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ONE WORK, MANY CONTRIBUTORS: Solving the Copyright Conundrum in The Indian Copyright Regime

Vasishtan P.

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Contents

Volume II | *ISSN: 2582-8533* | April 2021-March 2022

Articles *Page*

1. ACCESS TO JUSTICE IN PRE-COLONIAL INDIA: Revisiting Possibilities and Challenges for Legal Pluralism in 21st Century
Chanchal Kumar Singh, Mritunjay Kumar & Aayush Raj 1

2. ELECTRONIC EVIDENCE AND CYBER FORENSICS IN INDIA
Shubham Singh Bagla 33

3. DATA PROTECTION, PRIVACY AND PROPOSED LAW IN INDIA: Tracing the Previous Challenges and Transition to the Bill of 2021
Aana Sharma 55

4. KIRTI V. ORIENTAL INSURANCE LIMITED: Juxtaposing Household Labour into Economic Equivalents
Vanshika Maan & Varin Sharma 80

5. ONE WORK, MANY CONTRIBUTORS: Solving the Copyright Conundrum in The Indian Copyright Regime
Vasishtan P. 99

Notes and Comments

6. JURISPRUDENCE OF SEDITION IN INDIA: Weighing the Balance of Fundamental Rights and Administrative Control
Rushali 115

7. POWER OF POLICE – USE, MISUSE, & ABUSE: Critical Analysis of Provisions Related Powers of the Police in The Indian Evidence Act, 1872
Manan Daga 136

8. INCARCERATED UNTIL PROVEN INNOCENT: The State's Penchant for Imprisonment vis-à-vis the Right to Liberty of an Accused
Akashdeep Pandey & Sanskriti Prakash 162

9. TRANSGENDER PERSONS' PROPERTY RIGHTS: India & Beyond
Jubal Raj Stephen, Siva Mahadevan & Tamoghna Chattopadhyay 177

10. STATE OF TRIBAL RIGHTS IN MODERN INDIA: A Study of Tribal Laws and Issues
Vasundhara Sharan & Kushagra Jain 190

11. COMPARATIVE INVESTIGATION OF EPIDEMIC LAWS: United Kingdom, United States of America and India
Kartikey Mishra 209

ONE WORK, MANY CONTRIBUTORS: Solving the Copyright Conundrum in The Indian Copyright Regime

Vasishtan P.[*]

[***Abstract:*** *Usually, per Copyright Act, 1957, when a work or a composition is authored, by virtue of S.13 and S.17, the first author of a work, when it is formed from scratch, becomes the first and foremost owner of the property under the rules of 'the creator is forever guarded by his moral rights' principle, unless, such a composition was created under a prevailing employment contract that is signed to author the creation. When an author creates a work, that becomes his intellectual property, as this roots to the essential ideal of copyright, 'to reward the mind of the creator'. But when there are other artists who have contributed to the creation or whose minds were required towards the creation of the song, the concept of ownership gets split by virtue of the aforesaid principles. This would not be a confusion if the intellectual shareholders of the music do not engage in any disagreement. But in case of two or more authors of a work, who end up in a dispute over economic benefit or to claim their role to be bigger towards the outcome of the music, a confusion arises when the equally split copyright comes into the question as to who exercises more control over the copyrighted content. An active solution is required to address the void, this scenario creates.*

The paper will analyse on the copyright issues occurring amongst the joint authors on account of various differences, who have authored a single creation, and what follows subsequently in the economic interests, generated from such a creation or other moral rights that get in dispute. Understanding the non-precedented discussion on this narrative, the researcher strives to bring out the concept of joint ownership, in the tangible divided copyrights of various authors or joint authors who created a single work.]

I

Introduction

The Law of Copyright in its genus intends to grant the right to be recognised and the merits of being an author to a work that he/she so created.[1] The theory is direct and simple. Anybody who creates a work, becomes its author. By virtue of becoming the

[*] Mx Vasishtan P., Advocate, LL.M., DF, M.B.L., M.A. (Pursuing). Email: vasishtan98@gmail.com

[1] Copyright, World Intellectual Property Organization, *available at* – https://www.wipo.int/copyright/en/ (Last visited Jan. 03, 2023).

author, he/she entitles to full rights over that work with limited exceptions or on conditions that such right was transferred by the authors themselves.[2]

In the case of one or more authors creating a work, then there could be an agreement that defines what their shares of rights in the created work and other split up of economic rights.[3] However, the challenge arises when there are two or more authors and in the void of an express agreement that limits one's economic rights over the created work. The difficulty to fragment the equal economic benefits at par with the divide in labour vested in the work between the joint-authors becomes the challenge.[4]

The entire doctrine of having more than one author creating a work as a whole, is called as the 'Joint-Authorship Doctrine'.[5] In certain cases, the publisher of the book becomes joint author in the eyes of law. Thus, in those cases, if there arises any confusion, however moral rights could be distinguished, the interpretation of the same could add additional vagueness and time to the dispute. Moral rights have been preliminarily viewed from the perspective of the first author or the original creator by the Indian Courts and the Copyright law in India. The Courts however, have applied the moral right concept on a case-to-case basis only. More information on moral rights is elucidated in later parts of this paper.

The Indian definition of a joint authorship is defined by S.2(z)[6] of the Copyright Act, 1957, which is defined as a 'work produced by the collaboration of two or more authors in which the contribution of one author is not distinct from the contribution of the other author or authors'. Just like the validity of a copyright in case of a single author, in the case of joint authors, the posthumous period of 60 years of copyright validity is determined from the date of death of the last living joint author. Many States' copyright regimes acknowledge the concept of joint authorship, 'with the intention that their contributions be merged into inseparable or interdependent parts of a unitary whole'.[7] At present, in all the copyright regimes across the world, there is a unilateral recognition of any work of joint authorship to be equally crediting all the authors in granting copyrights.

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2 World Intellectual Property Organization, A HANDBOOK ON UNDERSTANDING COPYRIGHT AND RELATED RIGHTS (2016), p.6 *available at* – https://www.wipo.int/edocs/pubdocs/en/wipo_pub_909_2016.pdf (Last visited Jan. 03, 2023).

3 *Id.* at p.10-11.

4 Scott C. Brophy, JOINT AUTHORSHIP UNDER THE COPYRIGHT LAW (1994), p. 14, https://repository.uchastings.edu/hastings_comm_ent_law_journal/vol16/iss3/ (Last visited Jan. 03, 2023).

5 Tehila Rozencwaig-Feldman, *The Author and the Other: Re-examining the Doctrine of Joint Authorship in Copyright Law*, 32 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. (2011) 172 *available at* – https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1789&context=iplj (Last visited Jan. 03, 2023).

6 Section 2(z), Copyright Act, 1957.

7 Paul Goldstein, INTERNATIONAL INTELLECTUAL PROPERTY LAW (1998) 23.

This paper, tries to analyse the nature of a work and intent behind joint-authors, in both cases of dependant and independent works, the challenges in case of dependent work in the absence of an explicit contract, the bifurcation between the economic and moral rights of the individual authors, etc. The paper also analyses the position in various jurisdictions including India, United Kingdom and the United States of America. The comparative study is aimed at identifying solutions to the issues in India because of limited literature with respect to joint ownership and copyrights thereof. Finally, the paper concludes with a limited set of recommendations that are compatible to the Indian Context, should any cases of this fashion arise in the future.

II

Joint Authorship: Position in the UK & US

Position in the UK

The issue of join-authorship in the United Kingdom's copyright regime is reviewed on the basis of three requisites.[8] First, the joint author's contribution into the finished output of the work must hold some relevance to the subject. In other words, such a role of the joint author in such a work must hold a sense of significance, substantiality, originality which must emanate from the joint author's labour and expertise and finally the reasonable form of dexterity and industriousness, towards the nature of such authorship.[9] Second, there must be a nature of alliance and partnership between both the joint authors towards the output of the primary work that they both are creating in a sense of joint effort and labour. Such an output, must arise into a definitive number of outcomes that they intended to deduce to, and instead of further altering the same work or output being performed by one of the joint authors independently, while the other had worked towards the principal creation of such work.[10] Third, as hinted by the law of the UK, the Copyright Act of 1956, that the contribution or the share of work by one of the joint-authors should not separate itself, in the sense that, one's work must not detach itself of any hint that it was not created over the course of the entire work and that it was created separately, against the involvement of the other joint-author(s).[11]

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8 *Beckingham* v. *Hodgens*, EWHC 2143 (Ch. 2002), FSR 14, 44 (2003).

9 J. Griffin, THE CHANGING NATURE OF AUTHORSHIP: WHY COPYRIGHT LAW MUST FOCUS ON THE INCREASED ROLE OF TECHNOLOGY (2005).

10 *Infopaq* v. *Danske Dagblades Forening* (2009) ECR I-6569.

11 The Copyright Act 1956 on 'work of joint authorship as a work produced by the collaboration of two or more authors in which the contribution of each author is not separate from the contribution of the other author or authors' (1956 Copyright Act: 4&5 2 c.74 S.11(3).

In the *Infopaq* case[12], the Court tested for a reasonable nexus whether the 'claimed author' employed the 'right kind of skill or labour' to be qualified as a joint author, to the merit of enforcing Copyright protection upon them.

For instance, in the case of *Brighton* v. *Jones*[13], the England and Wales High Court was submitted an evidence that read the question of whether the involvement and the share of work done by one joint author, who was the director of a drama called Stones in his Pockets, outstripped and involved, beyond the usual and average role that is to be expected to be performed by a director of a regular conventional drama, and that did such role suffice in qualifying the Claimant (hereinafter C) to become a joint author of the drama along with the Respondent (hereinafter R) of the case, whose role was that of a playwright in that drama.

In this case, C produced all the conclusive proof that her role and activity in the Play was beyond the usual capacity of that of a director in an ideal Play, wherein, a few witness like a few actors, manager, etc., testified that C's role was not beyond any scope of the usual and regular role performed by a director of a play ideally, which would be expected out of such role, in a normal Stage Play.[14] Admitting the proof submitted by the witnesses in the form of testaments the EW High Court decided that C's contribution did not, to the Court's satisfaction, amounted to reasonable kind of skill and labour' to qualify her as a joint author. [15]

In another similar case presented before the EWHC, the Judge highlighted that[16]

> *[The defendant] presented [the claimant] with a play upon which, during the rehearsals, she was expected to exercise her director's skills, together with Mr Murphy and Mr Hill exercising their actors' skills, in order to get it ready to be performed before live audiences. The actors did not become joint authors by reason of what they did, and I do not think that [the claimant] became a joint author by reason of what she did either.*

Comparing the position of the defendant as the chief composer of who's brainchild was the impugned music in the case, the Judge compared the role of the defendant to that of the Maestro Beethoven, who possessed the incredible ability to perceive music through its sound absorbed by his body and not by ears because he was deaf. The Judge then juxtaposed the similar position to another case before the same Court,[17] wherein, a band of musicians created a soundtrack and called it 'collective jamming'. This was then accepted as a word in use by the court. This case was related to the Kemp case where the Judge ruled that,

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12 *Supra* note 10.

13 *Brighton* v. *Jones*, EWHC 1157 (Ch. 2004), FSR 16, 48 (2005).

14 *Id*.

15 *Id*.

16 *Hadley* v. *Kemp*, [1999] EMLR 589.

17 *Stuart* v. *Barrett*, EMLR 449, 458, (Ch. 1994) per Morison QC.

> *Someone started to play and the rest joined in and improvised and improved the original idea. The final piece was indeed the product of the joint compositional skills of the members of the group present at the time.*

Therefore, the position, the role and the contribution of one of the joint authors are quintessential towards creation of any work and that their share of work should not be a result of addition or compilation, but, as an integral part of the impugned work itself.

Position in the US

Regarding the position of the Copyright Law in the United States of America's context, the law in itself attests and an inclination towards conferring rights for joint authorship. This position stands affirmed in the case of *Childress* v. *Taylor*.[18] The entire definition of joint works in the US' copyright law has been attributed to this case. There are two requirements with respect to joint-authorship in the US – First, the involvement of any one joint author towards a work should be inter-connected, inextricable and raveled up in the course of the entire work per se. The Court highlighted the terms 'inseparable' and 'interdependent' to define this first requirement.[19] Second, such a contribution of the joint authors should individually be independently copyrightable in a manner that such a work would standalone be qualified to become a distinct character of a copyright matter.[20] Third and final requirement being, each of the authors of the joint authorship venture, must individually identify themselves and intend to consider to be joint authors in all regards and situations.[21]

Therefore, in the United States' position, both the authors of a joint authorship must possess the idea of intention, authority and role. These three ideas of joint-authors in a copyrighted work are woven together as an abstract single concept. In this scenario, the intent of an author aides the third requisite laid down by *Taylor* case, that acknowledges one's intent to be a co-author to a work, despite possessing mere knowledge over the impugned work.

Thus, the one's intent and knowledge in a work that he/she is a joint author of, is decided by referring the 'factual indicia' of an ideal authorship, that encompasses concepts pertaining to the role and authority held together in such a work. In this pretext, the ideals of an authority, is highlighted frequently in the name of 'decision making authority over what changes are made and what is included in a work'.[22] In plethora of cases, the same would be the significant-most aspect and reason, something that would be aided by proviso of a binding contract formed between the joint authors, that power

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[18] *Childress* v. *Taylor*, 945 F. 2d 500 (2d Cir. 1991).

[19] A. Aguilar, *Distributed Ownership in Music: Between Authorship and Performance*, 27(6) SOCIAL & LEGAL STUDIES (2018) 776.

[20] *Id*.

[21] *Id*.

[22] *Supra Note* 18, para 12.

them to decide who would hold the power to approve the conclusive changes to be made in a joint work.

The conclusive proof to prove the authoritative role will also adduce as an additional factor towards deciding on one's intention.[23] This takes effect on how one of the joint authors represents themselves and assigns themselves of tag, based on the role that they performed towards the creation of the work being as claimed joint author. It is how they bill themselves for their role in the output of the work that they claim to be a joint author of.

In the Larson playwright case,[24] the Claimant was decided to not be the director who had performed her duties way beyond what was expected out of an ideal director of the play. Her role and efforts included under the understanding of a regular director of a play, unlike the conditions of her being in a position vis-à-vis joint composer in a musical work.[25]

The abstract idea of a joint authorship is working together in the creation of a work that is intended to be created in a pre-determined output. When this pre-determined and pre-calculated outcome of the work, any work that is created, will not be considered under the definitions of the US' joint authorship. In the case of *Edward* v. *Jerry*,[26] the New York HC decided that in conditions where the two or more joint authors of a musical work, even if they work on such a composition at two different times, they will still be regarded as joint-authors and thus own the copyright under the definitions of joint authorship, provided, the intent and eventual common-design requisite, needs to be ensured.

Even in the case of two authors of a joint authorship with two different and unrelated skills, performing two different works but towards the same outcome, will also be included in the joint authorship's ambits.[27] The ideal example could be the lyricist and master composer of a finished song. This is given by the fact that however different in their trails, the final outcome was a single entity that they both intended to create jointly.

Therefore, the United States' position on joint ownership contrasts itself with respect to the position in U.K. In the US, unlike the UK, the factors of role and authority of a joint author are not interlaced with their contributions and the hard work vested upon such a work and most importantly, the expertise in the work. The role and authority of a joint author appear independently and self-sustainable as individual factors, whereas, the concept of one's intent to be a joint author has been expressly defined in detail by the

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[23] Burada, Marinela, *Joint Authorship: A Glimpse Into Some Local Practices Of Merit Attribution* (2017), Conference Paper, Research Gate, *available at* – https://www.researchgate.net/publication/313768740 (Last visited Jan. 03, 2023).

[24] *Lynn M. Thomson* v. *Allan S. Larson and Ors.*, 97-9085 (2d Cir. 1998).

[25] *Id.* at para 6(b)(i).

[26] *Edward B. Marks Music Corp.* v. *Jerry Vogel Music Co.*, 140 F.2d 266 (2d Cir.1944).

[27] *Supra* note 24 at para 6(b)(i).

United States' Courts, for the same has not been acknowledged equally by the UK Courts. This brings a polar difference between these two Copyright regimes. This could be majorly be attributed to the way the US' constitution builds a liberal sense of approach in the way any law is dealt under it, wherein, the UK has from time immemorial been under the Queen's rule and having an unwritten constitution, that, in practice, would not be as effective and liberal as the United States' Constitutional approach.[28]

III

Two Perspectives on Joint Authorship

The Normative Perspective

The ambiguity in the analysis of the precedent has resulted in the need for a more definitive structure when it comes to establishing a test for joint authorship. A prudent start to this structure, would be to clearly demarcate between 'questions of law' versus 'questions of fact'. While on the outset, such a demarcation might seem like the most obvious route to take, one should note that such demarcation has in reality, had a long history of being unjustified and hence not distinguished appropriately. That being said, popular opinion among scholars and critics alike, primarily rests on public law, which allows for such a distinction to be made, which in turn, plays a crucial role in allocating responsibility and decision-making power.

In this regard, the understanding of eminent jurist, William C. Endicott,[29] is of importance. He argues that an analytical approach is possible in such a situation, provided one ventures into the very fundamentals of what can be considered to be a question of law. For this, he first delves into establishing the purpose of classifying certain questions as questions of law and states that 'questions of law are those where the law requires a particular answer to the question.' Going by his opinion, one can arrive at the stance that questions of law are those that claim a 'normative importance in a particular context.'[30]

Secondly, he goes on to define questions of fact and states that such questions, unlike questions of law, are more objective in nature with a sure yes or no answer- devoid of any grey areas or any subjective truth, as defined in common jurisprudential parlance. He conclusively states that unlike legal questions, questions of fact lack normative

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[28] Elena Cooper, *Joint Authorship in Comparative Perspective: Levy v. Rutley and Divergence Between the UK and USA*, CORE (2013), *available at* – https://core.ac.uk/download/pdf/42357858.pdf (Last visited Jan. 03, 2023).

[29] T. Endicott, *Questions of Law* 114 LQR (1998) 292.

[30] *Id.* at p. 318.

dimension and can be classified as merely empirical in nature with a high degree of subjective decision making.[31]

Even if one were to vehemently disagree with Endicott's interpretation and differentiation between questions of law and questions of fact, one cannot deny that there exists certain fundamental attributes to each of these questions that are easily distinguishable from one another- and these differential attributes are used by advocates, judges and scholars alike, demarcate between questions of law and fact.[32]

To simplify, Ballantine's Law Dictionary defines question of law and questions of fact in the following manner:

> *questions of law as to the terms of the law by which the case is to be adjudicated' and a question of fact to be a question 'of the truth to be decided upon conflicting evidence.*[33]

This brings us to the primary question concerning joint authorship- if one must build on the argument that questions of law are ones that require an analysis of the law, what part of the test to determine joint authorship will amount to be the question of law?

Perhaps the answer to this lies in considering authorship, in particular, joint authorship, to have both a factual as well as a normative dimension to it. The test for joint authorship has stemmed from the test for authorship in general - *firs*t, the question of what sort of work and thus the authorship, will be protected under the copyright regime and *second*, whether a particular authorship is eligible for copyright protection in terms of the creativity and originality quotient. These two questions roughly translate to the normative and factual aspect of the joint authorship test.[34]

Thus, when dissecting the normative aspect of the joint authorship test, it must clearly consist of a question of law- in this case, such a question would be whether a particular work, is in itself eligible for copyright protection, as the copyright legal regime determines and demarcates between what is copyrightable and what is not.[35] In this case, it would be best if left undecided, in the hands of an adjudicatory body- perhaps the judiciary, to decide whether a particular authorship, irrespective of whether its joint or not, is even eligible for copyright protection in the first place. Even then, the relevant facts must not be entirely discarded as facts are implicitly connected with the law and will help establishing joint authorship effectively.[36]

Thus, when it comes to deciding what work is copyrightable, it is not merely sufficient to take a look at existing social and cultural norms within the creative community, as this does not give a comprehensive picture of the entirety of the situation. Additionally,

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[31] *Id.* at p. 326.

[32] *Id*. at p. 336.

[33] Ballantine's Law Dictionary (Ed.) 2010.

[34] P. Kirgis, *Questions of fact in the practice of law*, 8 INT'L J OF EVIDENCE AND PROOF (2004) 47.

[35] *Id.* at p. 61.

[36] *Supra* note 29 at p. 308.

what kind of work is acceptable, from a cultural perspective or from a creator's point of view might violently clash with what the legal system seeks to uphold, as a matter of policy. While the actual contributors to a work can agree beforehand, as to the ownership rights of the work by way of a legally binding agreement, it is not possible to do the same when it comes to deciding the authorship of the work. It is at this juncture that the copyright legal regime steps in to provide a standard or even a threshold to decide authorship, that will stand clear of any power or creative imbalances that exist between the contributors.

The Factual Perspective

If we were to proceed with the assumption that questions of fact are in fact questions of truth that need answering based on contradictory and often conflicting proof, the next question of what part of the test to determine joint authorship will amount to a question of fact, will arise. The answer to this question will not be cause for trouble in case of individual authorship as it is not very difficult to attribute protective expression when it is a single author. However, when it comes to joint authorship, the situation becomes murky.[37] This arises from the fact that, when there is creative collaboration of persons, division of labour will come into picture, which will inherently create confusion as to the factual aspect or dimension of such an authorship. This throws more questions than it answers, as now we're faced with the dilemma of determining whose contribution, amongst all the authors, can be considered to be significant enough to warrant a copyright protection.

How do we decide the author *responsible* for the work in order to bestow their work as a 'protected expressions'? Although precedents seem to indicate that in order to determine authorship, it is essential to determine which author has made 'significant' contribution, this again throws the question of how to decide what amounts to significant contribution.[38]

From a cursory glance, this aspect of the test, requiring the determination of 'significant contribution' might look like a question of law rather than a question of fact, in which case, the law would have to step in to set a standard or threshold of the quantum of 'significant contribution'. However, legal jurisprudence and not to mention, several judgments have held that this isn't a question of law and their argument in this regard has been that the standard for judging joint authorship is considerably higher than that of single authorship and for this reason, establishing a one size fits all threshold would only be a counterproductive move on the part of law makers. Instead, for a long time now, judges have refrained from setting any legal standard for assessing the significance

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[37] *Id.* at p. 271.

[38] M.B. Nimmer & D. Nimmer, NIMMER ON COPYRIGHT (1976) 336.

of a contribution. Additionally, the law is also silent when it comes to establishing the test of significant contribution for any work.[39]

Such a situation might be the reason behind one branch of jurisprudence which states that the 'requirement for a significant contribution is a *de minimis* standard'[40] and is thus irrelevant. Another branch of thinking is that instead of trying to establish which author is responsible for making the most significant contribution, the test should instead focus on determining the *right* kind of contribution. Over the years, authorship has been awarded on the basis of the *value* or *meaningfulness* of a contribution by factoring in the 'relevance, attractiveness or value of the contribution within the creative context concerned'.

The Scholars are of the opinion that the determining factors in the test should be, whether the contribution can be set apart in the work and whether it 'contributes to the aspect of the work which distinguishes it from others of the same genre.' While these interpretations might not give a cohesive answer to what amounts to a 'significant contribution', it does help in solving the dilemma faced in joint authorship.[41] Typically, there are two ways of measuring what is 'significant'- one way would be to quantify it as *de minimis* and thereby do away with setting of the standard entirely, while the second approach would be to establish a qualitative standard of what amounts to a significant contribution. While the former does not do much in the way of answering the question of what is significant, the latter involves recognizing and establishing not an absolute but a relative value to each contribution.[42] Decidedly, this implies that context is very crucial when it comes to deciding what is a significant contribution and what isn't- such a standard ought to be decided within the context of a work in its entirety and not in the abstract. If we were to go ahead with such a qualitative assessment of contributions, it might be necessary, at this juncture, to bring in experts in the respective cultural fields or communities. More than a Judge, such persons would be a better judge of what amounts to a significant contribution, as they will have a better understanding of the work in question. More importantly, such an approach will help circumvent the dead end of setting a rigid quantifiable legal standard of what is significant and for this reason, this should be treated only as a question of fact and not a question of law.[43]

Lastly, the question of establishing distinctiveness of the contributors' works arises. In answer to this, first, joint authorship should not be seen from the perspective of just being 'a sum of its parts'; rather, joint authorship is more than just combining the works of different authors as it involves a conscious decision to work towards a common design while also maintaining each individual perspective or touch. Secondly,

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[39] *Supra* note 29 at p. 288.

[40] *Supra* note 9 at p. 28.

[41] *Supra* note 38 at p. 432.

[42] *Id*. at p. 416.

[43] *Supra* note 29 at p. 37.

copyright law should not, in fact, require an answer to the question of distinctiveness. Such an issue would not come under the ambit of question of law and thus needs no answering from the law.

Ideally and effectively, the test to determine joint authorship must be centred around establishing an objective standard of the 'shared understanding' of the contributors. 'Distinctiveness' in a work should therefore be determined in its ordinary sense while also taking into account, the creative context.

IV

Position in India: Present and Future

Joint Authorship in India

Considering India, there is clearly a dearth for cases noted. With India being one of the major contributors in the film and music industries, both in associated songs from the cinematograph films as well as standalone albums to instrumental music that all reflect the diverse culture India has to offer, there are only a handful of instances and more particularly, only one notable case law that had discussed directly into this issue. However other issues had arisen, those were watered down either because such an issue arose due to the disagreement in an existent contract or the royalty issues, those of which were later sought out by the impugned parties privately. It is shocking to reveal the fact, India has a dearth in the cases and clarity in the position of copyright law that governs on the issues and disputes arising over the joint authorship.

The Indian definition of a joint authorship is defined by S.2(z)[44] of the Copyright Act, 1957, which is defined as 'a work produced by the collaboration of two or more authors in which the contribution of one author is not distinct from the contribution of the other author or authors. Just like the validity of a copyright in case of a single author, in the case of joint authors, the posthumous period of 60 years of copyright validity is determined from the date of death of the last living joint author.

However, it is interesting to read the clarification issued by the Government of India in their handbook on Copyright Act, 1957 that they have explained joint ownership as "Work of joint authorship" means a work produced by the collaboration of two or more authors in which the contribution of one author is not distinct from the contribution of the other author or authors."[45] The reason why this handbook needs to be regarded is

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[44] Section 2(z) of the Copyright Act, 1957.

[45] Government of India Department for Promotion of Industry and Internal Trade Ministry of Commerce and Industry, A HANDBOOK OF COPYRIGHT LAW, *available at* – http://copyright.gov.in/Documents/handbook.html (Last visited Jan. 03, 2023).

because, this shells out better clarity on joint authorship than S.2(z) itself. However, this booklet itself sets out a disclaimer stating is intended to serve as an informational booklet and could not be regarded as a substitute for either the Copyright Act, 1957 or other Copyright Rules from 1958, till the present day.

Analysing the Maulana Azad Joint Ownership Case

Proximally, the closest case dealing with S.2(z) of the Act in detail is *Najma Heptulla* v. *Orient Longman Ltd. and Others*.[46] This was a case with regard to the question on what criteria does one become a joint author to a work that is essentially, a book.

The facts of the case surrounding the book titled "India Wins Freedom" that was written by Late. Dr. Maulana Abul Kalam Azad, freedom fighter and Islamic theologian scholar. In 1958, days before the book was slated for the launch, Maulana Azad passed away. This book was also part written by Dr. Kabir, a close associate of Maulana Azad, who had translated all the parts into English from Urdu, wherever applicable.[47] The book was handed over to the publisher named Orient Longman. After Maulana Azad's demise, his legal heirs wanted royalties from the sales of the book and thus, gave in writing of their consent.[48] So, Dr. Kabir, entered into a contract with the Publisher asking them to share the royalties between the Indian Council of Cultural Relations and Maulana Azad's heirs in equal proportions, on time. Further, there were 30 pages that were not intended to publish with the book's initial publication and on Dr. Kabir's request as well as the consent obtained from Maulana's heirs, the seal was agreed to only be opened in 1988. It was also agreed that after 1988, the publishers shall be vested with full rights to handle the 30 pages whose seal were opened.[49]

After 1988, when the publishers decided to open the seal and sell more copies of the book, it was when the descendent of Maulana Azad who was his legal heir then, filed a suit seeking relief against the agreement entered between Dr. Kabir and the publisher and filed an injunction suit stating that only Maulana Azad was the sole author of the book and Dr. Kabir's works, however acknowledged, did not qualify itself to become a joint author in this case, and that his very agreement with the publisher is void ab initio since he was not a joint author and thus, did not have the rights to enter into such a contract under the title of joint author.

The issues of the case then squared down to – Whether Dr. Kabir, a joint-author of the book? And whether the agreement so entered, is also void as consequent of his status of authorship?[50]

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[46] *Najma Heptulla* v. *Orient Longman Ltd. and Others,* AIR 1989 Delhi 63.

[47] *Id*. at para 3.

[48] *Id*. at para 4.

[49] *Id*. at para 5-7.

[50] *Id*. at para 13.

The Court stated that on the rationale that the very intention of the Copyright Act is to recognise the authors who had put their labour and skill into making a work, be it single author or joint author. And looking into the labour of Dr. Zakir into the book, added distinctiveness to the subject matter of copyright and was a tangible part in the book, whose work could have been distinguished by any reader from Maulana Azad's work under intelligible differentia. Thus, in that ground, the Court rejected to exclude Dr. Zakir from authorship as the book's preface bore Dr. Zakir's name, which testifies the fact Maulana Azad's consent was present. The court held that Dr. Zakir was a joint author and not the sole author of the book as Maulana Azad's work has been the genus behind the book.[51]

For the second issue, the Court held that the agreement could be allowed and was valid mainly because there was not lack of consent and for a undeniable fact that Maulana's legal heirs have been the beneficiaries of the book through the royalties that it had generated over the course of 30 years and all of a sudden it would not change the fact that Dr. Zakir was not a joint author to the book. It was testified otherwise in the preface of the book that he was a joint author. On this basis, the Court dismissed the injunction petition and held that the agreement was valid as it believed such an agreement must have arisen out of the express consent of the legal heirs of Maulana Azad.[52]

Road Ahead to an Accommodative Copyright Regime

Reading together the case and the position of the Indian Copyright Regime, unlike the United States and the United Kingdom's position, to a dismal surprise, was not very compelling and showed lack of interest towards identifying the qualifications of a joint author in absence of an agreement saying so. The sole requisite in the Indian law was that one author's contribution must not be as distinct as the other author's, implying, both authors must have jointly worked and spent their labour towards the outcome of the same work, which should not reveal the difference between the respective authors, as to which work came from which author.

The researcher feels that the position in the US and UK laws were more stratified in nature as they had plenty of tests, requisites and conditions to offer, identify and implement in real life scenarios. However, there were fair differences between the US and UK, such differences were understandably contrasting, due to the structure of their constitutions framed in such a way. India on the other hand, possesses a Constitution that is diverse, grants freedom of almost all aspects, is quite liberal and has distinctive features, that if worked along and more specifically, could have addressed most of the test and more detail-oriented definitions into its copyright law.

The researcher, for time being, proposes a moot question that was almost another case in the likes of Najma Heptulla. It was the feud between Ilaiyaraaja, a popular Indian

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[51] *Id*. at para 21.

[52] *Id*. at para 23.

musician and S.P. Balasubramaniam (SPB), a prominent face in the singing industry. When SPB had participated in various concerts singing some of his famous songs and being paid for performing in such concerts. Ilaiyaraaja, sent a notice to both SPB and the event's organizer claiming for royalties because it was his music at the end of the day, and his moral rights as a composer guaranteed him the bare minimum right to seek for royalties. Like discussed above, it was also Ilaiyaraaja's argument that defining one's moral rights will naturally determine the subsequent economic rights of an author as well. Somehow, the case was mediated between the parties privately and thus, did not reach the Court of Law.

Had it reached the Court of Law, the Indian Copyright law would have witnessed its new position to interpret the tests for being a joint author and the rights of various joint authors through the lens of their moral rights. However, assuming the case reached the Court of Law, then the need for balancing the moral rights of the author in an indeterminable field of rightful contribution would have raised the challenge.

Unlike writing a book, which may contain tangible elements that are comparatively easier to relocate, reshuffle, edit as per the joint authors' wishes, composing a song is a mean task. The recording process is sequential and the facets of various elements like lyrics, singers, composers, instrument players etc., introduces a lot of authors with their related rights into one entity. Related rights could be a distant concept to the rights of joint authors in a complex entity like a song, but when it comes to performing in public, every joint author's individual rights that is related to the song itself may bring upon a question of allowing them to use it in their own right and monetize it subsequently based on their individual rights over the song.

To briefly conclude with, India needs to improve on its facility to accommodate more tests and standards with regards to the position of joint-authorship. There should not be a position where there is no law because there had not been any issues pertaining to the void created by the absence of such laws. The object of any law/legislation is to be perennial in nature yet be robust in its dynamic framework. When the internet era is a blooming age, thanks to the Digital India campaign, more details to all aspects of law should be accommodated.

V

Critical analysis and Conclusion

On analysing all the aspects connected and the recommendations enumerated by the researcher, the creative context may deliver an insight on an imperative hint that the Courts could address on the legal void. This would enable the Courts to understand what is being the requirement of the joint-authors and provide for a better platform to

accommodate their interests and promoting the culture of more joint authorships across all forms of work created.

This would encourage more of such authors and add sense to their collaborative works.[53] Such perceptions are specifically pertinent towards determining whether the contribution made by one author becomes distinct, unique and holds any significance, and most importantly whether such work was caused by a tenable collaboration of both the author, in their respective contributions. Conceivably, the prime purpose behind linking the legal standpoint of a joint authorship and its jurisprudential and cultural perception is because it is essential for the growth of the Copyright Law and to attest its highest order of integrity and legitimacy.

After looking into a handful of limited cases that laid down various tests for identifying the joint authorship, is however very restricted in number. Reading these inadequate case list would not justify to completely build a well academically-developed arc to compare the jurisprudence behind the moral rights associated with the joint authorship. This limitation makes it difficult to validate the legitimacy and authenticity of the tests to test the work of joint authorship. As discussed in the 3rd Chapter, this difficulty could be a by-product of the factual exactitude in joint authorship conditions. This factor cannot be avoided and at the same time, cannot be ignored totally either. This is because most if not all the cases could be solely managed and given an appropriate result by applying this form of test, that makes the processes easier and time efficient.

What is more threatening is the fact that the absence of a proper channel of analytical lucidity in determining these tests and effectively applying the same on the impugned joint authors. This lack of clarity is becoming a growing concern because of its capability to hamper an effective determination process. Having this in place, would jeopardize the controlling authors and would thus, not ensure moral rights to the concerned joint authors.

The researcher presents an open-ended question that these shortcomings arise on two accounts. Firstly, the judges while incorporating the tests for the joint authorship, they are worried about the ground realities that may emanate in cases of multiple joint authors for one copyrightable work. The practical and imperious approach may subsequently influence a Judge to espouse a more challenging requirement for the test of joint authorship.

This difficulty puts the non-dominant authors in a co-authorship into a more deprived position because of the fact that this very flawed in nature. This form of a doctrinal approach confluents several other concepts of joint authorship that demands for a positivistic prerequisite to be qualified under the definitions of joint authorship and makes the overall process impracticable to fit under such legal purview. Next, the

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[53] *Supra Note* 38, 471.

"judicial commitment to aesthetic neutrality can obscure the important role of aesthetic considerations in decisions involving joint authorship."[54]

Regarding the aesthetic considerations, they are advertently appropriate regarding the doubts of whether a specific involvement of a joint author would entitle himself to become a joint author or not, nevertheless the prevailing significance of strict consideration given to law. A silence prevailing over the open announcement of this mechanism would ultimately direct the narrative towards more of a non-transparent and comical perspective. However, one's ultimate question could be the joint authorship per se, its path is intervened by creative approach.

It is natural to assume that always a Judge, while analysing from his/her point of view, would be inclined towards his/her societal and cultural perspectives on authors and their approaches of work while applying the copyright laws while determining the status of joint authorship. However, the copyright regime in itself is flexible in nature, that is being the reason for its dynamism and ever-changing ability.

Therefore, the author leaves an open-ended question, perhaps that is the best conclusion one may deduce to, after analysing in depth, of the regularities, mandates, requirements, tests and requisites required to prove joint authorship. While the States like US and UK principally differing from each other, other equally constitutionally accommodative states like India has to evolve in its copyright regime to be able to house all the lack of appropriate provisions for joint authorship, and thereby address all the conundrum surround the realities for a joint author.

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[54] D. Simone, AUTHORSHIP AND JOINT AUTHORSHIP. IN COPYRIGHT AND COLLECTIVE AUTHORSHIP: LOCATING THE AUTHORS OF COLLABORATIVE WORK (Cambridge Intellectual Property and Information Law Cambridge University Press. doi:10.1017/9781108186070.002. (Last accessed on 03rd January 2023).