motivation for an individual. To Hegel, recognition of externalized ideas through institution of property is equivalent to acknowledging the subjective freedom and will of the creator, thus leads to his self actualization.<sup>32</sup> On the other hand, Maslow defined self actualization not as a perfect stage of nirvana but a continuing process of attaining the highest form of oneself.<sup>33</sup> Thus, he associated it with individual growth and self worth. Furthermore, for both Maslow and Hegel, creativity remains a convergence point in reaching self actualization. Maslow identified creativity as one of the characteristics of self actualized persons whereas Hegel referred to it as subjective freedom of an individual.<sup>34</sup> Thus, both Maslow and Hegel regard self actualization as the ultimate motivation for an individual to work.

There are numerous theories and justifications for attaining self actualization. For some, it is art or literature,<sup>35</sup> for some it is attaining goods marks,<sup>36</sup> some reach it

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<sup>30</sup> Abraham H Maslow, *The farther reaches of human nature*, 1 J. TRANSPERSONAL PSYCHOL. 1, 3 (1969).; ABRAHAM H. MASLOW, *THE FARTHER REACHES OF HUMAN NATURE* (1<sup>st</sup> ed. 1993).

<sup>31</sup> Saul McLeod, Maslow’s Hierarchy of Needs (May 15th, 2020), <https://www.simplypsychology.org/simplypsychology.org-Maslows-Hierarchy-of-Needs.pdf>

<sup>32</sup> Kanu Priya, *Intellectual Property and Hegelian Justification*, 1 NUJS L. Rev. 359, 362 (2008).

<sup>33</sup> Jeevan D’Souza & Michael Gurin, *The universal significance of Maslow’s concept of self-actualization*, J. HUMANIST PSYCHOL 1, 5 (2016).

<sup>34</sup> *Supra* note 31.

<sup>35</sup> Thomas A. Regelski, *Self-Actualization in creating and Responding to Art*, 13 J HUMANIST PSYCHOL 57, 58 (1973).

<sup>36</sup> Hester L. Dorer & John M. Mahoney, *Self-Actualization in the Corporate Hierarchy*, 8 NAJP (2006).

through sport,<sup>37</sup> whereas some might derive with a certain corporation setting. Similarly, for a director it stems from film making. Having underlined the common features of both theories, it can be argued that an effective IP system can cater to all the needs evinced by Maslow. The creation of work and its statutory recognition not only enables a person to satiate one's needs,<sup>38</sup> but also advance her/her motivation to pursue self actualization. Interestingly, for the personalists, the recognition of the work itself demonstrates her self actualization. However, non-recognition of authorship creates impediment in this process of satisfaction.

A non-recognized author can satiate her initial four needs described by Maslow but attainment of self actualization would always remain a distant dream. Illustratively, J.K Rowling's work enabled her to satiate her needs of physiological, safety, love and belongingness and attain self-actualization. However, a director who works on contractual basis, is not attributed with the authorship of the work regardless of satisfying the fundamental requirements of creativity and originality. Such a director may satiate his/her primary needs and get fame for his work by the people but self-actualization would always be remain impossible for him.

Furthermore, non-recognition of the director's authorship leads to the feeling of unproductivity or a lack of fulfilment as described by psychologist Erik Erikson in the seventh stage of psychosocial development.<sup>39</sup> As per Erikson, it important for an individual to attain generativity or a feeling of creating something that will outlast them in order to appreciate the sense of self. Absence of this feeling leads to the stagnation which is detrimental to the creativity of an individual.

#### IV. Pre-defined Authorship: A Legislative Infelicity?

Filmmaking is an art and filmmaker is an artist. However, 'who is film maker' and 'what requires to become a filmmaker' are two nebulous but regularly debated questions in copyright law. Countries like USA, which endorse an economic centric

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<sup>37</sup> C. Sherrill, *Self-actualisation of Elite Wheelchair Athletes*, 28 *PARAPLEGIA* 252, 256 (1990).

<sup>38</sup> William Fisher, *Theories of Intellectual Property* (April 20, 2020), <https://cyber.harvard.edu/people/tfisher/iptheory.pdf>.

<sup>39</sup> P. H. Munley, *Erik Erikson's theory of psychosocial development and vocational behaviour*, 22 *J. COUNSELING PSYCHOL* 314, 316 (1975).

copyright law and underpins a capitalistic concept of authorship, regards financier as the author of the movie. Similarly, India's copyright law synonymizes a filmmaker with producer who is actually financier/risk-taker. These two approaches appear to be similar but are fundamentally different. USA does not give a pre-defined authorship for the work<sup>40</sup> whereas India fixes the authorship to producer<sup>41</sup>. In principle, both the countries surmise financing as the ultimate yardstick for a movie and overlook element of creativity. This is fundamentally a flawed concept as it not only deviates from the general notion of authorship but also obfuscates the philosophical foundations of IP law.

Interestingly, the term author is derived from the Latin word *auctor* which is developed from the verb *augere* means "to increase, augment, strengthen that which is already in existence".<sup>42</sup> The modern meaning as given in Black's law dictionary defines an author as "one who produces, by his own intellectual labor applied to the materials of his composition, an arrangement or compilation new in itself."<sup>43</sup> Similarly, in *Burrow Gils case*, the Court defined an author as "he to whom anything owes its origin; originator; maker; one who completes a work of science or literature."<sup>44</sup> In *Jefri Aalmuhammed case*, the author is defined as a person who really represents, creates, or gives an effect to the idea.<sup>45</sup>

In India, there are no specific cases for the meaning of authorship however, it can be deciphered from cases discussing originality. In cases of *MRF Tyres*<sup>46</sup> and *Yashraj Films*<sup>47</sup>, it has been settled that a movie is an 'original' work of authorship. Here, the expression original requires the deployment of skill and judgment coupled with flavor of minimal creativity. Thus, an author is a person who employs his skill and judgment to create work (though minimally creative). However, the current legal cinematic authorship framework replaces it by risk taking i.e. financing.

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<sup>40</sup> Copyright Act of 1976, 17 U.S.C. § 201 (2012).

<sup>41</sup> The Copyright Act, 1957, No. 14, Acts of Parliament, 1957, § 2(d) (India).

<sup>42</sup> AUTHORITY MATTERS: RETHINKING THE THEORY AND PRACTICE OF AUTHORSHIP (Stephen Donovan et. al. eds., 1<sup>st</sup> ed. 2015).

<sup>43</sup> *Author*, Black's Law Dictionary (6<sup>th</sup> ed. 1990).

<sup>44</sup> *Burrow-Giles Lithographic Co. v. Sarony*, 111 U.S. 53 (1884).

<sup>45</sup> *Aalmuhammed v. Lee* - 202 F.3d 1227 (9th Cir. 2000)

<sup>46</sup> *MRF Limited v. Metro Tyres Limited*, (2019) 79 PTC (Del.) 368.

<sup>47</sup> *Yash Raj Films Pvt Ltd v. Sri Sai Ganesh Productions & Ors.*, (2019) 80 PTC (Del.) 200.

Further, Section 17 and Section 18 of the Copyright Act, 1957 play a significant role in the ascertainment of the ownership and authorship of the work. In case of movies, these provisions provide a conceptual framework for the author-owner divide and settle issues of the economic exploitation of the work. These provisions expatiate the determination of IP rights through the contractual relationship among various authors thereby suggesting the pivotal role of 'contract of service' and 'contract for service'. However, they decipher author as per Section 2(d) of the Copyright Act which does not include director anywhere. Thus, director always remains out of the purview of copyright law.

Such anomalous arrangement owns its origin to the British era it has always remained a guiding cannon for Indian copyright regime.<sup>48</sup> Before the independence, Copyright Act, 1847 and Indian Copyright Act, 1914 were epitomes of UK's Copyright Act, 1842 and the Imperial Copyright Act, 1911 respectively.<sup>49</sup> At this time, movies were not regarded a separate copyrightable work. Rather, they were given dual treatment of dramatic work and artistic work.<sup>50</sup> Such consideration created a conceptual flummox in the law and blurred the ownership of the work, e.g. in *See Fenning Film Source v Wolverhampton Co Cinemas*,<sup>51</sup> producer was regarded as an owner whereas *Falcon v Famous Players Film Co*,<sup>52</sup> held screen writer as an owner of the work. After the independence, India enacted Copyright Act, 1957 by relying on U.K.'s Copyright Act, 1956 which regarded movie a separate works and bestowed the authorship to the producer.<sup>53</sup> In 1988, U.K. made changes in its Copyright law and made director as the joint authorship of the movie.<sup>54</sup> However, India still suffers the same legislative infelicity.

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<sup>48</sup> Shubha Ghosh, *A roadmap for TRIPS: copyright and film in Colonial and Independent India*, 1 QMJIP 146, 153 (2011).

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Fenning Film Source v. Wolverhampton Co. Cinemas*, [1914] 3 K.B. 1171.; *Burrow-Giles Lithographic Co. v. Sarony*, 111 U.S. 53 (1884).

<sup>52</sup> *Falcon v. Famous Players Film Co*, [1926] 2 K.B. 474.

<sup>53</sup> Upendra Baxi, *Copyright Law and Justice in India*, 28(4) JILI 497, 506 (1986).

<sup>54</sup> Copyright, Design and patents Act 1988, C. 48, § 11 (Eng.).

## V. Revisiting Idea-Expression Dichotomy

In simplest words, copyright is given to the person who expresses an idea not to the one who finances the author to express the idea.<sup>55</sup> An idea itself is not copyrightable but its expression is.<sup>56</sup> The copyright is not concerned with the process of expressing an idea. Even a photograph created through a mechanical process can get copyright if it originates from the photographer's creative choices. Thus, as held in *Feist case*, even original selection and arrangement of the material can get copyright if its original.<sup>57</sup> Unfortunately, this is not generally applied on a director's work which is often regarded as managerial task

Indian Copyright law endorses two tests for giving rights in a cinema. Firstly, final screening of the movie, and secondly the risk-taking factor. In former, copyright takes the appearance of the person/work into consideration. Simply, anyone whose contribution can be noticed in a movie gets some rights. For e.g. performer, singers, lyricist etc. Whereas the latter is contextualized as the financing and economic risk taking for instance an investor and producer who bear risk if the movie fails. Such scenario highlights the preference of noticeability and suggests a restricted understanding of idea-expression dichotomy.

Further, moral rights are defined as the special rights of 'Authors' where the author is the one who is mentioned under Section 2(d) excluding the director. Thus, contractual relationship between a director and author becomes the ultimate governing law irrespective of the create contribution of director which the copyright law aims to safeguard. The 2015 *Sartaj Singh Pannu*<sup>58</sup> case is a prime example to demonstrate the plight of directors where the Judge expressed his incapacity to protect the moral right of a director in the absence such right in the act.

In *Ramesh Sippy case*,<sup>59</sup> the Court denied the right to the director and held that unlike literary and artistic work which requires a natural person to be the author, in cinematography a legal person can be the author. The court held that it the

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<sup>55</sup> The Copyright Act, 1957, No. 14, Acts of Parliament, 1957, § 2(d) (India). [Author is always the first owner of the work unless an agreement to the contrary]

<sup>56</sup> *Eastern Book Co. v. D.B. Modak*, AIR 2008 SC 809.

<sup>57</sup> *Feist Publ'ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 345 (1991).

<sup>58</sup> *Sartaj Singh Pannu v. Gurbani Media Pvt. Ltd. & Anr*, (2015) 63 PTC (Del.) 590.

<sup>59</sup> *Ramesh Sippy v. Shaan Ranjeet Uttamsingh & Ors.*, AIR 2013 Bom. 228.

“cinematography is not a original work of composition” of one person. Rather, it is a works of collective efforts which are joined by the “entrepreneurship thread’ of the producer. This is problematic at multiple levels as it not only overshadows creativity of the director with the producer’s entrepreneurship but also dilutes the concept of authorship to non-human entities and extends moral right to corporates. Such metaphoric justification by the Court highlights the relevance of ‘control’ and ‘veto’ power of the producer which is not always the appreciable factor in comprehending authorship as held in *Community For Creative Non-Violence case*<sup>60</sup> and *Kogan Case*<sup>61</sup>.

It blatantly contravenes the personhood and fairness theories of IP which seek to protect the individual values of authorship and bolster the bond between the author and work. Hence, such anomalous arrangement not only deprives directors from the economic benefits of authorship but also disables them to claim the benefit of moral rights.

## VI. Conclusion

Externalization of idea though intellectual labor should be primary yardstick for determining authorship and noticeability should be merely used to comprehend and appreciate the art. It is high time that India and countries which don’t recognize director’s authorship, need to change their laws. In *Feist Publications, Inc., v. Rural Telephone Service Co.*, one of the most celebrated cases in the world especially for the interpretation of the original work, the Court observed that if the author arranges and manages work in such a way that begets mental effect, such work would be copyrightable and the person who does this is an author. Nowhere in this interpretation exits financing as an aspect of originality. To create an original work, one has to employ labor, skill, and judgment which often involves certain costs. Sometimes this cost comes for creating a work (requirement of a pen, paper, or camera, etc.), and sometimes it is needed to disseminate the work to people (publication, performance, etc.). It is not always possible for the author to incur such costs. If he/she incurs such costs, then the recovery of the cost along with some profit

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<sup>60</sup> Cmty. for Creative Non-Violence v. Reid - 490 U.S. 730, 109 S. Ct. 2166 (1989).

<sup>61</sup> *Kogan v Martin* [2019] EWCA Civ 1645.

is expected. Thus, financing generally comes into the picture in pre-creation or post-creation scenarios.

Pre-creation is the stage where a creator or author needs finance to indulge in the creation process whereas post-creation is the stage where work is made accessible to people. Here, it is very imperative to distinguish between the author and owner/financier of the work. The person who creates is conceptually and ideally, the author of the work and the person who pays for such creation or who transmits such creation is the owner/financier. These two separate titles should neither be intermingled nor should they be synonymized. Cinematography is a work of various creative efforts but there is one creative force that coheres all the creative efforts and eventuates a final work. This force comes from the director whose task is to manage, arrange, guide, direct, and coordinate all the efforts by his visual conception of the whole. A producer's role is to bring these creative people in one place and incent them to create a movie. Therefore, a movie is an investment apparatus for the producer to earn money and it has veto power to control every major decision with no requirement of creativity.

The purpose of copyright law is to protect the creativity of individuals which ultimately progresses the society. Both these facets of copyright namely the progress of society and protection of creativity deserve similar attention. To balance these two separate but converging aims, the owner-author system demands greater attention. It is to be noted that the protection of a work succors to the growth of the society and at the same time the growth of the society enhances the individual worth of people by exposing them to a pool of new expressions. Thus, it is an unending cycle of society and can be disturbed by an imbalance in the above relationship. Non-recognition of the director authorship as prevailing especially in India and the USA not only disentitles a director from claiming the statutory benefits such as inalienable rights of royalty but also disables him/her from claiming moral right over the creation. It results in the extension of authorship to non-human entities such as corporations and companies which further leads to stretching of moral rights to a non-human entity. This creates a conceptual conundrum in copyright law which is based on the ideas of IP as an expression of one's personality wherein personality symbolizes individualistic experiences and events.

This essay is an attempt to highlight the significance of this dichotomous relationship of authors-owner. The author has highlighted that the non-consideration of a director's authorship especially in India signifies the failure of idea-expression dichotomy. In simple words, idea-expression is not concerned with a particular kind or nature of work nor is it germane to any pre-fixed conception of authorship. A mere conversion of idea into expression even by simple arrangement, placement, and coordination is enough to get authorship of the work. The producer should be regarded as the owner of the work. The performers have been given rights in audiovisual works by Beijing Treaty, however, the issue of directors is still regarded as a contractual rift and not an authorship debate. This is the reason after so many years of the issue still lacks attention. Thus, it is high time when the director should be given due recognition of her/his work. The change in the law may create certain issues in the beginning, producers would not accept the change, the film industry may get affected, unequal bargaining powers could also be pretextually used, however, it is be understood that "speculation about future harms is no basis for [courts] to shrink authorial rights." as said by the Supreme Court in *N.Y. Times Co. v. Tasini*.