CHAPTER 8

THE STATUS OF THE PERFORMER IN THE AUDIOVISUAL INDUSTRY IN INDIA

Objective of the chapter: The chapter seeks to assess the status enjoyed by the performer in the audiovisual industry in India by tracing it from the time the industry began in India. An assessment of the state policy towards the film industry and the performer is attempted. An analysis is made of the entertainment industry within the context of the constitutional scheme in India. The protection afforded to the performer by prevalent statutes with the objective of securing labor and social security to the performer is scrutinised and the status of the performer assessed by analysing judicial opinion. The chapter seeks to understand the possible changes to the practices and status of the performer in the context of changes sweeping the sector in the wake of it being declared as an industry and also in the wake of corporatisation and internationalization of the audiovisual industry.

The Beginning

The early films in India were heavily dependent on the world outside for the artistic as well as technological skills required for the film industry. Being an artistic form that was an offshoot of a scientific invention - the cinematograph, the film trade did not have any precedent to follow with respect to techniques as well as practices. The situation was the same in the rest of the world as well.¹ The first feature film 'Harishchandra' was made in the year 1913 with borrowed technology as well as by securing the services of foreign technical personnel. The early filmmakers found spotting talent and getting them to perform very difficult. There

¹ The studio system took over quiet early all over the world. The practices, which were followed, were not much different from that of the production practices in other sectors of trade. The artistes were employed on contractual terms on a monthly salary basis and treated as employees. These practices cast their shadow over India as well. The practices prevalent in the drama troupes where in the performers were attached to groups and traveled with it can be considered as having been followed in the cinema industry as well. It would be the same troupe that donned different roles in various productions.
was an acute shortage of acting talent during the silent era. This scarcity was felt more acute for the feminine roles. It was difficult to recruit ladies for roles requiring their presence as acting was not considered a respectable vocation and therefore Indian women were reluctant and hard to be persuaded to act. Thus in the early years it was either the male actors who donned the grease paint for the female roles or the Anglo Indians whose social mores didn’t view the profession in cinema with suspicion. The performing artist’s class was considered as those with loose morals and a stigmatic background there by occupying a low social position in the social ladder. Thus socially the performers were considered as not occupying a respectable position in the initial years of the film industry. The cause can be attributed to film production being unstable as a trade, the income being meager and irregular. Even actors from commercial theatre companies were not attracted to films. In contrast the stage was still a popular and economically viable avenue for the actors. There was an acute shortage of actors during the silent era. In other words performers in fixed audiovisuals had not yet emerged as a distinct artistic and professional class in the Indian film industry.

The Performing Artist in the Silent Era

The remuneration commanded by the artistes during the silent era varied with the standing of the artistes in the market. In the large studios a permanent staff of

---


3 *Id.*, p.71. There is nothing peculiar in this and is not characteristic of casting problems in the early Indian film industry. The social mores of the times looked at the performing arts with a stigmatic prejudice. Even in performing theater companies the men had to don female roles.

4 For instance Ruby Myers alias Sulochana and Marien Hill. They were all either Anglo –Indians or Jews.

5 Due to the need to play female characters impressively, the actors used to grow long hair in order to play the part of the female whenever required with the consequence that the society used to look down upon them for their non-conformist lifestyle.

6 This was accentuated by the fact that the uncertain prospects of a fledgling industry could not promise any extraordinary remuneration that would beget economic and social respect.

7 Theodore Bhaskaran, *Eye of the Serpent, An Introduction to Tamil Cinema*, East West Books, Madras (*edn. - 1996*), p.7. The resultant situation led to amusing instances of the technicians and even the family members being asked to don the grease paint. In fact even accountants had to don roles however some of them lasted well into the talkie era.

8 Raja Sandow along with Devika Rani was one of the most highly paid actors; the latter can be considered the first heroine of the film screen.
actors was maintained whose income was on an average Rs. 30 per month. It ranged from Rs. 30 for an extra to Rs. 500 – 700 or Rs. 800 for a star. Cinema to the artistes of the silent era was more a means of earning a living rather than a chosen way of life. During the early stages of the silent era, the producer or the film company owner was in total control of the unit. Directors were hired only to train actors. The artistes would not boastfully claim to be actors and actresses. They were mere employees of the film companies' and no more. The artistes were paid in the aforementioned rates till the forties on a monthly basis. After the forties the pattern of contractual engagement changed from six months to one year. It was considered more economical than the practice of monthly engagements. The artists were also sure about the duration of their contract with the production companies. However companies who had their studios did have the comedian and heroine on their payrolls. This was because these entities were important for the success of the film and having them would facilitate easier production of films. Different companies wooed popular actors in order to have them on their payrolls. They can be considered as the first stars on the filmy firmament. The film companies engaged the artists and others on a contractual basis treating them as employees and they had not yet acquired any independent status. Though freelancing had not yet commenced nevertheless the masses had their favorite stars amongst the actors and the actresses. It was not any acting ability that mattered but the physique and other body skills that mattered to win recognition and success at the box office.

It is of note that during the early years of the silent cinema the performers names were not mentioned on the credits. However by the beginning of the thirties, the performers began to be given credits on screen. It can be inferred that professional standards were being set and the market appears to have begun to

\[9\] P. Rukmani, op. cit., p. 71.
\[10\] Id., p. 95.
\[11\] Rangavedi Velu, a stage actor was hired to train actors in the early films. In the year 1916 for the Indian film company ‘Keechaka Vatham’- Disrobing of Draupadi’. S. Theodore Bhaskaran, op. cit., p. 4.
\[12\] P. Rukmani, op. cit., p. 112. Gemini pictures were famous for these practices. They were hard task masters as well as good paymasters
\[13\] One of who was Sandow who was a crowd puller with his physique and so was Hunterwali. Nadia, a lady who was popular with the masses because of her stunts and daredevilry in films.
respond to the star value. Whether it was the first signs of principle of a moral right to attribution of ones name to ones performance or a response to market demand is unclear. But it appears that star names had begun to matter.

During the silent era the impetus was more on looks and the gait rather than any other talent. Therefore, acting as an art form that required flair and talent as one can gather today was nonexistent because of the limitations of the silent medium. Either a narrator or subtitles were used to narrate the story. The professional development was at its nascent stages and so was the infrastructure. At times live orchestra would accompany the films. There were no permanent theaters to screen the films but the projections were attached to either melas or public fairs. A pan Indian trend in the production practices could have begun in the film industry because of the inter-sectoral dependence and mobility for infrastructure and technological availability as even the films in south India were shot in Bombay, Pune and Calcutta. Importantly independent freelancing among artistes as one can witness today had not yet commenced in India during the silent era. It has to be noted that due credit has to be given to the early silent film maker as there was no peer for them to look upon or any settled industrial practice to assuage their apprehensions and make film production a suitable business proposition.

The Status of the Performer in Talkies Under the Studios

During this period the production houses began to produce films at their own studios by engaging in house personnel. The talkies did effect an escalation in the cost of production of the film in that there was a seventy five percent increase in the cost of production as compared to the cost incurred for producing a silent film. From the aesthetic point of view most of the early talkies were just celluloid versions of the stage plays, the normal practice being to engage a

---

14 Theodore Bhaskaran, op.cit.,p.8. The most sought for genre in the silent era were the stunt films that needed more by way of physical attributes from the actors rather than any acting talent. Therefore battling Mani and stunt Raghu were the leading actors of the times.
15 P.Rukmani, op.cit.,p.119.
The arrival of the talkie in the year 1931 resulted in the mass migration of artistes and technicians from the stage to the film industry. The same lack of organization among the artistes that was evident in the theatre realm continued in the event of this transition as well. A similar attitude of indifference from the employers continued even in the studio work environment. Though the monthly wage arrangement seems to have been discarded during this period nevertheless the artistes were on contract with particular studios, which expected them to act for them alone. Whether there was a detailed oral or a written agreement with the artistes is not ascertainable but there was an agreement with respect to call sheet timings. During these early times there are instances of the artists being sued by their companies for breach of contract. They were not to engage in multiple engagements at the same time according to the norms of the times. It was the producer who commanded the production and the director had not yet reached the status being the architect that was attained later on. In other words during the early period of the talkie as well as the silent era the onus was solely on the investor who was the creative force behind the venture and acknowledged as the author. The studios loaned the stars who were on the rolls of the studios to outsiders who needed them for their projects. The right was exclusively that of the studios and there was no individual freedom of the stars in this regard. Thus the system was that of the labor being owned by the investor just like any other capital used in production.

The medium of the cinema produced a star hierarchy even within the studio system under which they worked. Of relevance in this context is the fact that

17 Theodore Bhaskaran, op.cit.,p.13. It can be considered a photographed version of the drama.
18 This was one vital disadvantage for the artistes in the Indian film industry, as they did not have a precedence to look behind in order to sow the seeds for an organizational movement. Theodore Bhaskaran, *Trade Unionism in South Indian Film Industry*, V.V. Giri National Labor Institute, Noida (1st edn. - 2002), p.11.
19 The first talkie in India, ‘Alam Ara’, was marked by litigation with an actor being accused for breach of contract by the studio that had employed him on their rolls for acting in the film, <http://www.angelfire.com/movies/madhuni/alamara.htm.> as on 23-2-2004. Although Mehboob was scheduled to play the lead in ‘Alam Ara’, Master Vithal from Sharda Studios got the part. When Sharda sued Vithal for breach of contract, he was defended by M A Jinnah (the founder of Pakistan).
20 For as early as 1937 one of the superstars of yesteryears Sri K.B Sunderambal commanded a price tag of Rs.1 lakh that was granted to her for the film ‘Nandannar’. Artistes with a decent
there were no contractual arrangements that can be considered similar to that of recognition of intellectual property value by way of royalty payment agreements in the Indian film industry during this stage.\textsuperscript{21}

It was with the advent of sound that the value accorded to the film medium as a creative enterprise increased way above the popularity and following enjoyed by the unfixed audiovisual media that includes drama troupes and the rest. By now the familiar the creative showman performer emerged with the opportunities created by the arrival of sound in the Indian film industry. All the prerequisites and traits identified with the performing arts on the stage had to be adapted and with little variance expressed in the cinema. The motion picture of the silent era was less demanding for the artistes by way of creative abilities, as the technical facilities were not sufficiently developed to exploit the same. The advent of the talkie in the year 1931 through ‘Alam Ara’\textsuperscript{22} in Hindi (also made in Tamil) effected a change in the professional fortunes of the performers. The environment was different from that of the silent film era. In fact the importance of voice and other attributes was important perhaps more than any other perquisites. Though the production methods were still crude and unsophisticated nevertheless the industry woke up quickly to the demands and potential of the cinematic medium.

The fusion of the audio element with the visual element of the silent film era gave the domestic filmmaker an edge over the foreign competition in silent films that he was facing since the advent of the industry.

The early screenplays were mere adaptations of the stage plays that were mostly based on mythological adaptations. Thus the artistes from the theatre found themselves in great demand on screen. Further, the tradition of theatre had always attached great importance to the need for music, dance and orchestration. With the inception of audio this advantage also could be exploited to cater to the tastes of an audience bred until then in folk and stage performances. The prevalent tastes necessitated and requisitioned the talent of

\textsuperscript{21} Though initially the studios employed artistes on monthly salary basis with exclusive contracts with a particular studio. This system was abandoned as the pay of the artistes was pegged according to their market value. It is to be noted that this attribution of market value is also another way of recognizing the intellectual property value in the performance.

\textsuperscript{22} One of the longest films ever made in Indian film history.
performers who could render dialogues as well as sing on stage. The latter technology arose as the technology of playback was yet to be invented. Thus there had to be an excellent expertise in music as the actress or actor would have to enact song and dance with a live orchestra on the sets with the camera recording the scheme. It is striking that several of the early films had singers who were loud enough for the galleries. These mannerisms were carried over onto the microphone era as well. This onset of play back singing brought out a decisive change in the prerequisites required to be a film artiste. This removed one of the prerequisites considered essential to be an actor.

In fact the glamorization of the actors as a pivotal aspect of the medium became unavoidable during the talkie era. The reason was obvious as the close-up of the actors, loud emotive dialogue deliveries, the garish costumes and their larger than life image on the screen was leaving an indelible impression on the minds of the Indian cinema aficionado. Characters started becoming synonymous with the actors and they became etched in the psyche of the audience. Further the film magazines also sprouted with their gossip columns giving a closer glimpse of the artists' lives. This had a positive impact on the remuneration of the actors as this lead to a hierarchy of stars according to their popularity and thereby the market value. Thus with the advent of the talkie the actors ceased to be mere acrobats - stunt performers and became nearer to the performers that they were in live theatre. It shows that the studios had begun to realize the fact that the actors were playing a determining role in the fortunes of the film unlike other raw materials that went into filmmaking.

23 This continued till the mechanism of playback arrived.
24 The high decibels in which singers such as K.B. Sundarambal and P.U. Chinnappa sang are in stark contrast to how singers render their performances.
25 Two celebrated artistes such as Ashok Kumar and Thyagaraja Bhagavathar in the thirties and forties were all singers.
26 Theodore Bhaskaran, Eye of the Serpent, An Introduction to Tamil Cinema, East West Books, Madras (1st edn. - 1996), p.19. It is also worth mentioning that though theatre artists were most sought after with the advent of the talkies there was a reverse trend also during the mid thirties to try on amateurs. The reason was that they were cheaper and easier to handle than the stage actors. The exploration of the medium led to several attributes evolving as desirable traits for the film actor. The stylized acting went together with the realistic acting. Thus even actors with non-professional acting training entered the tinsel world.
A successful film could always lead to the actor hiking the rates for his performances. The trend of calling an actor a star began with the forties if he or she acted in a box office film. The star culture had begun to be rooted in the psyche of the people is clear from the down fall of several stars based on the rumors regarding their professional and private lives. The star value and property value in the commercial sense of the term had begun to be recognized in the early talkie (pre-independence) period of the star culture. During this period there are stray instances, which point out that the commercial value of the image, or the commercial potential in the personality as distinct from the mere market value of the performance had come to be recognized. The personality and image of Baby Saroja, a child actress and a favorite of the Tamil film viewer who acted in three films was exploited to sell household articles as well as toiletries. It was only by resort to legal measures that the same was restrained. In spite of the absence of the residual payment system followed as a remunerative model, the industry was conversant with the personality and market value of the performer and both the producers as well as the artistes were aware of the same. The first signs of the need for an organization representing the concerns of film artistes also emerged in the late thirties, before the war shook up the studio system, but the initiative did not last long.

Music Industry and the Movies -Pre-Playback

An important instrument for recreation and entertainment that preceded the arrival of sound to the silent film era was the gramophone that had been

---

27 P. Rukmani, op. cit., p.113.
28 Ibid. The treatment of these stars only varied marginally between the north and the south of the country though the former did not hesitate to introduce new talent
29 Thyagaraja Bhagavathar and N.S.Krishnan were charged with the murder of a journalist for having attempted to blackmail them. The former who was a superstar in his time never quiet recovered his fortunes after his acquittal.
30 The prevalence of the star system has spawned various theories to the extent of connecting it with the idol worship and guru worship. See, Firoze Rangoonwala, A Pictorial History of Indian Cinema, Hamlyn, London (1979), p.70.
32 Theodore Bhaskaran, Trade Unionism in South Indian Film Industry, V.V. Giri National Labor Institute, Noida (1st edn. - 2002), p.12. In the year 1938, M.V.Man was elected president and Thyagaraja Bhagavathar was the president of the Association of Actors.
School of Legal Studies

commercially available since the year 1902. It had acted as an appendage both to company dramas as well as the films that succeeded it.\(^{33}\) Songs came to occupy a pivotal place in the song and dance dramas of the companies and this trend continued into the films.\(^{34}\) Cinema popularized music and the traditional barriers were broken as music was for the first time enjoyed by the masses and the classes alike. In the initial years the phenomenon of playback was non-existent as the technology had not developed in this regard therefore the artists had to sing and enact the roles themselves. The artists used to ask for a higher remuneration in order to sing for the discs separately. This was because at that time there was no play back technological possibility. Interestingly neither the studio owners nor the producers opposed the cutting of the songs contained in the film. But the technology had not been developed to take the song directly from the sound track. Artists when approached asked for double payment for specifically rendering these songs for the discs. Gramophone companies were not ready to make the payments other than royalties to the producers. Thus version recordings were made and sold, as the original artist could not protest, as it was all right if the producers received the royalty.\(^{35}\) However different singers often sang for the gramophone records when the original star singers found the price offered uninteresting. For some time in the initial years even the permission of producers of films was not taken for these version recordings however the gramophone companies later on adhered to this.\(^{36}\) The highlight of these transactions is that the artistes were aware of the need for extra remuneration for the exploitation by way of discs separate from the remuneration for rendering for the film. Thus despite the producer being the owner of the film, that did not vest in him the right of using the soundtrack for the gramophone as well. The artists had to be separately persuaded to do the same with additional remuneration.

---


\(^{34}\) *Id.*, p.42. The fifty songs in the first Tamil film testify to the relevance of music and the skill required for rendering it.

\(^{35}\) P. Rukmani, *op.cit.*, p.122.

School of Legal Studies

Status of Playback Singers Under the Studio System

The need for the actors to be trained in Karnatic music and be singers had to be discontinued with the start of prerecording facility. The ability to sing ceased to be the sine qua non for the actor. Artists began to be primarily chosen for their good looks and acting talent. Playback also brought in a distinct group of artists called playback singers. It brought in a new class of contributors to the cinematic medium called the play back singers. In the early years the singers, songwriters and the dialogue writer others did not receive the credit for their performances. They were paid much less than even the other workers and were rated low.

The Extras in Talkies Under the Studio System

By the thirties there was sufficient distinction between the supporting artists and the main artists in the film industry. Under the studio system the extras were engaged on a daily wage rate. With the takeover of the industry by new entrepreneurs during the war and after the Second World War period there was immense exploitation of the labor in the industry. With the extras unable to have the same bargaining power as the main artists and popularity among the masses, they were a disgruntled lot. The extras were paid Rupees two as a daily wage by the employers. Once the war was over they advanced their claim to a higher wage rate at rupees 5 per day. One can note that in comparison to the monthly salary that the main artists and certain technicians were enjoying the extras who were also performing artists but relatively irrelevant and subdued to the major scheme of things were earning a daily salary. The demand was realized from the studio owners and film producers by striking work. The first signs of class-consciousness were apparent in this episode.

37 Id.,p.45.
38 By way of titles- credit.
39 Theodore Bhaskaran, Trade Unionism in South Indian Film Industry, V.V. Giri National Labor Institute, Noida (1st edn. - 2002), p.11. Even the Indian Copyright Act, 1914 did not extend statutory protection to the cinema. There was little protection even after that for the other literary offences like plagiarism.
40 Dr.Inturi Venkateswara Rau, The Trade Union Movement in South Indian Filmdom, in Hemachandran,(et al), Film Trade Union Movement, Southern Zone, A Flash Back, Published By Film Employees Federation of South India (FEFSI). It was the 'extras ' (as they were called then) who first raised the question of raising the wages and struck work. It was at the Jaya Film Studio compound at Madras (now Chennai) that the struggle saw its culmination.
The Dubbing Artists

The dubbing artistes were also new additions to the film industry following the invention of sound recording and playback in the film. They were also paid on a daily wage basis just like the junior artistes. Thus in the initial years of the Indian film industry the western models of the studio system had influenced the relations in the studio system adopted in India. However the condition of the employees under the studios appears to have been better than that of the employees outside it.41

The Performer in the Era of Independent Production

The assembled factory line style of producing films by studios changed with the onset of the Second World War. The rise in the price of the raw materials together with the stringent economic policies of the state during the war and after plunged the film industry into a crisis. With escalating costs and an inflation-ridden economy there was little succor to the film industry and the studio system was hit hard by the times.42 This turn of events had a lasting impact on the status of artistes in the film industry. Several of the studios and their artistes were out of assignments. This was despite the fact that the number of theatres had increased.

The black money hoarders-investors seized this despondency in the market as a safe platform to invest. The sequence of events though designed to avoid taxation by showing inflated expenditure on the films produced had an impact on the system through which the stars were remunerated. Till then the stars were on the payrolls of different studios for a particular period of time, they became blinded by the heavy sums offered by the independent producers and were enticed to part ways with the studios.43 The artistes entered into independent

42 Though there was increased demand for films, the economy had become inflation prone and costs had gone up. Report of the Film Enquiry Committee, 1951, printed in India by the Manager, Government of India Press, New Delhi (1961), p.14.
43 Ibid.
contracts with the producers. The stars became the focal point of the film industry as inexperienced film producers with only with the lure of tax evasion or wanting to make an extra quick buck safely and easily.

The star system began to influence the decision making in the film industry. The stars decided several vital decisions such as who should do the script, as to who should co-act and even direct the film. The stars began to take up multiple engagements at the same time in order to cash in on the new opportunity that their star power commanded. The immediate fall out of the same was on the contractual practices and the legal consequences regarding the terms and conditions. There was no standard consistent practice followed. The pattern of practices was such that the commitments were drawn in any manner without specifics regarding the nature of the role and duration of engagement. It could be oral or written and the production schedule could vary from a few months to over five years, the script could either be written before the shooting commenced or would not be insisted upon depending on the credibility of the producer and the director. Even in these unpredictable chaotic circumstances there had to be certain unwritten rules but that varied according to the commanding power of the stars in the market. There was neither any security through collective bargaining practices nor was there any legislative cover for the artiste to provide him a secure labor cover. The artiste was treated like any other skilled laborer and paid for his services though not as a manual worker with respect to the fixation of his wages. One significant point to be noted is the cheap labor cost of the Indian film worker compared to that of western counterparts. It is noteworthy that correspondingly during the same period in other parts of the world as a consequence of widespread exploitation, unions were demanding the imposition of the residual model of remuneration for the performing artists.

Organizational Efforts in the Industry and the Performing Artist

The first organizational efforts of the industry had already begun from the thirties onwards in Bombay. The Motion Picture Society of India (MPSI) was formed in

---

44P. Rukmani, op.cit.,p.449. This was a significant factor in reduced costs of film production in India.
the year 1932. The period also saw the emergence of an organizational front of the producers in India representing the interests of the film industry. In the year 1936, the Bengal Motion Picture Producers Association was formed. The Indian Motion Picture Producers Association was formed in the year 1937. The South Indian Film Chamber in Madras came into existence in the year 1938 under the pioneering spirit of Sree Sathyamurthy. There does not seem to have been a precursor to this organization before that in the Indian film industry. However the interests of the performing artist were not on the agenda of these organizations nor was it brought to their notice during this period. Thus it could be said that adversities brought together the various organized entities to function in the south and the north Indian film industry but their interest's were to promote the industry and not for improving the lot of the artistes and the personnel involved.

The first All India Motion Picture Congress was held in the year 1939 in Bombay by bringing together all allied unions and trade associations to discuss their problems. From the records of the various conferences held during this period it can be said that Indian Motion Picture Society, The Motion Picture Producers Association, The Indian Motion Picture Distributors Association, Association of Cine Technicians, Amateur Cine Society and Visual Education Society of India, the Indian Film Exhibitors and The Cine Artists Association were in existence and active in India. The artists too began to organize themselves as well as the technicians by the end of the first half of the century. The working conditions were on the agenda of both cine technicians as well as cine artists. For instance, while the former had demanded that salaries be disbursed by the fifteenth of every

45 The first motion picture trade journal was begun in the year 1935 by the Motion Picture Society see <http://www.meadev.nic.in/media/media.htm> accessed on 6-2-2003.
47 Ibid. The Indian Motion Picture Distributors Association was formed in the year, 1938 at Bombay.
48 The organization was formed by the exhibitors, distributors and the producers to act as a spokesperson or to represent their grievances before the Government Of India, the state governments as well as other interests in the industry.
49 A futile attempt was made in the year 1938, though it cannot be categorized as a post studio development. Both the systems of film production were coexisting during this period.
50 P. Rukmani, op.cit., p.163.
51 <http://www.meadev.nic.in/media/media.htm> as on 6-2-2003.
52 See also <http://www.indiaheritage.com/perform/cinema/history/history.htm> as on 6-2-2003.
53 In the western Indian film industry
month as well as that the equipment should be in a good condition, the Indian cine artists called for a regular schedule of working hours. This shows that a slow consciousness of the need for order was being felt in uncertain times in which all were prone to exploitation in a disorderly industry. The end of the Second World War as well as the dawn of the independence brought forth a momentum to these organizational movements.

Pre- Independent Film Policy of the State and the Performer

Rangachariar Committee Report

The colonial rule that prevailed in India during the time of the advent of the film medium into the country made it essential for the administrators to evolve a policy towards this highly potent medium of communication. The regulatory initiatives towards the film sector in British India’s began as early as in the year 1918 with the passage of the Cinematograph Act. By the 1920’s the provincial government had begun to impose taxes on cinema as an imposition on entertainment revenue. The British government did not pay any attention to the plight of the film workers in the Indian film industry. The British government appointed a Film Enquiry Committee in the year 1927/28 in order to study the functioning of the industry in an elaborate manner. However the intent was to take stock of the sunrise industry and the problems connected there with and did not include any issues with regard to the personnel involved in production. Though suggestions were made with regard to taxation and the need for professional training to be imparted to the technical and artistic personnel involved in the production no concrete proposal for the standardization of transactions and dealings or for the betterment of labor relations was made. Despite several recommendations of the Rangachariar committee with respect to finance, taxation and more efficient

---

53 P. Rukmani, *op.cit.*, p.167. It is significant that this was a period before the dawn of independence.
55 Theodore Bhaskaran, *Trade Unionism in South Indian Film Industry*, V.V. Giri National Labor Institute, Noida (1st edn. - 2002), p.7. In 1921 W. Evans who was sent to make a survey of the industry only made propositions with respect to censorship.
56 Ibid. The exercise was a comprehensive and an elaborate one with the questionnaires being sent to different parts of the country and hearings held in different places.
functioning of the industry, the government kept the recommendations in the cold storage. The Committee made a comprehensive study of all aspects of the film industry that included film production, distribution and exhibition, public and presses perception as well as the governmental monitoring of the film industry.\(^{57}\) It took note of the need for a healthy capital infusion so that qualitatively better films were produced. They underlined the low quality of films produced was due to cheap investments and the lure of quick returns. In fact it noted that the trustworthy capitalists were shying away from the industry (mainly because of the stigma attached to the industry). The Committee recommended the setting up of a central organization to guide, assist and control the industry.\(^{58}\) A huge responsibility was placed on the government to supervise this process that intended to cover activities from provision for finance to developing cinema halls.\(^{59}\) However the government did not act on any of the propositions.\(^{60}\)

If there was anything that finally influenced government policy and activated it towards the film industry was their concern about the message borne by the potent medium. Therefore their primary concern was with censorship of the cinematic medium and guidelines to be formulated in respect of censoring the film media and the identification of the medium as a potential source of revenue. This was understandable since the film folk had many a nationalist within its fold the British government had to be wary about the message borne by the films.\(^{61}\)

---

\(^{57}\) *Report of the Indian Cinematograph Committee –1927 –28–Rangachari Report, 1928 Madras, Printed by the Supt., Government Press and Published by the Government of India, Central Publication Branch, Calcutta, pp.xi –xii. The terms of reference included the need to examine the organization and the principles and methods of the censorship of cinematograph films in India and to survey the organization of the exhibition of cinematograph films and the film producing industry in India.*

\(^{58}\) *Id.,p.140.*


\(^{60}\) *This was mainly because of the dissenting note by the three European members of the commission. See I.K.Menon, Genesis and History of the Motion Picture Industry in India in Hand Book of the Indian Film Industry, 1949, MPSI Publication, Bombay (1950), p. XVII. One of the earliest accounts published around the fifties.*

\(^{61}\) *Theodore Bhaskaran, Trade Unionism in the South Indian Film Industry, V.V. Giri National Labor Institute, Noida (1st edn. –2001), p.10. In fact leading stars in the film industry like K.B. Sundrambal campaigned for the Congress during the 1937 elections.*
One Rule Contrasting Attitudes

The attitude of the British government displayed contrasting dispensation to what was reflected in the British policy towards the film industry and the performer in particular in Great Britain. While protective legislative measures and an atmosphere conducive for the growth of the trade unions were created, the same could not be discerned in the Indian terrain. It is interesting to note that prior to the first film enquiry committee report the British parliament had enacted the Dramatic and Artistic Performances Act, 1925 in Great Britain for performers' protection that seems to have had no impact on the Indian performer. By the dawn of independence there must have been at least three revisions to the 1925 enactments but the same does not seem to have had any impact on the performer or the legislators in India nor are there any references about the same in the Enquiry Committee report or in any subsequent initiatives prior to the independence. The lackadasical attitude was not exuded by the British government alone rather even the popular Congress governments in the provinces chose to ignore the film industry. The Labor Commissioner did not have the cinema within his purview. However the Payment of Wages Act 1938 covered the studios within it and the Factories Act of 1914 covered the studio unskilled workers but it was not to cover writers, music directors and sound engineers. As litigation concerning performing artists has not been reported at all and as from what has been stated creative personnel seem outside the purview of the Factories Act, performing artists do not appear to have a foothold in the enactment.

---

62 Id., p.8.
63 The reason can be explained by the historical absence of the trade union or any organizational effort among the Indian performers traditionally in non-affixed media like the drama companies. In contrast there was a vibrant union culture in the theatre field at the time of the advent of the cinema. Id., p.9
64 Theodore Bhaskaran, Trade Unionism in the South Indian Film Industry, V.V.Giri Institute of Labour, Noida (1st edn.-2002), p.7.
65 Report of the Film Enquiry Committee, 1951, Printed in India by the Manager, Government of India Press, New Delhi (1951), pp.81-82.
The South Indian Film Chamber of Commerce did interact with the Government Of India from the time of its inception by way of petitions and representations to look into the problems faced by the film industry particularly with regard to taxation, raw materials, stock and institutional finance. It is important to note that the Indian performer during this period in the non-fixed medium had also never organized themselves unlike English counterparts and so the organizational culture might not have been passed over into the new media. It could be said that the lack of an organized precedent could have slowed the organizational resolve and momentum of the Indian performer.

After the 1927-28 Film Enquiry Committee report the next noteworthy endeavor on the part of the state was the constitution of the Film Advisory Committee that was constituted in 1944 with representatives of the trade to stabilize the industry. The result of this endeavor was that in August 1944, the government agreed to provide royalty of one rupee for every song played on the All India Radio. This was to be administered through the Film Chamber from the 15th of December 1943. Agreements of this kind were signed with the Governments of Travancore as well as Ceylon as there was tremendous appeal towards the cinematic medium. It is unclear whether any part of the royalty from this exploitation went to the performer. In the absence of any cited instances it can be surmised that there was no such practice other than from the sales of records during this period. Thus despite the striking observations regarding the potential of the industry by the Rangacharier Committee and the growing stature of the film industry there was a general apathy toward the issues facing the film industry.

---

66 That represented the film industry in the south formed in the year 1939.
68 The major issue was the burgeoning price of the raw film stock and the tax imposed on the same. See I.K.Menon, op.cit., p.xxiv.
69 Even cinematography as a distinct course of study was commenced in the Travancore state with the launch of the visual education scheme. P. Rukmani, op.cit., p.173.
Post-Independent Film Policy and the Performer

Committees on Film Industry in the Post Independence Period

The constitution of the S.K. Patil Committee in the year 1951 and its submission of a report on the film industry in the year 1953 exhibited the first stern resolve of the Government of India to streamline the functioning of the industry. The Committee had wide terms of reference. The most striking proposition made by the committee was the formation of a central body to take decisions with regard to the film sector. The body was to be called the Film Council that would have representation within it from all quarters. The artists were also recognized as entities worthy of representation in the Film Council together with the workers and other technical and financial personnel including producers, distributors and exhibitors together with the State and the Central Government representatives.

A firm indication of the need to cultivate a firm infrastructure for the seeding and the growth of the guilds was made in the S.K. Patil Committee Report. The committee had envisaged a film directorate consisting of members of whom 1/3rd are to be elected from the trade circles and other one third nominated by the central government in consultation with the state governments. It was to report to the government about developments in the industry and recommend legislations in areas relating to guilds. It was also intended to establish a film academy. The expenditure to be incurred was to be allocated between general purposes loan fund, producers loan fund, development fund and pension fund. The basis of the scheme would be the various guilds representing various departments. All the guilds together were to form the Federation of Guilds. It would make and reinforce regulation for the conduct of persons engaged in each guild. It would be

70 Report of the Film Enquiry Committee, 1951, Printed in India by the Manager, Government of India Press, New Delhi (1951), p.1. The terms of reference were to enquire into the growth and the organization of the film industry in India and to indicate the lines on which further development should be directed, (2) to examine what measures should be adopted to enable films in India to develop into an effective instrument for the promotion of national culture, education and healthy entertainment (3) and to enquire into the manufacture of raw film. ... and for floatation of new companies.

71 The Bulletin of the South Indian Film Chamber of Commerce, Madras, 1954, p.15.


73 Id., p.188.
from the Federation of Guilds that one by third of the personnel would be added to the film directorate.

The S.K. Patil Committee report made certain observations that sums up the state of performing artists in the film industry in its enquiry and urged them to form an association.\textsuperscript{74} The actors and actresses complained about their inability to negotiate as group with the employers.\textsuperscript{75} This has restricted them from attempting a standard form contract and in checking practices not in the best interests of the industry. In completion of films even within a period of one year was cited as a reason for the multiplicity of assignments taken up by the artistes. Unhealthy practices resulting lack of standard contractual practices include displacement from the role at the discretion of the producer. The script is never finalized prior to shooting, the schedule is not planned, the stars do not know their part, and there is no advanced rehearsals or coaching to prepare them for the role.\textsuperscript{76} It is significant that the committee had noted the trends of organization among actor in the U.S.A.\textsuperscript{77} The non-application of labor laws to the film industry including the Industrial Disputes Act and the Factories Act was noted by the Committee.\textsuperscript{78} The inappropriateness of the application to the technicians and others indiscriminately was also stressed.\textsuperscript{79} It is important to note that they were grappling with issues that would give them minimal security and therefore notions such as copyright or royalties had not been made part of the industry vocabulary.

A characteristic of the report is that even though it compares and looks for guidance to the model of production code in the United States of America for cure for ills plaguing the Indian film industry\textsuperscript{80}, at no point is a reference made to the residual remuneration through collective bargaining that is practiced in the United States.

Some of the other important suggestions and observations of the committee were that the collective organization in the form of associations and guilds had to be on

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{74} Id., p. 71.
\item \textsuperscript{75} Ibid.
\item \textsuperscript{76} Id., p. 87.
\item \textsuperscript{77} Id., p. 71.
\item \textsuperscript{78} Id., p. 81.
\item \textsuperscript{79} Id., p. 82.
\item \textsuperscript{80} This includes high cost of production and undisciplined functioning of the film industry.
\end{itemize}
\end{footnotesize}
School of Legal Studies

a national scale for better coordination.\textsuperscript{81} Another from the artists' perspective was the establishment of a casting bureau that would act as a clearinghouse by observing healthy contractual practices.\textsuperscript{82} During the course of the enquiry at no point have the artists touched any issue resembling those from the copyright realm or with regard to the extent of exploitation or regarding the credit or attribution and control over the performances. Their concern was limited to contractual standardization and a disciplined work environment.

The question of the Film Council did arise in the parliament from time to time even after the S.K.Patil Committee Report in 1952. In the year 1962,\textsuperscript{83} the Estimates Committee made recommendations to the Government of India that the film industry has come to occupy an important position in the countries economy and India being the largest producer of films, the committee was of the view that the film industry had come of age and should be able to play a constructive role in revising its standards by constituting a film council. The committee noted that at present there was a tendency to put profits above artistic excellence. The states attempted a lot of measures in the sixties to understand the film industry better. In the year 1963 a Film Consultative Committee was set up and later the Film Finance Corporation.\textsuperscript{84} The Government of India also endeavored to conduct a survey on the film industry in order to collect authentic data that would be helpful in assessing the problems of the film industry by means of questionnaires.\textsuperscript{85}

\textit{Fledgling Consciousness of Artistes Welfare}

In the year 1964,\textsuperscript{86} an annuity scheme was mooted for the artistes by the Finance Minister in his budget speech. A trust was proposed to be set up. However this

\begin{footnotes}
\footnote{81 Id.,p. 186.}
\footnote{82 Id.,p.191.}
\footnote{83 \textit{Journal of the South Indian Film Chamber of Commerce}, Madras, July 1962 –63, p.2. Perhaps Shri K.Gujral was later to be influenced by the same.}
\footnote{84 \textit{Journal of the South Indian Film Chamber of Commerce}, Madras, June, 1963, p.6.}
\footnote{85 \textit{Journal of the South Indian Film Chamber of Commerce}, Madras, Feb., 1964,p.5.}
\footnote{86 \textit{Journal of the South Indian Film Chamber of Commerce}, Madras, April, 1964, p.2.}
\end{footnotes}
was to be through contributions from the artistic community and other members of the film industry that might be utilized for the development of the industry. The film artists were to freely contribute to the trust out of which some kind of annuity was to be given for the benefit of the artists and to the contributors as old age pension. 87

It is significant to note that during this period a consciousness had come about with respect to the perilous life of the artiste. Perhaps within the film industry and the state had matured to understand the disadvantages of being in the limelight. It had begun to be realized that the artistes’ career graph was a fluctuating one, which was fleeting in character. Though there could be exceptions to this among the stars. 88 The consciousness about the need for a special security scheme in the form of a benevolent fund to benefit not only the fortunate among them but also to help others when they retired from the field was beginning to be felt. The government was disposed to help the artists when the project took shape. It can be observed that though the state encouraged the proposition of artists social and economic security it would not embark to foot the bill all by itself nor through any stern regulatory bill been envisaged to create a stable social security platform. It is clear that the government was only echoing the sentiments of the artist community. 89 The state governments like Maharashtra were considering including the film industry in the fourth five-year plan. A board for the film industry was set up in the year 1966. 90 Besides the wage board there was to be a regulation for employment in the film industry and a tripartite panel was set up for the purpose of legislation. 91

The attitude of the industry interests was one of stiff resistance to the idea of legislation for cine employees. The tripartite committee set up for the purpose discussed this. Several features were asked to be dropped and the rigor of the legislation to be diluted. The word ‘worker’ was to be cleverly defined to mean

87 Raj Bahadur, Minister of Information and Broadcasting, Madras, 25th May 1966.
88 Journal of the South Indian Film Chamber of Commerce, Madras, June 1966, p.10.
89 Mr. Varadajannar voiced this during the opening of the premises of south Indian artists association building. Journal of the South Indian Film Chamber of Commerce, October, 1964, p.5.
only the unskilled worker. The ambit was to be considerably reduced and the stringent character to be softened. Though the Government of India and its ministers defended the same. It was in the late sixties that the quest for government intervention once again gained momentum.

Sri I.K Gujral, the then Minister of Information and Broadcasting, was emphatic about the creation of the Film Council to resolve the problems in the industry. His was a striking about turn from the total abnegation or disavowal of the same that was witnessed around twenty years before when Sri S.K.Patil had proposed but the government was disposed in favor of voluntary groups rather than the state instituted film councils. The reason touted was to save the industry from the crisis that it was facing.

The trade bodies as always were not in favor of the same and were content to have the self- regulatory initiatives that they were always beginning to implement once there is any mention of the Film Council. It was derided as unrealistic and unnecessary. The reason being adduced was the censorship guidelines that came with the film policy. Thus popular ill will towards the censoring regulations was exploited to ignore the regulatory initiative of the film industry in total. The government submitted the same to the film industry for its responses. The trade bodies voiced the following reservation on the proposals. The producers allied with the chamber felt that the representation for the industry should be revised. There would be a central as well as a regional council. The council would also give representation to the artistes –three proposed by the chamber. However the film industry would not contribute to sustaining the same.

The state was supporting its cause now based on the preceding initiative of the S.K.Patil committee reports. The film council was proposed to have the general authority to superintendent and regulate the affairs of the industry and to act as

92 Journal of the South Indian Film Chamber of Commerce, October 1967, p.11.
93 Shah defended the government stand; the trade bodies were of the opinion that the Film Council was not the remedy. Journal of the South Indian Film Chamber of Commerce, October; 1968, p.5.
94 Though it is not clear whether it was the influence of nationalistic economic policies. But the resolve coming from the offices of the information and broadcasting ministry had a ring of sincerity about it.
its guide, friend philosopher and to advise the central and state governments in regard to various matters connected with the production, distribution and exhibition of films. It was recollected that the Patil committee had reached this conclusion after being aware of the deterioration in films, existence of conditions of financial insecurity and the need for establishing professional norms and principles. During this period the parliament too expressed grave concern over the situation. In particular, the crisis in the film industry, financial insecurity and dislocation between the different wings were cited as instances. In such circumstances a multi functional apex body was found essential. Interestingly after the first round of consultations all the important interests in the industry seemed inclined to the idea but they expressed their reservation to set up a statutory organization to regulate the film industry. The state ministers too had endorsed the idea of the film council being a feasible entity.

Importantly the film council was envisaged, as the principle advisory body. It would act as an apex body to be consulted to bring about the rationalization of the working class conditions in the film industry. It would act as the central authority to demand the licensing of production enterprises so that the units employing cine employees and producing films would be organized on a sound basis on economic and professional lines. It would act as the highest forum to guide the film industry in the matter of professional norms and relationships between the three sectors of the film industry with a view to sub serve quality. However there was opposition to the concept of film council on the basis of the past experience by the representatives of the trade. There was also greater demand for greater representation of the technicians on the film council. Though the government reemphasized that it would not interfere with the creative freedom of the industry.

The biggest reservation of the Federation was with regard to the composition of the film council it was felt that the filmmaker being the most important factor in the film enterprise should have a simple majority in the matter of representation in the

96 Id., p.10.
School of Legal Studies

film council. Similarly it was felt that other film interests must overall have majority in the film council as the body is concerned with the industry.

It is important to note that the film artiste is only provided a single seat on the panel representing the film council directorate. The qualification of the artiste would be that he has to be outstanding-one who has worked as major artiste and has maintained a good public image and popularity. While the aims of the industry do encompass the workers whether the same brings within the ambit the artiste is a question mark. The functions of the film council included the regulation and development of the film industry. It would frame regulations and initiate legislation with a view to ensure coordination of the different sections for the coordination modernization and rehabilitation of the motion picture industry. It would strive to avail recognized sources of finance. The film council was to be consulted with regard to any legislative bills proposed for the industry. It is important to note that the Film Council would discuss ways and means to promote the welfare of the workers and the displaced disabled members of the film industry. Significantly it had been envisaged to devise means for the licensing of producers by fixing minimum qualifications to this end. Importantly within the envisaged limits of the film council it has been planned to devise methods of fixing business norms based on equity and fairness and to fix work patterns and contracts of work in respect of artists, technicians, craftsman who are engaged for work.

In the context of the film council the only mention of intellectual property comes with respect to copyright of films. Particularly to protect the copyright of producers on titles, music and other content on the motion pictures. Besides the workers welfare mentioned priority, it was intended to devise ways and means to bring about standardization of agreements and contracts entered into between different sections and branches engaged in the film industry. The last of the objectives would have gone a long way to remedy a major lacuna in the practice of the film industry.

However despite these parleys between the state and the trade bodies the trade bodies were not inclined to the idea of setting up a film council and considered the self regulatory bodies to be adequate for the same. The recommendation to set up a film council was considered as unrealistic and unessential. Therefore, it can be said that the film federation had already made up its mind to the cause - in short there was no need to set up the film council and self-regulation would be the best recourse. The representatives of the film industry had already voiced strong objections to the regulations envisaged as draft regulation for the film industry upon which the tripartite committee submitted its report. Though no body would deny the need for setting order into the practices in the industry they were only willing allow themselves the need for self regulation.

From the artistes viewpoint it can be inferred that while no worthwhile proposition regarding practices seems to have gone to the government with regard to the working conditions and contractual standardization, the state had been endeavoring to formulate its schemes with respect to it. There were other recourses through self-regulation since 1971. Other than what was begun in the mid sixties. But these were regulations for the better conduct of the trade rather than for the welfare of the artistes. With meek measures such as not to book artistes with more than nine assignments and not to book supporting artistes with 15 or more assignments, they remained mere cosmetic attempts.

It can be perceived that even during the discussions and consideration of the idea of the film council, the film industry had not been included within the five-year plans. The bottom line was that the government still intended the film council to finance its own regulation in a self-sustaining manner by recourse to the state coffers if essential rather than spend a penny from the central government finances. While there was some initiative in the parliament there were isolated initiatives from certain states where in a robust film industry flourished. The

101 It is dealt with the collective efforts to self regulate. Journal of the south Indian film chamber of commerce, January 1971, p.8.
School of Legal Studies

parliament witnessed the introduction of non-official bills in order to secure workers interests they had to rest with an assurance and nothing more. The Shiva Karanth Committee that was called the Working Group on the National Film Policy went into the question in detail in the year 1980. They noted that the 3.5-lakh workers in the film industry were without any benefit of security of employment, pension or any other social security. The plea was for a special labor legislation taking into account the fact that being casual workers they were not getting the benefit of the labor laws, even those with regular employees do not reveal the exact numbers and the film producer cannot be equated with any other employer. For the first time from the perspective of workers an official commission body asked for the declaration of the film business as an industry as that would cover the workers under the Industrial Disputes Act as well as the Minimum Wages Act. Significantly one of the observations of the committee was that the lack of well-organized association's in the Indian film industry has contributed to the indifference and the knee-jerk reaction from the state. There appears to have been no mention particularly about the performer as either they had been impliedly assimilated into the class of the cine worker or it was the understanding that the performer are better off compared to the others. It is also significant to note that if the mass of workers could not be protected due to differences among the sectors or due to state inertia then seeking any protection for the minority of actors would be an uphill task. However, based on the recommendations of the committee three bills were passed within the next three years by the Parliament which were the Cinema Workers and Cinema Theatre

103 The central government also set up a standing committee to go into the issues and this was placed before the standing labor committee consisting of the producers' workers and the government. The kher Committee documented the state of the industry in Maharashtra. The Government of West Bengal too initiated such moves but did not come up with any concrete action.
105 Id., p.22.

The aforementioned analysis points to the wide distance between the state and the film industry. It also reveals the predisposition of the industry interests for self-regulation rather than state regulation. From the intellectual property standpoint the only indulgence has been towards the issues relating to copyright of films. It points out to the need for the infusion of funds from healthy financial sources in order to have transparent transactions and standardized contractual deals in the film industry. The need for organizational structures as well as the welfare funds. The difficulties in canalizing the funds in this respect are also revealed as the state is looking upon the artistes to draw up the corpus. The need for greater participation by the workers and other sectors like the artists have been stressed but government intrusion has been discouraged. It is noteworthy that while the committees have desired for the workers amelioration programs, no recourse to the idea of royalty model or an intellectual property paradigm has been mooted by them nor suggested to them.

The Constitutional Framework and the Film Industry

The constitutional framework within which the film industry is positioned provides valuable insight into the way matters with regard to the film industry have been administered in the past, presently and can be managed in the future. It would also be instructive to see the lay out of legislative and administrative powers as it would have an impact on the administration of performers rights if ever it is extended to the performer in the audio visuals. The regulatory power over the film industry is divided (neither equally nor conveniently) between the center and the states. This has been so ever since the early part of the century when the British government devolved the power to tax entertainment to the provinces.\textsuperscript{106} The Union Government has the power to legislate with respect to

sanctioning cinematograph films for exhibition. This is the only direct power that can be ascribed to the Union Government with respect to cinema. The rest of what has been assumed is based on List three that is the concurrent list in which both the Union and the States can legislate. Though not directly pertaining to films the central government is empowered to legislate with respect to all forms of communication that includes posts and telegraphs, telephones, wireless, broadcasting and like forms of communication. The residuary powers of legislation outside of List 1, 2 and 3 remain with the central government. Thus anything outside the purview of List 2 and 3 can be legislated upon by the central government. The states are endowed under list 2 to regulate theatres, dramatic performances and cinemas subject to the entry 60 of list 1. Thus this is a grant of unqualified and very wide powers to the state government. It is a matter of conjecture whether cinemas mentioned herein covers the exhibition alone or whether it covers the entire process of film production beginning with shooting, through distribution and exhibition.

The state government is most critically aided in harnessing the massive revenue from the power to levy taxes on luxuries, including taxes on entertainment, amusements, betting and gambling. Thus the entire segment of entertainment tax is a state government prerogative. Therefore it is a safe inference to say that it is the state government that benefits most from the film business even though it is only from the exhibition stage that the tax is levied. From the perspective of social and economic security of the labor involved in the film industry concerned or the personnel involved in the film production it is the powers listed in the Concurrent List that is List 3 of the Seventh Schedule that governs them. Though both the center and the states have the powers to legislate concurrently the exercise of prerogative by the center would exclude any further initiative of the state in this regard. The area covers trade union, industrial and labor disputes.

---

107 The supervision and administration was confined to censoring films, as that was considered pivotal to the state interests particularly in a colonial rule. However the same spirit was sustained in the aftermath of independence as well.

108 Seventh Schedule- List-I, Entry 60, Constitution of India.

109 Seventh Schedule- List I, Entry 97, Constitution of India.

110 Seventh Schedule- List II, Entry 33, Constitution of India.

111 Entry 62, List II, Constitution of India.

112 Entry 22 List III, Constitution of India.
social security and social insurance, employment and unemployment\textsuperscript{113}, including conditions of work, welfare of labor, provident funds, employees’ liability, workmen’s compensation, invalidity and old age pension and maternity benefits.\textsuperscript{114} Thus labor welfare initiatives can either be partaken or the center can initiate the same to the exclusion of the state government.

The need for a cohesive development of the industry makes the present arrangement of distribution of powers and revenue questionable. The center gets only the revenue by way of excise duties and customs duties on import of film and the money deposited by the producer for the censor board certification of the film. Even if copyright (intellectual property rights) falls within the central list, the item needs to be seen in the backdrop of the film industry and budgetary realities that inadvertently fall into state governments favor and ambit\textsuperscript{115}. With the declaration of the film trade officially as an industry already prepositions to bring cinema and entertainment into the concurrent list have been mooted\textsuperscript{116} as this would perhaps result in homogeneity of vision in the administration and legal supervision of this sector. Both the need for rationalization of tax in all states as well as the lax measures to counter video piracy has given impetus to this thought\textsuperscript{117}. But significantly the entire train of thought has been impelled by the declaration of the film trade as an industry by the central government.\textsuperscript{118}

\textsuperscript{113} Entry 23 List III, Constitution of India.
\textsuperscript{114} Entry 24-List III, Constitution of India.
\textsuperscript{115} The rampant video piracy and the bifurcation of the responsibilities in this regard between the Ministry of Human Resource Development and the state governments who are in charge of law and order has already set the government thinking about alternatives. The same reliance on state governments execution would be required if the performer is also endowed with rights.
\textsuperscript{116} The center has written to the states seeking their opinion in this regard. However the concern that impelled this move is more of a tax based reason rather than the centers desire for greater participation. However video piracy has also promoted thoughts in this direction. “Center, States to Meet on September 1 to Ponder Cinema’s Industry Status”, UNI, 27\textsuperscript{th} July, 1998, <http://www.rediff.com/business/1998/jul/27movie.htm> as on 1\textsuperscript{st} February, 2003.
\textsuperscript{117} Though there are other theories doing the rounds that explain this move like bestowing the center with a more powerful control over freedom of expression in films. Gautaman Bhaskaran, Leave Cinema Alone, web published version of the editorial that appeared in the Hindu on 6\textsuperscript{th} April, <http://www.gautamanbhaskaran.com/gb/lca.html> as on 1\textsuperscript{st} February 2003.
\textsuperscript{118} The same problem with respect to checking illicit money financing films is also beset with the problem that even if the central government has declared film trade as an industry nevertheless the law and order is a state subject. Smt. Sushma Swaraj, Minister of Information and Broadcasting, made this statement in the Rajya Sabha. “No Foreign Investment in Print Media”, Tribune India, New Delhi, March 13\textsuperscript{th}, 2001,<http://www.tribuneindia.com/2001/20010313/nation.htm>, as on 1\textsuperscript{st} February 2003.
However recent technological changes do have profound implications in this regard of revenue sharing as well as the power of superintendence. The digital influence in filmmaking could alter the revenue potential of the central and the state governments. This is despite the fact that no direct relationship exists between the tax collected and the object of expenditure that is no quid pro quo principle need be expected. The digital filmmaking takes the away the need for import of film and this lack of demand could very well hit the central government as it gains considerably from the excise duty imposed on the raw film. The arrival of the Direct to Home (DTH) television could make way for the oblivion of the cable networks and therefore the service tax there from could be dented. Though alternative sources of taxation would be found like imposition of license fees for procurement of television and audiovisual equipment these changes could very well change the revenue distribution from these sectors particularly if the governments were to take up further responsibilities. Seen in this perspective the administration of intellectual property in the audio visual medium both administrative as well as deterrent would require a strategic overhauling of the division of constitutional powers of legislation, revenue collection and responsibilities in administration.

Legislative Initiatives by the State
The *Cine Workers and Cinema Theatre Workers (R&E) Act, 1981* ¹¹⁹

This Act provides a cloak of security to the employment conditions of the low paid artists and others in the film industry in India. The rationale of the Act is that the existing labor laws don't provide necessary safeguards to low paid artists and technicians engaged in the production of feature films with regard to their terms and conditions of employment, payment of wages and provision of other amenities and benefits. The eligibility to protection has been extended to a cine worker who is employed directly or through any contractor or other person, in or with the production of a feature film to work as an artiste (including actor, musician or dancer) or to do any work, skilled, unskilled, manual, supervisory,

¹¹⁹ Received the assent of the President of India on December 24, 1981 and published in the Gazette of India, Extra, Part II, Section 1, dated 24 th December, 1981, pp. 361-71.
technical, artistic or otherwise. Further, it has been specified that the remuneration in connection with the employment should not exceed a particular ceiling either by way of monthly\(^{120}\) wages or by way of a lump sum amount per year.\(^{121}\)

Under the statute is not to all the film workers but only to those who fall in the particular income bracket.\(^{122}\) Cine workers whose earnings are not above 1600 as monthly wages or rupees 15000 in lump sum fall within the term 'cine worker'. Thus those above this categorization do not come within the protective ambit of the Act\(^{123}\). The act expresses a negative order of words imposing a prohibition to employ or the producer or the contractor without subscribing to the following formalities with regard to engagement of cine workers in the production of feature films\(^{124}\). The definition does cater to those cine workers who have been directly recruited or engaged and even indirect contracting has been covered\(^{125}\). This is a positive feature as much of the engagements in the lower wage category in the film industry are owing to indirect engagements. The definition of the contractor also includes a sub contractor or an agent.

It is significant that under the garb of companies, the contractors or the employers cannot escape, as the person who was in charge of the company is held accountable for the same\(^{126}\). However if the same had been rendered without his knowledge then the liability ceases. It is important to note that the cine worker is one who works in a feature film. This might exclude those working in television or other audiovisuals. The definition explicitly excludes advertisement films. It is a matter of concern whether documentaries and other versions are also excluded from the ambit.

---

\(^{120}\) Rs 1600 per month.

\(^{121}\) Rs 15000 per year. This has been revised.


\(^{123}\) The upper limit used for this distinction has been revised upwards once in 1987 and in 2000 an amendment bill to endow on the government central to revise it from time to time was placed in the Loksabha. The Cine Workers Welfare Fund Amendment Bill, 2000, [http://indiachip.nic.in/ncodis/whatsnew/Cineworkers.htm](http://indiachip.nic.in/ncodis/whatsnew/Cineworkers.htm) as on 15 January 2004.


\(^{125}\) *ld.*, p.73.

\(^{126}\) Section 18 of the Act. The term company includes a body corporate and includes a firm or other association of individuals and a director includes a partner in a firm. Vijay Malik, *op.cit.*, p.79.
A producer has been defined as a person who makes the arrangements essential for the making of such film (including the raising of finances and engaging cine workers for the making of such film). This is an interesting definition considering the fact that the copyright definition of the producer in India is different from this and the definition in the Cine Worker's Act has more resemblance to the definition in the Copyright Act in Great Britain. It is much more of a functional definition.

The provision begins with a negative stipulation that no person shall be employed as a cine worker in or in connection with the production of any feature film unless the agreement is in writing. This stipulation is rigorous and requires adherence even if the engagement is directly made with the producer or through a contractor. The written agreement needs to be registered before the prescribed authority as well. The provisions of the written agreement are guided on a prescribed model form. A copy of the same would have to be forwarded by the producer to the Regional Provident Commissioner. The Employees' Provident Fund and Miscellaneous Provisions Act, 1952 is also applicable to an eligible cine worker who has acted in a minimum of 3 films.

The Act makes provisions for appointment of Conciliation Officers to mediate in instances of disputes with the further power to refer the matter to the Central Government in case the issue is not resolved. In case of both a settlement as well as a non-settlement, the conciliation officer has to send a report to the central government with a memorandum of settlement and the signature of the parties. The settlement is final and to be enforced by the competent authority and the same cannot be agitated before any court of law. The Central Government can decide upon the report whether to refer the matter to the tribunal or not. Most importantly the Act is well equipped for a speedy resolution or adjudication of disputes with the constitution of the Tribunals that are called the Cine Workers Tribunal. The Tribunal is conceived to be manned by a person of authority with not less than the person qualified to be a judge of the High Court or been a district judge or has held the post of a presiding officer of a Industrial Disputes

---

127 Id., p.74. Section 3.
128 Id., p.75.
129 Id., p.75.
Court. The Tribunal has the powers of a civil court in several respects. The High Court exercises the powers of revision over the Tribunal. The structure of dispute resolution and the end for which it has been set up is indicative of the existence of models for this sector. This sows the seeds for the further models to adjudicate on disputes involving all categories and sectors in the audiovisual industry engaging artists to workers.

*The Cine Workers and Cinema Theatre Workers (R and E) Rules*

The agreement that has to be signed under this enactment for the protection of the low paid cine workers who include the actors and others, both performing and technical, have several safeguard clauses. The agreement has to be in writing. It is specifically mentioned that the terms ‘producer’ and ‘cine artist’ brings within its fold their heirs, successors, administrators and legal representatives. (There is no mention whether the assignees of the producer are also liable). It is noteworthy that the agreement has to mention the date, the production number and the tentative title of the film and the language in which the same is produced, the technical specifications and the mode of photography whether it is in color or not. The duration of the agreement has been placed from the date mentioned to the completion of the film and this period shall not exceed consecutive months. The latter statement is extremely important in the sense that the shooting for a particular film in the usual parlance would last months and is often erratic.

The above statement means that a new agreement would be required if there has been a discontinuity. If the artist has to attend at the studio, location or work it requires the written intimation of the produce. The amount of money to be received by the artist has to be specified and the advance has to be stated and paid and the balance to be paid in equal installments. In case the film is not over in the stipulated period then the producer has to pay the actor additional

130 id., p.76. Section 12.
131 id., p.78. Section 15.
132 Form A, Section 3. Id., p.86.
133 This is absent in the model agreement that has been recommended as a guideline by the Joint Action Committee; See agreements by trade union collective bargaining entered into by the various organizers under the aegis of the South Indian Film Chamber of Commerce.
134 Id., p.87.
135 Ibid. Provision 2.
remuneration. The payment shall be on a pro-rata basis as mentioned earlier till the completion of the film.\textsuperscript{136}

If the assignment of the cine worker is completed before the stipulated period in the contract then the producer will settle the account and pay the remaining balance of the agreement in full before the commencement of the rerecording work/censor of the film whichever is earlier\textsuperscript{137}. The trend of paying the rest of the installments before the film leaves the lab is reflected in this clause.

The term 'call sheet' is eschewed rather the term 'working day' is used and this shall comprise of eight hours that would include one-hour rest for food and refreshments. A working week shall be a six-day week and Sundays and national holidays are not to be workdays and the cine worker cannot be compelled to work during those days. This means that it is a waivable option and that they can cooperate and work even on these days.\textsuperscript{138} A break shall be given to them every five consecutive hours. And the next succeeding call sheet shall be activated only upon the elapse of twelve consecutive working hours. Extra wages would have to be paid to the artiste if he needs to do preparatory work on the basis of per hour payments\textsuperscript{139}. If the work goes beyond the working day hours the artist would have to be paid by the producer at the rate of per hour basis with refreshments and transport facilities. The food and traveling allowance to be enjoyed by the cine worker shall be met by means of the bilateral arrangement between the producer and the cine workers representative organization.

Most importantly there is a clause that mandates the need for insuring the cinema worker\textsuperscript{140}. The responsibility for it is on the producer. The producer shall get the cine worker to be insured for any injury or damage to his or her person including death caused by accident arising out of or in course of his /her employment and during the period of his assignment under this agreement.

In case of any cause beyond the control of the producer like fire, riot, natural calamity, order of the public authority or any other reason, the artiste is entitled to suspend the operation of this agreement during the period of suspension of

\textsuperscript{136} ibid. Provision 3.
\textsuperscript{137} ibid. Provision 5.
\textsuperscript{138} ibid. Provision 6.
\textsuperscript{139} ibid. Provision 7.
\textsuperscript{140} ibid. Provision 10.
The producer has to serve a notice in writing with respect to this suspension on the cine worker and all dues up to the service of this notice shall be paid. The same terms as originally set down shall revive when the film is revived.

Most importantly in case the services of the artiste is terminated due to reasons that is not owing to the misconduct of the artiste or unwillingness of the artiste to perform then the producer would have to make all the remaining payments due to the artiste as stipulated in the agreement. The producer can attempt any replacement only after meeting this requirement. This clause goes a long way to protect the performer from the whims and arbitrariness of the producer. If in case the termination is owing to the misconduct or unwillingness on the part of the artiste concerned as required under the agreement the payment shall be provided to the artiste taking into consideration the cine workers total work in the film and the work she has completed in the full till the date of termination of the agreement.

Very importantly, the charges of the producer would have to be proved before a forum comprising equal number of representatives of the producers' organizations, cine workers organizations to which the producer and the artist may belong. The decision of the forum shall be binding on the parties. The producer can engage the services of another performer only after the forum has given a decision in favor of such termination and the cine worker has been paid all his dues. Strikingly there is no mention of the compensation to be paid by the artist to the producer in case it is because of his misdemeanor.

Once the service of the artiste is terminated, the discretion whether the work of the artiste has to be retained in the film is left to the producer. The artist shall be at liberty to decide whether the credit lines should have his credentials in such circumstances.

Importantly, the total right to decide on the manner of representing the performers appearance on the screen is given to the producer including her clothes, makeup.

---

141 ibid. Provision 11.
142 Provision 12. Id. p.88.
144 ibid. Provision 14.
and hair style and it is for the cine worker to comply provided that the requirements of the producer are communicated and accepted by her. No formality that the script should be given or that the undertaking should be in writing is given. Though prior intimation ought to be there. The artiste has to comply with all the reasonable directions either by the producer or by the director. It is important to note the words reasonable connote subjectivity.

Importantly the producer cannot transfer or assign the benefit arising out of this agreement without the consent in writing of the artiste. This secures the position of the performer vis-a-vis the middlemen and other means of circumvention by contracting out. The exact ambit of the term benefit needs to be understood in this regard. Another equally potent feature of the model agreement is that the producer cannot use the performance in any other film without the prior permission of the cine worker. It is not mentioned if there are any remunerative possibilities if these are used with the permission of the artiste. Adding more economic security to the performer, the cine worker is entitled to Provident Fund as the agreement makes the application of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, mandatory under the Act. It is for the producer to contribute to the Provident Fund Scheme.

The Cine Workers Welfare Cess Act, 1981

The Act was passed with the intent of imposing levy and collection of cess on feature films for financing the activities to promote the welfare of a certain category of cine workers and for matters connected there with or incidental to it. It is the duty of excise collected at the rate of Rupees one thousand on every feature film. This is in addition to any other cess or duty leviable on

---

145 ibid. Provision 15.
146 ibid. Provision 18.
147 ibid. Provision 20.
150 By amendment the limit has been raised to 20000/- in the year 1992. "Feature film" means a full length cinematograph film produced wholly or partly in India with a format and a story.
School of Legal Studies

cinematograph films under any other law or scheme. Every application for the certificate under Section 4 of the Cinematograph Act, 1952 shall be accompanied by a crossed demand draft drawn in favor of the Chairman, Central Board of Film Certification. The duty so collected would be credited to the Consolidated Fund of India. The duty is to be paid to the central government by the producer of such film on or before the date on which he makes an application for certificate in respect of such film under section 4 of the cinematograph act, 1952. The only instance of exception is when an order granting a certificate is refused. The central government can exempt the film from the imposition on account of the contempt, technical quality and other factors. Any contravention of the payment of duty is met by a penalty of fifty rupees for every month during which the duty is in arrears. However the producer shall be given a sufficient opportunity to explain the default and if the default were for a good and sufficient reason, the penalty would not be imposed. Any amount due under the act including the penalty if any payable would be recovered from any producer in the same manner as an arrear of land revenue by the central government. It is important to note that the definition of feature films excludes a lot of films produced in India that would fall into the genres of animation, documentaries, and cartoons. This leaves out a large chunk of producers from the responsibility to contribute to the welfare of workers engaged by them. Particularly since these segments do produce a lot of software and has immense demand in a globalised audiovisual economy.

Woven around a number of characters where the plot is revealed mainly through dialogues and not wholly through narration, animation or cartoon depiction and does not include and advertisement film.

151 Section 5 of the Cine Workers Welfare Cess Act, 1981.
152 Read with section 5-(a) of the Cinematograph Act.
153 It should be notified in the Government Gazette. Section 6 of the Cine Workers Welfare Cess Act, 1981.
154 Section 7 of the Cine Workers Welfare Cess Act, 1981.
155 Ibid. Proviso.
156 Section 8 of the Cine Workers Welfare Cess Act, 1981.

Though no mention is made of the manner of application of the money collected in the Cess Act other than the objective that the former Act is to be applied with the aim of aiding the artiste. But this is clarified in the welfare fund enactment where it is mentioned that the proceeds of the Cess Act may after due appropriation made by the parliament in this regard by law after deducting the cost of collection as determined by the central government. Thus there is no compulsion that all the proceeds of the Cess Act shall pour into the Welfare Fund Act. However it has been identified as one of the sources by which the welfare fund would be activated. Other sources prescribed include any grants from the central government; any money received as donations for the purposes of this Act and any income from investment of the amounts in the fund.

The Cine Workers Welfare Fund Act was set with the objective of promoting the welfare of certain cine workers. Thus the restrictive application of its benefits is evident. The cine worker has been defined as one who has been employed either directly, indirectly or through a contractor or in any other manner, in or in connection with the production of not less than five feature films to work as an artiste (including actor, musician or dancer) or to do any work, skilled, unskilled, manual, supervisory, technical, artistic or otherwise; and (ii) whose remuneration with respect to such employment in or in connection with the production of each of any five feature films, has not exceeded, where such remuneration has been by way of monthly wages, a sum of one thousand and six hundred rupees per month (this has been upgraded to a higher amount), and where such remuneration has been by way of a lump sum, a sum of eight thousand rupees (this has been upwardly revised). The same restrictive application of the Cess Act is continued with respect to the definition of the "feature film" means a full length cinematograph film produced wholly or partly in India with a format and a story woven around a number of characters where the plot is revealed mainly through dialogues and not wholly through narration, animation or cartoon.


158 Ibid. Section 2 (b).
depiction and does not include an advertisement film. This definition therefore impacts the actors and others in the television industry as well as they might not fall within the terms of the definition. Particularly since the Cinematograph Act and the Censor Board play a part in collecting the amount.

The fund would be applied by the Central Government to meet the expenditure incurred in connection with measures and facilities which in the opinion of the government are necessary or expedient to promote the welfare of cine workers and in particular to defray the cost of such welfare measures or facilities for the benefit of cine workers. The fund would be used to provide loans and grants to indigent cine workers, to sanction any money in aid of any scheme for the welfare of the cine workers that is approved by the central government, to meet the salary of those in the advisory committees and any other expenditure from the fund that the central government may direct to be defrayed from the fund.

In order to facilitate the functioning of the fund it is proposed under the Act to set up advisory committees to advise the central government with respect to the administration of the Act and to the application of the fund. Each Advisory Committee is proposed to have an equal number of central government representatives, the cine workers and the producers. The Chairman would be appointed by the Central Government. A Central Advisory Committee consisting of eleven members will coordinate the work of the advisory committees and to advise the government. This shall be composed of the members of the central government and shall include at least three representatives of the government, cine workers and the producers. The chairman shall be appointed by the central government.

The Act envisages the appointment of Welfare Commissioners by the Central Government for the purposes of the Act and the Cine Workers Welfare Cess Act, 1981. The Welfare Commissioner may with the assistance, if needed, enter at any reasonable time any place that he considers necessary to enter for carrying out the purposes of this Act and the Cine Welfare Cess Act. An annual report of the activities and a statement of accounts would have to be published in the

159 Ibid. Section 2(c).
160 Ibid. Section 4.
161 Ibid. Section 5.
162 Ibid. Section 8.
gazette every financial year. The central government has been granted the power to call for such information from the producers as it finds essential. The Central Government has the right to make rules in order to carry out the Welfare Fund Act.

**The Central and The State Government Welfare Program Initiatives**

The National Film Development Corporation (NFDC) has formulated a list of schemes for the welfare of the cine artist in financial distress. The fund called the Cine Artists Welfare Fund of India is for extending financial assistance to cine artists who have fallen on bad days or require financial assistance in order to remove poverty. (During 2001-2002 the corporation fund has distributed over 35 lakhs to those found eligible for the pension assistance.) Under the rules of eligibility the cine artist has been defined as any person who has performed in any capacity and appeared on the screen in any cinema and such cinema was produced and shown to the public at large. In order to eligible he has to complete at least 5 films and be earning less than 24000 rupees per year. Under this scheme financial assistance of Rs. 750/- per month will be extended to Cine Artistes who have fallen on bad days due to unemployment or due to any other reason. To be eligible for such help, a Cine Artiste should be above the age of 50 and should have acted or performed at least in five films or spent not less than five years in the trade. Such applications should be duly recommended by the Union/Association to which the Cine Artiste is/has been affiliated. Financial assistance is also extended to widow of cine artist for a period of 1 year. Assistance to the extent of Rs.750 p.m. can be given for such period as the Trust may decide. The trust is endowed with the discretion to select the recipients as well as the period of assistance if it has been provided to the recipient or beneficiary. A significant characteristic of this governmental initiative has been the underlying necessity of a recommendation sanctifying the particulars of the

---

163 iid. Section 10.
164 iid. Section 11.
166 The Cine Artists' Welfare Fund of India, set up by NFDC, is the biggest ever trust in the Indian Film Industry with a corpus of Rs.4.16 Crore. During 2000-2001 (up to November), an amount of Rs.35 lakh was disbursed as pension to cine artists. This was from the corpus fund set up from the proceeds of the film Gandhi. Even this gesture had to come from a foreigner and a legend Richard Attenborough.
details provided by the applicant. It has to be attested by the association or the trade union of which the cine artist is a member. Therefore in order to avail of the scheme one ought to be a member or be duly recommended by cine artistes association. It is to be noted that there is no distinction drawn between the principal artiste or the background or the junior artiste or the stunt performer or any other category. They are all eligible for the benefit under the fund provided that they fulfill the criteria of economic deprivation. An artist availing the assistance from one source has to specifically state the status in that particular regard and cannot apply further.

The Cine Artists' Welfare Fund of India also has a schooling assistance program for the children of the cine artist. In addition to this scholarships are also offered for meritorious students. The significant highlight is the need for an attestation or recommendation validating the details furnished by the applicant by the trade union or other representative body of the artists recognized by the state. As this recommendation is mandatory, it is clear that the government accords great credence to the existence of trade unions in administering welfare measures to the performing artists. However the nonmembers of unions would be at a disadvantage in this regard. These are likely reasons for more active participation in collective organizations in the audiovisual industry. Another pertinent point is the extension of the scheme to the television artists or other audiovisual artists. This does not seem to have been the intent as the cine artists in the film medium is specifically stressed in the rules. Further this idea to create a corpus fund was at a time when the television industry had not yet attained the proportions that it has today.

Some of the salient aspects of the NFDC initiative reveal the limitations of the said scheme. For one the assistance in whatever form can only be availed once by the beneficiary. Secondly, the assistance is completely at the discretion of the trust body. No body can claim the same as a matter of right. It is dependent on a host of other factors such as the corpus amount available for allocation besides

168 An amount of rupees 800 for classes up to 12th and an amount of rupees 1200 per annum for classes up to graduation.
the artist fulfilling the criteria. Even with respect to emergency financial assistance the trustee is vested with enormous discretionary power to allocate the amount and the duration of its sustenance. The trustees would decide the extent of the assistance. The most debilitating consideration to be fulfilled is that the beneficiary should have at least completed five films and his annual income should have fallen below 24000 rupees. This means that the monthly income earner above rupees 2000 would not be eligible for the assistance under the welfare fund. This would leave out a large chunk of the eligible yet deprived category if one takes into account the inflationary pressures and the hospital expenses etc. The decisions are made by the regional subcommittees of the trust as applications are also received by the trust at these regional centers were the applicant is residing in the particular zone.

State Government Initiatives

Several state governments that have a vibrant regional language film industry have formulated welfare measures for the performing artist and others connected with the film industry. Some of the most vibrant industries in Maharashtra, West Bengal, Andhra Pradesh, Kerala and Tamilnadu have benefited from the sparse but important measures taken by their state governments. An analysis of the schemes initiated in Kerala would be instructive both as to its relevance and with respect to their short falls.

The Government of Kerala has initiated certain welfare programs towards the welfare of the cine artists. This has been achieved through the National Film Development Corporation at the national level and the Kerala State Chalachitra Academy at the state level. A pension for distressed film artists was commenced

---

169 It is expressly provided in the rules as follows. - Grant of financial assistance from the trust fund to any cine artiste is not as a matter of right. Assistance would be extended depending on the applicant satisfying the eligibility and also keeping in view the financial allocation available for the purpose. The trust reserves the right to reject or accept any application without assigning any reason thereof.

170 In cases of emergency pertaining to compensation in case of death or other similar emergencies which warrant immediate financial assistance, the Chairman or the Managing Trustee is competent individually to grant the financial assistance up to a limit as may be decided by the Trustees.

171 There are moves to raise the ceiling and bring down the number of films needed to qualify.
in the year 1981 by the state government and financial assistance through the Academy was commenced in the year 2003. To date 246 pensioners and 35 deceased have availed of the pension. Since the commencement of the scheme around 300 applications are received from the eligible categories. Thirty applications are received every year, 215 receive the favor at a time. The pension scheme and the financial assistance scheme are funded by the State of Kerala.

The corpus fund is formed by the service charges collected in the cinema theatres. There is a 1/0.50 Paise service charge for each ticket sold in a theatre and the fixed amount is paid by the theater as per a slab system to the academy. The artists need to apply in a prescribed form. A revenue officer should attest the same not less than the rank of the Thahsildar or district information officer or a non-governmental but noted organization like the Malayalam Chalachitra Parishad. An income certificate has to be produced. Applications are received at any time. Applicants should be less than 50 years of age and the annual family income should not exceed 12000/-. There are a number of stipulated categories of artists. In order to verify the income certificate a private inquiry is also done before being sanctioned by a committee that consists of two members consisting of the chairman and the secretary. According to the data 108 women out of the total of 246 pensioners have received the pension.

The Government of Kerala has been endeavoring to administer social and economic security benefits to the artists since the year 1981. The same has been revised from 1981 through 1985 to 1986 and finally in the year 1992. The supportive organizations that have found mention as being an aid to the implementation of the scheme are the Malayala Chalachitra Parishad, Film Chamber Of Commerce and the Kerala State film Development Corporation (KSFDC). The scheme is for providing support to the disabled performing artists in films as well as technicians and their dependents. The rules govern provision

---

172 Data provided by Kerala State Chalachitra Academy, Trivandrum, Deputy Director Shibu. S. Kottaram and Program Officer Louis Mathew, July 21st 2004.
173 The last of which was published in the Gazette number: 58/92/ by the public relations department Government of Kerala.
of financial help to performing artists and cinema technician and their dependents in distress.

These rules are applicable to Keralites who are performing film artists and technicians in the film industry and their dependents. The following categories of performers are eligible for the financial help - actor/actress, dancer and singers in the film field. Among the technicians the following are included: Camera, film editor, film director, art director, screen play Writer, dance director, Makeup man, sound recorders. The criteria that have to be fulfilled include that a person who receives an annual salary above Rs. 12000 would not be eligible for the benefit. The remunerative capacity of member of the family of the applicant would also be taken into account in this regard in order to consider the eligibility. The following members would be considered as part of the family: a Widow, Widower, father, mother, unmarried daughter and son who has not attained the age of majority.

The pension is for a sum of Rs. 500 per men sum and is for the life of the beneficiary. Every two years the beneficiary must produce a certificate of income from the local authority within the state or from the Malayala Chalachitra Paridshad in Tamilnadu. The eligibility shall be based on the following basis of priority in the following order of precedence from among the beneficiaries. The beneficiaries are divided into those who are unemployed or disabled owing to physical incapacity and those who are unemployed due to being over aged and are therefore unemployed. The precedence shall be accorded in the following order: Widow, widower, father, mother, unmarried daughter, son who has not attained the age of majority. The help will be provided to only one person at a time. The pension shall cease upon the remarriage of the widow or the widower, when the unmarried daughter gets married, and when three years elapse from the date of the son-attaining majority. These facts need to be testified every two years by the beneficiary from the respective local authorities. The applications for the availing the pension shall be subject to inquiry and vetting and to this end the services of K.S.F.D.C shall be elicited. On the basis of the aforesaid rules the government shall consider the applications and pass appropriate orders

174 By the term Keralite is meant a person who is a Malayaly without reference to his or her place of habitation or any person who is living within the borders of Kerala.
School of Legal Studies

accordingly. The public relations director is endowed with the power to stall the pension scheme without assigning any reason whatsoever.

One can notice this pan Indian trend in the welfare initiatives with similar drawbacks for these schemes particularly since the Welfare Fund Act and its administration is a uniformly applied scheme all over India with the regional units working in tandem with the organizations representing the performers. Thus other than these half hearted legislative exercises granting certain minimum rights and uneven distribution of unemployment security doles there exists no other stable source of economic security for the performer or the worker in the audio visual. While the former enactment seeks to set minimum standards for the regulation of employment, the latter two acts specify the means to collect the financial resources to cater to the welfare of the workers of which the performer too falls part thereof. Other than provide minimum guarantees, it does not provide the artiste or the performer any way of begetting equal and certain returns in tune with the exploitation in the market through regulation that would safeguard against such exploitations. Further the burden of all these welfare measures falls on the producer of the film as it is collected on its way to censor certification. One of the striking drawbacks of these statutory welfare measures is the limited amount, the restricted criteria of income limit, the lack of certainty in continually availing the benefit, the discretionary power to choose the beneficiary and the time taken to avail of the benefit. This exposes the need for an alternative remuneration possibility not based on welfare or charity.

The Performing Artist and 'Industry' Status for the Indian Film Industry

After striving and representing for nearly a century to the government, the film trade was granted and 'industry' status for all legal and administrative purposes by the Government of India in the year 2000. In exercise of the powers conferred by Section 2 (C) xvii Industrial Development Bank of India Act, 1964, the Central Government notified the entertainment industry including films as approved activity under industrial concern. The declaration is supposed to trigger an
attitudinal change in the Indian banking sector towards the lending possibilities in the film industry. The declaration should be taken as an opportunity for the film trade and it should respond by confidence boosting gestures by being more transparent and professional in its operations. (Though this might not beget for the artist any new found respect nevertheless the standardization in contractual matters that this would effect would result in the artist being paid the promised sum, being insured and perhaps being protected by new social security instruments rather than the informal, most often unwritten and broad based understandings upon which the deals in the film industry are based today.

But whether the status granted would have the same repercussions on the human resource employed particularly the artists as in resourcing the liquid capital into the trade is a question mark. This is not baseless considering the fact that there have been representations from the capital investors to the state to exempt the labor from the benefits of the declaration of film trade as an industry. That the industry must be kept out of the industrial disputes act as the institutional finance may come with various strings attached. However ever since the declaration the government has been reassuring the employees that the labor laws would remain applicable to the industry. This assurance was given to a clarification from the All India Film Employees’ Federation representing the craft unions that includes the artists to the Hon. Minister Sri Sushma Swaraj. The declaration and the grant of the industry status have effected significant developments in the film industry. As had been forecast pursuant to this new status, banks are allowed to finance against the ‘under production’ film as a collateral. However, to receive institutional finance, the film industry will need to indoctrinate and practice accountability. This would indirectly dry out the influence of unaccounted money in the industry that had led to all shady transactions. Additionally, the industry status also allows entry for insurance companies to participate in the film industry. Producers seeking an insurance cover for the completion of film would have to execute a completion bond. With more formal sources of finance being available, movies will be produced within an assured

176 *Journal of The South Indian Film Chamber of Commerce*, December 1999, p.22.
177 *Journal of The South Indian Film Chamber of Commerce*, January 2001, p.16.
time frame thereby reducing the costs and indirect burden on the producer. This should improve the structure of the industry and initiate corporatization. The Initial Public Offer market in the year 2000 was media-dominated. Mukta Arts, G.V. Films, Pentamedia Graphics, Crest Communications and Cinevista, went public indicating the trend towards corporatization and involvement of public money in filmmaking. Other media companies including Adlab Films, Balaji Telefilms, Padmalaya Telefilms, and Shri Adhikari Brothers have followed suit. These trends augur well for the performing artists as well as any legal framework that should secure better protection for him.

Two significant changes in the Indian film industry landscape is bound to have its repercussions in the expectations that the performing artists in India can have about their future economic and social security. The change is in the status of industry that has been given to films and the climate of internationalization that has set in owing to the pro-active policies of the Government of India. This process has gained speed since the year 2000 particularly since the grant of the industry status to films. Both these processes are sure to bring about changes to the contractual practices with respect to the performing artists and this in turn could facilitate a necessary change over to residual paradigm based on collective bargaining and collective administration in due course of time.

The grant of the industry status by the Government of India has been accompanied by several concomitant measures that has made investment in the

---


180 The announcement that the government intended to grant industry recognition to films production was made by the union minister for information and broadcasting made at an event `challenges before the Indian cinema` co-organized by the federation of Indian chambers of commerce and industry (FICCI) and the film federation of India in May 1998. See "Bollywood’s Woes to Get a Hearing, Finally," Indian Express, 9th May 1998, <http://www.expressindia.com/le/daily/19980509/12950924.html> as on 1st January 2005.
Indian entertainment industry particularly the film industry an interesting proposition not only for those with foreign capital but also those with in the country. The Government in India is removing barriers to foreign investment, fast tracking procedures and introducing legislation to control piracy and under-declaration. It has granted the film sector 'industry' status and has introduced 'clean money' through state controlled banks. In addition, the Government has started to use regional and national tax incentives for improving and building the production and exhibition infrastructure and to improve investment in content creation and human capital. The Government is also moving towards signing a number of co-production treaties to provide a framework within which private and public partnerships can flourish. Besides the fact that the grant of the industry status leads to access to clean money from the banks for the investors, it would also facilitate transparency for the operations down the chain of production, distribution and exhibition much of which in the traditional manner of operations was unsystematic and haphazard.

Around the time of the declaration of the film business as an industry one cannot but notice the positive performance by the sector in both investment and growth rate recorded. The entertainment industry registered a growth rate of more than thirty percent during this period and exports of films also showed substantial increase. The declaration of the trade as an industry has had its most conspicuous and refreshing impact in the modus of financing film production through banks and other accountable financial houses. Because the


182 The Indian media and entertainment industry consists of film, music, television, radio and live entertainment. According to a report produced by FICCI, the entertainment industry outperformed the economy and was one of the fastest growing sectors in 2001. The industry experienced growth of more than 30% in 2001 with a combined turnover of 130bn rupees compared to 100 billion rupees in 2000. Key growth drivers were advertising spending and ticket sales. Exports of video films and software increased by 65% from 7.25 billion rupees in 1999/2000 to 12 billion rupees in 2000/2001.
transparency and practices that would need to be maintained to this end. With
the sector being eligible for conventional and recognized sources of bank finance
leading financial institutions in the public and the private sector have begun to
open up to this sector. The Industrial Development Bank of India (IDBI) set up
the country's first film fund worth 100 crores (£14.5 million). The Government
fixed a ceiling of 60% on entertainment tax. A cooperative endeavor involving the
state, the film and cable industries have been launched to curb the curb piracy of
films. Radio was privatized with 37 fm radio franchises awarded. There are
opportunities for foreign capital investment in projects, production houses, film
and television studios and film facilities, especially post-production, distribution
and exhibition. The Indian Government has made constructive policy decisions
including those in which the foreign investors will no longer have to seek
clearances from the Foreign Investment Promotion Board or permission from the
Reserve Bank of India. This has elicited positive responses from large
international agglomerates such as Rupert Murdoch's News International,
Universal and Sony. This is a pointer to the large-scale changes in this sector in
the past few years.

From the point of view of performers rights this creates a very conducive
atmosphere for building up a structure to apply the models of remuneration in
other countries. The umpteen number of means by which the performance can
be exploited has doubled in terms of exploitation and has also proven itself in
terms of revenue generated. The new revenue streams such as cable and
satellite rights are immense sources of revenue, in fact revenue from the cable
industry surpasses even the earnings from the film industry. Though from the
films alone, the distributions of revenue shows that the theatrical rights still claim
the highest share. Even though this might have dwindled down following inroads
by the other sectors.

\[183\] Cable television is the largest revenue earner with television broadcasting in second place and
film third, followed closely by television production.

\[184\] The film industry draws its revenues from: domestic theatrical sales (2001: 36 billion rupees);
overseas rights (2001: 5.25 billion rupees); music rights (2001: 1.5 billion rupees); television and
New Forms of Bank Finance and Performers' Contracts

One of the delectable changes to strike the film business or entrepreneurship during the post industry status granted to it was the availability of finance from traditionally recognized sources of the Government of India namely the nationalized banks. While several banks have come forward with schemes to support film industrial ventures, one of the first to set up a corpus amount of rupees 100 crores towards the purpose was the Industrial Development Bank of India. This marked a changeover for legitimate funding of film ventures from regulated sources of finance to be opened up. Priorly, the recognized nationalized banks and credit worthy private sector banks found the sector abhorrent to the risk that inhered in it. But with the governmental policy having undergone a change complemented by changed communications entertainment possibilities in the satellite era and digital era, the institutions have recognized this as a sector with potentially safe returns. They have tailored the schemes in such a manner so as to be safe and secure in the portfolios undertaken in this sector that is potentially high risk. From the performers perspective the advent of nationalized banks into the sector ushers in an era of standardized and transparent transactions.

The Industrial Development Bank Of India has been the recognized agency for the disbursement of finance for financing of films in the country from among the traditional lending agencies. The fact that IDBI has not pulled out nor has the Government Of India developed any cold feet on the last three or four years is indicative that the idea has borne fruit or that it has not been disappointing. The IDBI criterion that has to be adhered to in order to be eligible for the loans to

video rights (2001: 2 billion rupees); corporate sponsorship and merchandising (2001: 0.01 billion rupees). The total revenues of the industry from these sources are estimated at 45 billion rupees.

185 A few banks like the Canara Bank and the Indian bank that used to extend loans for film production incurred huge losses.
produce films brings to the fore very important consequences for the performing artist.\textsuperscript{187}

The criterion to be fulfilled requires adequate proof of the individual creditworthiness of the applicant.\textsuperscript{188} Besides other requirements to be furnished, most importantly the questionnaire demands the details of those whose work goes into the actual creation of the film. The creditworthiness of the producer of the film is to be verified by the need to state his income tax position during the last five years. This is a pointer to the credibility of the film producer. A leading query in this regard is the fact whether the producer is a member of any association connected with the film industry. The producer has to divulge whether the association has blacklisted the producer. The producer has also to furnish details with respect to any pending court case\textsuperscript{189}.

The most significant feature from the standpoint of the performer has been the fact that the much importance has been emphasized to agreements relating to or involving personnel that go into the making of the film. This includes both the production managerial department as well as the creative personnel. Besides the title registration, the language, the name of the film producer, the co producer, the names of the dance director, the music director has to be furnished. With respect to the performing artiste the producer to furnish the status of the contract along with the name of the principal cast that includes the lead stars, male and female and also the supporting cast\textsuperscript{190}. Importantly the factual position with respect to any pending dispute with the main artists actresses or any other talent in earlier /prior ventures needs to be spelt out\textsuperscript{191}.

The application solicits information about the intellectual property acquisition and contracts with respect to it. The questionnaire with respect to this begins with the canniest detail. Details with respect to the author of the story idea, the synopsis of the script and most significantly a copy of the agreement with the author/
owner for the right of use (ostensibly in the film). The name and background of
the author is essential. The name of the copyright /intellectual property right
owner has been solicited from the applicant. The agreement entered into with
the owner for the right of use has to be furnished. The period of the right of
adaptation and use has to be declared. The bank also solicits information about
the use of the name or likeness of any living or dead person and whether the
same is fictional or a true portrayal. It has also to be elicited whether the
production is based on another work and the nature of the connection. Whether
the production is based on another work or works and the nature of the
connection. Significantly besides the need to show the status of contract with the
main actors and actresses the agreements with other actors too has to be shown.

The agreement should indicate the schedule and the date commitments for
shooting the film. The core production team has to be laid down along with
copies of agreements with them. Similarly the agreements with the director,
cinematographer, choreographer and action director has to be revealed.
Specifications of the contract with respect to the dialogue writer have to be
furnished. Similarly separate agreements for owning the performing; recording
and synchronization rights have to be shown.

However in respect of the music composition besides the details of the composer
and their backgrounds, copyright and intellectual property rights ownership, the
singer and his status and contract is not required to be listed. Rather only the
details or particulars of the music director is requisitioned. Technical information
has been solicited from the applicant and that includes details about
cinematography, art direction, costume design, studio facilities, sound recording
and dubbing. Though the need for information (contractual) regarding the
engagement of technicians in the sound dubbing activities is warranted, there is
no mention about the dubbing artists directly in name. The applicant has to
furnish details regarding animation/ computer graphics and special effects,
editing and editing studios. In the category with regard to production and
execution arrangements, it is essential to furnish copies of contracts with various
artists including foreign artists and singers, music arrangers and others. (This is
the only section were in the singers are mentioned and the information pertaining to their contracts is requested). The latter becomes sine qua non in the finance process. Female and those of the supporting cast. Similarly the name and the status of contract of the cameraman, composer/music director and art director needs to be produced\textsuperscript{192}.

The schedule within which the shooting has to be completed from pre-production to release has to be stated in the application. A separate categorization for songs, shooting, editing and post-production and release has to be mentioned separately. This would go a long way to assure the artiste as well as the producer that the dates promised would be kept.

The most conspicuous part of the IDBI scheme has been the issue of collaterals for the release of the loan. The list of securities includes a letter from the processing laboratory conveying rights on the negatives of the film in favor of IDBI. An assignment of all agreements and intellectual property rights in favor of IDBI. The creation of a Trust and retention account and a first hypothecation charge in favor of IDBI. Assignment of existing rights like music, video, Internet, VCD, DVD rights, library of old films or any other collateral has to be transferred to the IDBI. There is the need to produce a completion bond guarantee and status of government consents with regard to the film production. Conspicuously, the total budget of the film needs to be clearly laid down under separate heads and that would include the costs paid to the main artists as well as others. Another very important requirement is the production of insurance details of cast taken or proposed to be taken\textsuperscript{193}.

The agreement also demands the production of contracts and names of the main and supporting stars and that secure their position as regards economic and social security. Further the exact price paid for their services should also be mentioned. The insurance cover should also be pointed out and this secures

\textsuperscript{192} Clause 10.
\textsuperscript{193} In short in order to solicit funding from the IDBI there is still the necessity of collaterals, but IDBI is demanding only derivatives of value from the film itself unlike other collaterals traditionally sought for by the banks in the like of land and other instruments of value. This considerably eases the pressure on the applicant to produce valuable external security.
them against all hazards. Further the need to clearly specify the shooting schedule and other arrangements secures the performer from undue exploitation, as these would be prepared in advance. With respect to music compositions the diverse patterns of intended exploitation needs to be mentioned and contracts in respect of these should be produced. But the application does not demand detailed information with respect to the singer.

The IDBI insistence on these provisions is a pointer to the fact that when the performing artist in the audio visual is provided with the statutory performing right in the audio visual then more detailed agreements would have to be produced before this lending agency. For once documentation would turn out to be important and the performing artist cannot or need not worry about the presumptive transfer of his rights in the absence of proper documentation as the latter becomes sine qua non in the finance procurement process.

Corporatisation of the Indian Film Industry and the Likely Impact on the Performing Artists

For long the Indian film industry has been disorganized. But with the traditional model no longer paying the dividends winds of change has begun to brew into the film production landscape. Today corporate’s are, making a beeline to the Indian film sector to invest in ventures\(^\text{194}\) with a fresh blue print and redone arithmetic. Over Rs.1000 Crore is being invested in the film industry by these authentic corporate houses.\(^\text{195}\) The enthusiasm of the industry is reflected in the beeline before the SEBI office for incorporating film production houses\(^\text{196}\). They are willing to invest in production distribution and exhibition as well. The well known brands include, Pantaloon, Dainik Jagran, Tata Info Media, and Bankers like SSKI. The array of new investors are an optimistic sign particularly since the statistics speak of a mere 10- 15% profits and a 50% break-even from the picture. Even the films that began tall with the superstaries touching the skylines in

\(^{195}\) Id., p.32.
posters have not got back its investment with theater owners even asking for refunds.  

After the break up of the studio system in the fifties the next big change is happening in the industry now. Particularly in the way the movies are financed, made, distributed, marketed and exhibited. The change has been impelled by certain decisive factors-the changes in the governmental policy, the margin squeeze, industry status for the film trade, tax-free multiplexes and 100 % foreign direct investment. The companies are looking forward to investing in the sector in this encouraging environment despite margins being projected at 20 to 30 % alone. From this chaos strong professionally managed companies are considered to arise.

The companies are looking forward to the integration of production, distribution, and exhibition functions and earning revenues from each of these. Till now the entire risk in filmmaking was being borne by the exhibitor and the distributor. The prior sales, advances of the rights that have taken place already cushion the producer. New techniques and models are being frantic tries to minimize the risks. Business deals not on out right purchase but on the basis of commission is being tries out. Most importantly films are being brought on commission basis. All the revenue and profits they garner will be shared along the distribution chain. Instead of just one man—the producer—safely pocketing it at the cost of everyone else, there is thus less risk in the commission based business model. Leading

197 For instance for the film Baba starring Rajanikanth that sunk much below the expectations Vanitha Kohli, op. cit., p.33. Other rights or revenue sources like music rights and satellite rights are not of help either in contrast to the cost that it used to recoup between 60 and 70% of the investment. The margins have fallen with the production costs going up between by 10 – 15 Crores. The secret seems to be in the manner of tapping the market.


199 Id., p.35. For instance Metalight industries strategy is echoing these calculations. New modes of economizing the production and distribution is being implemented.

200 For instance for the film Baba the rupees 10 crores film sold its Indian theatre rights in the southern states for 13 crores. Overseas rights were sold for another 8 crores and music for 3 crores, product endorsements for another 6 crores. Thus without the film having been seen by anyone it had speculatively fetched rupees 44 crores. After seeing the rushes, All the speculators lost their money including the theatres, the music companies and the overseas rights holders as well. Jolted from the experiences as a result of the blind following of the old models. Id., p.36.

201 Id., p.37
distribution companies like Columbia Tri-Star. Distributors in the altered environment can therefore no more act as part-time financiers of entrepreneurs. The new signal is pointing towards lending institutions like the IDBI and Bank Of India to finance 50% of the film.2°2

The corporate are infusing discipline from thinking to execution. This is reflected in the need for a bound script before discussing the project. (For instance companies like I Dream productions) in fact IDBI has a twelve man advisory committee to vet the scripts, screenplays, shooting schedules, casting dates all of which have to be on paper.2°3 The pre-production preparations take four to six months (that includes signing the artist) and any delay leads to adverse cost implications.2°4 Therefore production companies are now targeting a production gestation period of 9 to 12 months. Computerized ticketing will ensure that the transparent source of revenue is maintained. There will be less fragmentation and more concentration, revenue streams other than domestic theatres. 30 to 40% of money recovered may come back to the film but the rest may be written off as the debts of the badly performed films. The actors are also becoming comfortable with their altered working environment were in they are amenable to the comfort of remunerative security but at the same time are answerable in respect of accountable practices a well sticking to their work assignments in a disciplined manner2°5

Much of the uncertainty that stalks the performing artist with respect to the transactions in the film industry can be resolved by the effect of the corporatisation. Written agreements and transparency in the payment promise and made can be expected. There could be much more professionalism in meeting commitments and deference to agreements made. It could also lead to the performing artist being able to fix his value more fairly and objectively.

2°2 Id., p.40
2°3 Ibid.
2°5 Leader speak column in India infoline column interview with the heads of Ke Sera Sera Production which is a corporate entity that has endeavored to produce such hits as Darna Mana Hai, Company, Road, famously associated with Ram Gopal Varma Productions. Mr. Ash Pamani, chairman and Parag sanghavi, president and CEO of the company. July 23rd 2003.
With the certainty that shooting dates to scripts required to be ready beforehand, it enhances the expectations of the artist and inspires confidence in the industry. It can very well prepare the ground for the residual system to take roots either through contracts, individual or collectively bargained actually or by means of statutory interventions. This sense of security can result in fewer onuses being placed on the initial heavy payments and confidence to depend on deferred accruals of payments out of the exploitation as the distribution chain is no longer an untrustworthy account of revenue. With the banks keeping a keen eye on professionally managed companies, weak bargainers like the performing artist can expect a fair and safe deal from the films exploitation. The euphoria over the changes is not without the critics particularly on account of the fact that several ventures in the altered corporate pattern have not met with great success. Despite the increasing corporatisation and the standardized practices like written contracts and royalty clauses being written into it, the enforcement and ability to protect are still major issues to be tackled and it is the legal system that has to be prepared to this end.

**Internationalization of Film Industry**

The internationalization of the film industry in India is also another contributory factor that demands the hasty legislative changeover in keeping with the trends both contractual and statutory in this regard abroad. Liberalization following the Uruguay round had effected changes in the audiovisual policy in this vital sector. It has also been shown that the open policy has not had any adverse impact on the audiovisual trade of the country. Rather it has encouraged greater thrust to explore co-productions and intrusions into foreign markets. Performing artists

---


have begun to enjoy the practices such as flat fee accompanied by back end wages based on the performance in the international market. This has begun to be resorted in situations where in the producer might not be in a position to pay the essential remuneration for the Indian star. For instance some of the top Bollywood names that have begun to find acceptance and calls from the international production companies are engaged in this form of contract. Aamir khan in 'The Rising' based on the 1857 mutiny directed by Ketan Mehta has been provided back-end remuneration based on the showing in the US and U.K markets. Ashwariya rai is another artiste who has found herself among such offers. The internationalization of the film industry has also seen the entry of foreign film companies venture into both production as well as distribution of Hindi films.

That the winds of international professionalism is here is testified by the fact that the actors who once used to jeopardize production by double booking themselves, being late and even raising their pay midway through the shoot are being more professional. The air of informality is being dispelled in order to accommodate the new trends of formal professionalism. The *modes operandi* of signing movies is undergoing a change with the international film stars with their roots in Bollywood have begun to sign up with western talent agencies like William Morris agency that ensure that their commitments are honored. However in the altered environment the stars are not complaining.

The trends have begun to rub off on young professionals like Farhan Akhtar and Ronnie Screw Walah (both recipients of professional education abroad) of the United Television in projects like *Lakshya* (7 million dollars was sunk into the project) where in contracts were duly executed to all the crew. Actors insisted on a finished script, the set was insured and the schedule of the shooting was meticulously laid down. This is in stark contradiction to the deals that were sealed by resort to a mere handshake or a word. Industry experts expect the use of western practices to descend in another three to five years.

[211] Alex Perry, "Queen of Bollywood," *Time*, Oct 27th, 2003, p.47. Amithab Bachchan is delighted at the turn of events and called it the end of disorganization that had ruled for so long.
[212] ibid.
In other words confidence inspiring standards and practices have begun to permeate the Indian film industry. The internationalization has already led to top stars being provided remuneration based on the profits from certain markets. However these are based on mutual contracts and not based on the statute. This should pave the way for conditions of trust and transparency to activate a model of royalty payments based on either statutory copyright or neighboring rights or collective bargaining. This can also pave the way for models of remuneration to be implemented in India as they have been executed in other countries.

Labor Jurisprudence, the Film Industry and the Performing Artist

The case law of Hindustan Journals Limited v. Dinesh Awasthi was one of the first to consider whether the activity of creating intellectual products would come within the canopy of the terms of the Factories Act. In the course of the case the court referred to the English Factories Act, which expressly omitted the employment of theatrical performers from the ambit of the Factories Act under Section 151. However it was pointed out that a similar exclusion was not found under the Indian Act. The High Court while considering this case was of the opinion that the ‘news’ was not an article or substance or commodity to the making, altering, repairing, ornamenting, finishing or adapting of which Section 2(k)(i) has a reference. This logic does not help the performing artist to protection under the Act, as the produce of intangible intellectual output was not considered as a process of manufacture. Therefore under the logic propounded by the court no protection would be available to the performing artist as he is

---

213 AIR 1957 M.P. 125.
214 Section 151 of the English Factories Act, 1937 says any premises in which the production of cinematograph films is carried on by way of trade or for purposes of gain, so however, that employment at any time of theatrical performers within the meaning of Theatrical Employees Registration Act, 1925 and of attendants on such theatrical performers shall not be deemed to be employment in a factory.
215 Under the terms of the Act ‘factory’ means any premises including the precincts thereof (1) when ten or more workers are working, or were working on any day of the preceding twelve months and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily carried on or (ii) where 20 or more workers are working...without the aid of power or is ordinarily carried on but does not include....restaurant or eating-place. By the term ‘Manufacturing Process’ is meant any process for making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing or otherwise treating or adapting any article or substance with a view to its use, sale transport, delivery or disposal.
rendering a job not of any manufacture but intellectual creativity. It is also noteworthy that ancillary labor enactments such as the Payment of Wages Act require the terms to be applicable to premises that fulfill the definition of the term 'factory'. Thereby weakening its application to the creative industry and the workers therein as the characteristics of this industry would not fulfill the requirements of the term 'factory'.

A case law of considerable importance that appears an influential precedent with regard to status of the performer and other contributors under the labor law in India is KVV Sharma, Manager, Gemini Studio, Madras216. The facts involved the conviction of the manager of Gemini Studios for not observing several norms required under the Factories Act217. In order to take it out of the realm of the labor laws, the manager put forward the argument that the production of a finalized talkie film was mostly intangible material, contributed by the individual genius that is incapable of regimentation or standardization by strict labor norms. There is no artificial or mechanical process involved in the making of the film. The court took a different view from that expressed in the prior precedent pronounced by another High Court. The film production was held to be a 'manufacturing process' under the Factories Act. This decision provides a gleam of hope to the workers in the films including the film artistes as to the enjoyment of labor and wage security under the Factories Act. However the question would still remain whether the creative artist can be considered as 'worker' under the terms of the Act as distinct from others pursuing different occupations in the film production. Further a distinction can be made with workers in studios and those in independent productions.

It would be necessary to see whether the systematic performance or creation of the creative work or the performance affixed can be termed as a 'manufacturing process' as the raw film undergoes a treatment along with the affixation of the performance and comes out as a film to be distributed for the purpose of

216 AIR 1953 Mad 269.  
217 Rahul Mathan, The Law Relating to Computers and the Internet, Butterworths, London (1st edn. -2002) p.231. The decision has come under heavy criticism and scrutiny particularly the fact that publishing a record and the like could be called manufacturing and invokes liability under the Factories Act. According to Rahul Mathan, the provision of the Factories Act is meant to apply to only those who work heavy machineries and premises thereto. Intellectual activity would not qualify under the terms of the Act.
screening. The mechanical manufacturing process can occur simultaneously with non-manufacturing activity while affixation and other mechanical process can be considered as a manufacturing process. The work of creative intellectual activity need not be construed as a manufacturing process. The term manufacturing process appears to connote the application of skilled force on a material object to make a new object or alter an existing object. Film is not a material object that is being made but an artistic creation that is carried in a material object. From the performers point of view whether the performance rendered would be part of the process of adapting any article or substance with a view to its sale, transport, delivery or disposal is the question that needs to be resolved.

Some of the other legislations such as the Payment of Wages Act too appear doubtful about being applied to the performer as the definition of the term factory in the Factories Act is followed in the Act. Even though the last standing precedent from the High Court Of Madras does ignite hope to the workers in the films nevertheless there has hardly been an instance where in a performer has moved the courts for seeking relief under the aegis of these enactments.

The question whether filmmaking is a manufacturing process is open to interpretation or whether managerial or supervisory cadre as excluded under the Industrial Disputes Act would include the performers or creative personnel in the film industry under the Industrial Disputes Act is open to question. The most crucial question being whether creative personnel can be considered to be 'worker' in the context of all these workers legislations.

The very fact that film specific worker legislation was attempted in the eighties is reason enough to infer that the existing labor laws did not fit in with the needs of the creative film industry. This is further substantiated by the thoughts in the statement of objects and reasons to the Cine Workers and Cine Theatre Workers (Regulation of Employment Act, 1981) that said that taking into account the rigors of the creative industry much more of freedom was to be provided to the employers in the industry.218 The enactment of the special legislation in fact excludes the application of the general workers legislation to the film industry. The enactment has several inbuilt constraints and limitations.

It covers only a limited section of the performing artists and other workers within a particular income category. It is doubtful whether it would extend to the television sector that was only a fledging one in the early eighties. It is not being implemented or prosecutions launched. The most important requirement of executing agreements written with these workers is least implemented in the film industry. None of the institutional mechanisms envisaged under the enactment have been set up. After much persuasion in the late nineties an effort was made to raise the limits of the income category.

The laws it appears were formulated with the vision of the stereotype greasy factory environment and not the info intellectual or entertainment factory farms that contribute and engage as many hands as those in the former (if not more).

An analysis of the level of labor security enjoyed by the creative workers in the entertainment industry reveals the ambiguity and the insufficiency of the present labor legislations to accommodate them within their framework. The uncertainty encountered by the creative workers in other fields is a pointer to the status that the film workers and performers are likely to get under the aegis of the present labor laws.

There had been a profound move in the eighties to make enactments such as the Factories Act, The Payment of Wages Act, The Workman's Compensation Act, The Industrial Disputes Act, The Employees State Insurance Act, The Employees Provident Fund Act, The Industrial Employment (Standing Orders Act) and The Shops and Commercial Establishment Act applicable to the film industry.²¹⁹ The proposition was also for including a provision of penalty and imprisonment on those who contravened the provisions of the Act. However this idea did not see the light of the day. One of the specific drawbacks had been that these legislations categorized the beneficiaries either with respect to character of the work rendered or with respect to the wage limits. Though with regard to the former criteria there can be differing opinions and interpretations with respect to the latter it excludes a major chunk of workers who receive remuneration above a particular limit.

²¹⁹ See General Secretaries Report (1st January 2005 to 1st August 2005), Indian Film Directors Association, Bombay.
In the ordinary parlance the industry status to the entertainment sector would have attracted a host of labor laws existing in the country. However the situation lacks clarity and certainty in this respect even in post industry position extended to the entertainment industry. The extension of the appellation 'industry' to the entertainment sector from the year 2001 imparts mixed fortunes to the creative artist under the umbrella of the industrial labor jurisprudence. In the context of the term industry, the jurisprudence enunciated by the Supreme Court in this respect is discouraging. The performing artist does not seem to satisfy the requirements of the provisions of the Industrial Disputes Act even if it is assumed that a production company is accepted as an industry. Thus from a labor jurisprudence standpoint the present declaration of the industry status to the entertainment sector need not be advantageous to the artist even though that may benefit other workers in the industry.

Is the Performing Artist a Worker?

In a case law decided in 2001 of far reaching consequence to the entertainment industry and the workers and particularly the creative artists, the Supreme Court laid to rest any speculations on the fate of the creative artist under the industrial labor jurisprudence. In Bharath Bhavan Trust, Appellants v. Bharath Bhavan Artists Association and another, Respondents, the Supreme Court in a bench headed by Sri S.Rajendra Babu and Sri Shivraj V. Patil decided a very consequential judgment for the creative artist. The appellant, Bharath Bhavan Trust had entered into an agreement with 13 creative artists for the performance and production of a drama theater arrangement. Apprehending that their services are likely to be terminated or not renewed on the expiry of the contract, the artists filed a suit for declaration and injunction for regularization of their services. The said artists raised a dispute, which was referred to the labor court for adjudication in 33/971D, and the artists filed their claims before the labor court and sought for interim relief. The preliminary objection was that the Trust was not an industry and that the artists are not workmen under the Industrial Disputes Act. After

---

220 AIR 2001 SC 3348.
School of Legal Studies

initially giving an award the High Court directed the Labor Court to once again peruse the documents and pass orders. The labor court held that the appellant is an industry and that the artists are workmen. The Appellant Trust based their arguments on several decisions that the institution could not be classified as an industry in spite of the very wide connotations of the term imparted to it under the Bangalore Water Supply and Sewage Board Case v. Royappa, (1978) 2 SCC 213, particularly since the appellant was characterized as indulging in aesthetic activity. The attention of the court was directed to the case law of Miss A. Sunderanmal v. Government of Goa, Daman and Diu, (1988) 4 SCC 42 in which teachers were not held to be workmen although educational institutions may serve as an industry. The case law of T.P Srivastava v. National Tobacco Company of India Limited, (1992) 1 SCC 281 was also advanced where in the court held that a salesman employed for canvassing and promoting sales of company's product in an area involve duties that requires him to suggest wages and means to improve samples, study of type and the status of the public to whom the product has to reach, study of market condition and supervising the work of other local area sales men. It cannot be termed as manual, skilled, unskilled or clerical in nature but requires an imaginative and creative mind and such a person cannot be termed a workman. It was pointed out that the incidental activity entrusted to the artists are all connected with the production of drama and theatre management and cannot be taken to be a separate activity to classify them as workmen. The artists countered that considering the period for which the artists were engaged and the nature of the activities carried on by them even though to some extent creative is not by itself sufficient to state that they all fall outside the scope of the definition of workmen. They advanced the case of Prabhath Brass Band v. Their Workmen, (1959) 1 LAB LJ 78 (IND.TRI: Bom) (5), where in a set up was available to provide instrumental music on occasions like weddings or similar functions and those who were engaged in playing the band or music were held to be workmen. Relying on the case law of H.R. Adanthaya v. Sandoz India (Ldt) 221 it was pointed out that even though respondent artists may be classed as

221 AIR 1994 SC 2608.
skilled persons in their respective fields, they were also workmen despite that fact that they may not be engaged in manual work.

Significantly the court considered whether the institution for the promotion of art and culture is an industry and whether artists are workmen and applying the rationale of *Bangalore Water Supply v. Royappa* the court analyzed whether the institution engaged in a systematic activity or whether it was organized by cooperation between employer employees for the production of goods and services. The court found the reasons to classify Bharath Bhavan as an industry not compelling enough. It felt that it was only engaged in the promotion of art and preservation of artistic talent. Such activities are not one of those in which there can be large scale production to invoke the cooperation of efforts of the employer and the employee nor can it be said that the production of the plays will be a systematic activity to result in some kind of service. Therefore though it was not sure, it expressed doubts with regard to the eligibility.

The court went into the question of the status of the creative artist assuming the institution employing them to be an industry. The court analyzed whether the creative artists would fall within the four corners of the term 'workmen'. It ruled and observed that an artist engaged in the production of drama or theater management or to participate in a play can by no stretch of imagination be termed as workmen because they do not indulge in manual, unskilled or technical, operational; or clerical work though they may be skilled. The court opined that it is not such a work that can be read *ejusdem generis* along with other kinds of work mentioned in the definition. The court relied on the definition of *A.R. Adanthaya v. Sandoz India Limited*. The court noted that the work respondents performed or the creative artists performed is in the nature of a creative art and their work is neither subject to an order required from the art director nor from any of the artists. The court observed that in order to perform their work they have to bring to their work their artistic ability, talent and a sense of perception for the purpose of production of drama involving in the course of such work, the application of the correct technique and the selection of the cast, the play and the manner of presentation,
the light, shade effects and so on. The court noted that the work rendered by the artists is creative art which only a person with an artistic talent and requisite technique can manage to call such person a skilled or a manual worker would be altogether inappropriate. An artist must be distinguished from skilled manual worker by the inherent qualities that are necessary in an artist allied to training and technique.

The court relied on the case law of T.P Srivastava v. M/S National Tobacco Company of India Limited, AIR 1999 SC 2294, where in the section sales man engaged for canvassing and promoting sales of the company’s products in an area could not be put under the category of workman. The court most significantly noted that no work could be considered bestowed to them because the work of an artist is essentially creative and freedom of expression is an integral part of it. However the following observations could make a difference to the ratio being applied to the entertainment industry as distinct from a charitable institution. (Though the court presumes during the logical analysis of the problem that the status of industry is bestowed on the organization). The court sought to distinguish on the basis of the fact that firstly no goods and services were produced and secondly acting that is done is not for the business of another. There is a mere expression of creative talent that is a part of the freedom of speech and expression. These significant differences could make a difference to the analysis, as the film industry is an entertainment service industry with a commercial angle overwhelming all other factors.

This could tilt the fortunes of the creative contributors to the film industry, as the rationale seems to be indicating the commercial angle as determining the question of eligibility. However this is in contrast to the ambit of the meaning appended to the term industry. It appears that delineation could be drawn between the industry commercially in operation and those which are not producing goods and services and which is not intended to execute any business. Thus creative talent applied for business purposes begets the status of workman under the Industrial Disputes Act for the creative artist but application

---

224 The case law of Hussein Bhai v. Alath Factory Thozilali Union, AIR 1978 SC 1410 was also cited.
for non-business purposes would not.\textsuperscript{225} This does present a contradiction though there are judgments to the effect that charitable institutions should also be considered as industries and that non profitability should not be considered as disqualifying the institution from being attributed the status of an industry.

\textsuperscript{225}Bharath Bhavan Trusts, Appellants, v. Bharath Bhavan Artists Association and Another, Respondents, AIR 2001 SC 3348 at p. 3352.