CHAPTER 9

AN ASSESSMENT OF COLLECTIVE ORGANIZATIONAL INITIATIVES AND CONTRACTUAL PRACTICES IN THE AUDIOVISUAL INDUSTRY WITH REFERENCE TO PERFORMING ARTISTS

Objective of the chapter: An assessment of the manner of development of the collective organizations in the film industry and its effectiveness is of immense importance if one has to think in terms of an intellectual property paradigm to function in favor of any section of the creative contributor to the audio visual industry particularly the performer. The understanding of contractual practices is essential to measure whether any thing in the nature of recognition of intellectual property or residual based practices have been in vogue in the Indian film industry. The issues of unemployment, disability from old age or sickness are problems that afflict both the artist and the worker, which leads one to explore alternatives in economic and social security mechanisms. The purpose is to understand the state of sensitivity to these problems from within the industry that would go a long way to find whether the present scheme of things would suffice for the future and what changes are required for incorporating the residual model.

Collective Organizational Structure in the Film Industry

The trade union movement or the organization of the work force in the film industry began with the late fifties. The developments in the south Indian film industry and in the western sector¹ can be taken to be representative in several senses because the film industry in the south produced more pictures than any other film-producing center in the country and it represented a wide vernacular segment. Though the workers began organizing themselves distinctly on the

¹ The employees of the western India are represented by the Federation of Western India Cine Employees, Bombay (FWICE). Around 1000 films are produced every year in India and a major segment is from this sector. This is besides television programming.
basis of the respective skills that they contributed to the film industry, later they were to come under a common umbrella that was to represent them in their dealings with the state as well as the other interests in the film industry. Today the south Indian film industry is represented by 24 craft unions under the canopy of the Film Employees' Federation of South India (FEFSI) that came into being in the year 1967.\(^2\) It has a membership of around 25000 members. Similarly the film employees in the western sector are also organized and similar number of craft unions exists under its umbrella too.

All these organizations are further affiliated to the All India Film Employees Federation (AIFEC, headquartered in Bombay) that is the sole recognized entity by the central government to represent the concerns of the film worker. It acts as a bargaining front for the crafts within its fold with the state and the central government as well as the other industrial associations. It has been recognized by the state in echoing the sentiments of its constituents in the parleys with the government\(^3\).

It would be pertinent to understand the objectives and the functioning of the Film Employees Federation Of South India to understand about the sophisticated nature of its functions in comparison to its compatriots in other countries. It would indicate the preparedness of institutions in the future to undertake any other collective administrative function in the country with respect to creative contributors in the film field. The FEFSI is an umbrella organization representing 24 craft unions including performing artists such as the junior artists, the stunt artists and the cine dancers association. It is noteworthy that performing artists are also included within the unions though the major creative performing artists have decided not to form themselves into a union for reasons of convenience and therefore do not come under the canopy of FEFSI.\(^4\) But the creative quotient has nothing to do with this demarcation or choice as the technicians like the directors, the cameraman as well as the scriptwriters have also organized themselves into trade unions. However, membership is provided directly only to unions under the

\(^2\) A similar system can be seen with respect to the western segment also with 22 craft organizations.

\(^3\) Madhusudan, *Film Production as Industry* in Hemachandran (Ed.), *Film Trade Union Movement Southern Zone, A Flash Back*, FEFSI, Chennai (2000). This souvenir was released on May Day 2000.

\(^4\) *Film Employees' Federation of South India- Constitution*, FEFSI, Chennai, p.2.
canvas of the Film Employees' Federation of South India. The unions are more in
direct contact with their members.

The apex body aims to realize the welfare of film employees. The body has been
instrumental in coordinating the various constituents of the federation and
liaisoning with the other institutions and interests associated with the film industry.

The objectives of the FEFSI exhibit the concerns that the trade union movement
has kept itself busy over the years. The body functions with the objectives of
fostering brotherhood among the cine employees in southern Indian states
excluding the state of Maharashtra. Any existing organization for cine employees
that is not a rival to any of the unions would be eligible for membership. It is an
avowedly non-political and non-communal organization. The body seeks to
promote the economic and cultural interests of the members. It would guide,
assist, coordinate, safeguard and promote the interests, rights and privileges of
the cine employees in all matters including living conditions. It would promote and
maintain a high standard of professional conduct and integrity. It would assist in
the formation of trade unions in the yet to be organized areas. Most significantly
to negotiate with the state and central governments to make adequate
legislations for the cine employees and to secure the representation of the cine
employees on delegations of commissions or committees set up by the
government or other bodies in which the representation of cine employees as
non-officials is desired and any other legitimate activity that are appurtenant to
and facilitate the realization of the objectives stated.

Significantly, the definition of the word 'cine employee' in the constitution of the
FEFSI is wide enough to encompass the film artiste as well. He is defined as one
who is employed on wage, salary or contractual basis in any work connected with
production, distribution and exhibition of films. The words 'on contractual basis'
makes it clear that any body getting higher than the minimum or mutually arrived

5 ibid.
6 Film Employees' Federation of South India- Constitution, FEFSI, Chennai, p.2.
7 id., p.1.
8 id., p.2. Thus the objectives as exemplified in the FEFSI rulebook clearly can accommodate any
other task or responsibility that would promote the interests of the cine employee in its respective
affiliate unions
9 ibid.
at tariffs would also come within the terms of the word 'cine employee'. This also creates a presumption that the artist as he is connected with the process aforementioned would not fall outside the purview of the definition. But with the identity of an employee he may be denied, presumably, as having no intellectual property rights in the performance, if rights are ever granted to him in the future. The same rationale might apply to other creative contributors in the film medium as well. This could be cited as a technical reason for the performing artist in the future not to evince interest in forming the trade union if he has a desire to intellectual property status. The use of the word employee and the word employed might be a misnomer. This might be inadvertent fallout of the definition. A major drawback of the rules is that the union would not recognize fresh organizations in addition to an existing trade body representing the same workforce. This creates a status quo and also a real possibility of an unhealthy monopoly. The Federation neither sees whether the existing one is a truly representative one or not nor does it look into the adequacy of its infrastructure. However the important point is that a structure already exists with inherent and express powers to function on behalf of cinema employees adapting to the changed times or to canvas on behalf of the employees. The body also functions as a grievance redressing office for the complaints of the cine employees against the employers and vice-versa received through the affiliated unions. It also acts as a medium to implement the consensual decrees entered into any matter involving the members of the affiliates. It entertains complaints of the cine employees against an affiliate. The organization can institute legal proceedings on behalf of the federation, carries on any negotiation with the employers and their organizations on behalf of the federation subject to the approval of its general council. Each craft union under the FEFSI has its own rules by which they function.

10 Ibid.
11 Ibid., p.7. Functions of the Executive Committee.
Programs of Action

The body has been coordinating several programs for the welfare of the artists like pension scheme and the scholarship schemes; a lump sum payment during death etc. It is the via media between the schemes brought forth by the central and state governments that have been instituted. The beneficiaries concerned or the dependents have to apply through the channel and the application would be canalized and processed by the office and forwarded to the government institutions. Labor welfare is extended to both daily as well as contractual labors in the form of medical allowance and educational scholarships. There is no assured pension scheme either from the state or the central government. It is important to bear in mind that the FEFSI does cover a section of the artists. In case of normal death there is a lump sum grant of rupees 5000/- from the welfare fund by the central government and rupees 10000- in case of accidental death. Some unions might give a substantial amount at the time of retirement. This clearly points out to the lack of a sufficient sustenance mechanism for a section of the artists coming under the organization of trade unions and allied bodies.

It is important to dissect the exact composition of the sections of trade unions that constitute the FEFSI. The technical personnel and the artistic contributors together with workers constitute the FEFSI membership. Amongst the technical personnel there are those who creatively contribute to the film that includes the directors, the storywriters and the cameramen. It is to be noted that they are all trade union affiliates and the personnel mostly contract according to their bargaining power in the industry. Therefore it cannot be inferred that only those who do not creatively contribute constitute the trade union confederation. The

12 Similar features can be found for the employees of the western India who are represented by the Federation of Western India Cine Employees, Bombay (FWICE).
13 Interview with Sri Sambathan, Manager FEFSI, 13th of September 2003
14 Interview and data provided by the Manager of FEFSI under authorization from the Gen Secretary.
15 Ibid.
16 Film Employees' Federation of South India- Constitution, FEFSI, Chennai, p.2. Source: FEFSI.
point to be noted is that perhaps among the artists the creative artists who determine the cast are not part of the trade union body. But the background performers such as the cine dancers, stunt artists, the dubbing artists and the junior artists are all members of the trade union block. Thus distinctiveness on the basis of aesthetic contribution of the members of FEFSI cannot be made. Further the only support for those under the trade union in the absence of a contract specifying a sum would be the tariff or the minimum wages. But where the sum promised is a oral contract, the aggrieved need not seek recourse to the tariff and can very well seek the intervention of FEFSI for getting the amount promised for his contribution to the film. In these circumstances there would not be recourse to minimum wages or the tariff as the person has been promised much more. There is no hard and fast rule that the tariff shall only be strictly adhered to the point being that the tariff shall always act as the minimum in the absence of the agreement to the contrary. It is through pressures such as non-cooperation or confrontation and mediation that the issues are mostly resolved.

Performers in the Audiovisual Industry and Their Organization

The performing artists in the film industry had begun to be organized into an association as early as 1930’s in both the Bombay film industry as well as the south Indian film industry. It was ostensibly for the welfare of the artistes. It is to be noted that the distinction between major and the junior artistes was already drawn by the first twenty-five years of the film industry. Though not unified on the lines of trade unions, they were associations registered under the societies acts. But these early experiments at forging the unity among the artistes did not hold on and they became dysfunctional and died as a consequence.17 Similar efforts appear to have occurred in Bombay in the 1940’s.18 They did not have a vibrant program of action and therefore did not become noteworthy by any course of

17 An association begun at Madras in 1938 for an association of actors lasted only for 6 months. M.V Mani was the Secretary and the star of the times M.K.Thyagaraja Bhagavathar was elected the President. M.V.Mani was also a nationalist. Theodore Bhaskaran, *Trade Unionism in the South Indian Film Industry*, V.V.Giri National Labor Institute, Noida (1st edn.-2002), p.12.

18 The Cine Artistes Association that was a newly formed Association of Junior Artistes, The Film Artistes Association of India with Sohrab Modi as President and David Abraham as the Secretary, Junior Cine Artists Association in Bombay. *Organizations in Indian Motion Picture Industry in Hand Book of the Indian Film Industry*, 1949, MPSI Publication, Bombay (1950), p.400.
action, as one does not find mention of their role in any contemplated policy initiative during this period. It was during the period after the Second World War that the utility of organizing along trade union lines was found to be promising and utilitarian. For instance, the extras were dissatisfied with their wage rates and 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.

It is important to note that among performing artists in the film industry in India, the recourse to unionization has not been uniform across the country though in other categories this can be discerned. Thus while the performing artists in the Bombay–western film industry can be seen to have formed into trade unions in the fifties, while a similar organizational endeavor can be seen in the south, the performing artists have restrained from forming into a trade union and have instead registered as charitable societies. The recently formed artistes associations for instance AMMA in Kerala and even technicians association MACTA have desisted from registering as trade unions. The reason being that the recourse would be to the minimum wage tariffs in times of disputes with

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19 The extras were paid rupees two as a daily wage by the employers.

20 Dr. Inturi Venkateswara Rau, The Trade Union Movement in South Indian Filmdom, Hemachandran (Ed.), Film Trade Union Movement, Southern Zone, A Flash Back, Published by Film Employees Federation of South India (FEFSI), Chennai (2000). It was the 'extras' (as they were called then) that 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.

21 The Cinema and Television Artists Association (CINTAA) was established in the year 1956 and registered as a trade union. On the other hand South Indian Film Artistes Association was set up in the year 1952 as a society (Thenhindian Nadigar Sangam).

22 The late Chief Minister and the super star of kollywood Sri M.G Ramachandran together with such stalwarts as S.Kalavanan, N.S. Krishnan and Director K Subramaniam founded the organization of artists. The organization was further developed by Shvaji Ganesan and people of great proven mettle such as Radha Ravi, actor, former Member of Parliament and member of the Legislative Assembly of Tamilnadu. Courtesy interview with Selvaraj, Executive Committee Member, South Indian Film Artistes Association, on the 14th of September 2003 at Madras.

23 This includes the AMMA and MACTA from the state of Kerala but these are not affiliated to the union canopy. In Kerala even the technicians are not registered as trade unions.
regard to payments in case the association is registered as a trade union but as a Society it would be subject to some kind of consensus. But more nearer to the truth would be the fact that the performer or the performing artist did not belong to the category of the worker, as they were creative artists. Even though inadvertently this choice might have been made for the sake of remunerative benefit the fact that their bargaining power was far higher than that of the worker or that they were conscious of their distinctiveness from the workers in the cinema industry. It is important to note that the CINTAA of Mumbai though registered as a trade union too does not engage in minimum tariff agreement unlike other craft unions. In Kerala, the associations representing actors do not favor the collectively bargained minimum tariff.

It is noteworthy that among the performers associations only the performing artists in the Western Sector (CINTAA) are affiliated to the all India structure of unions. This exposes a grave disadvantage that major character-performing artists may face while any copyright is accorded to audiovisual performances.

The South Indian Film Artistes Association was open to all artistes with no distinction on the basis of regional or parochial lines. This can be attributed to the fact that the south Indian film industry headquartered in Madras and the production of films in Malayalam, Telugu, Kannada and Tamil took place in Madras. Cinema artists as well as drama artists are eligible to be members of the body. Thus all visual performing artists have been brought within its fold. This is a distinctive feature of south Indian film artistes association as distinct from CINTAA well as AMMA. AMMA does not represent television artists.

**Objectives of These Organizations**

There is a broad similarity with respect to the activity carried by these organizations. The objective of the South Indian Film Artistes Association was to secure the welfare of the artist, for protecting the interests of the performing artists, and for his social security. The welfare activities include the provision of

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24 Based on an interview with director Sri Selvaraj, Joint Secretary of the Thennindian Nadigar Sangam (South Indian Film Artists Association) and an active trade union member on the 14th of September 2003.
a fund for the purpose of providing relief to the family of a member who has expired. It is not a continuing benefit in the nature of a pension but a one-time payment of a fixed amount.\(^{25}\) All these are yearly payments to those who are found eligible. The entitlement of the beneficiaries increase or diminish in tune with the number of candidates to avail the same as this is from a fixed fund that does not fluctuate. Free medical aid and free dispensary services are also provided and even bills are met upon the production of proper documentation and letters being produced. A committee constituted to decide on the eligibility supervises the process in this regard.\(^{26}\)

Unsupported by any of the state institutions the association has on its own accord started or drawn up a pension scheme for its deserving members who have retired or are old in age.\(^{27}\) The eligibility would be decided according to the applications received therefore there are no hard and fast rules in this regard. The committee is vested with the discretion whether to grant or not to there fore an equal distribution cannot be realized by the scheme in which the choice of the members would play a role. The association has been recognized by the central and the state governments to assist it in the matter of implementing programs for the film artists.

The performing artist at present can avail three pension schemes other than the one at present granted by the association of artists. The central and the state governments are the sponsors of these pension funds. Besides the pension schemes awards carrying cash prizes are also distributed to the artists of both theatre a, folk and cinema and percussion artists. Concessions are also granted by the government for those aged above 60 with nothing to depend on and are helpless. The state government would accept recommendations from the Nadigar Sangam and the beneficiary would be entitled to rupees 500 per month from the state government.

\(^{25}\) Each member to be part of this is expected to pay rupees 10 per month that is Rs. 120 per year. The family of the deceased would then become entitled to rupees 10000/- on the death of the member. On the same lines the association for the benefit of the members has also instituted educational scholarships. Rs. 500 for first to fifth standard, 5\(^{th}\) to 8\(^{th}\) Rs. 750, 8th to 12\(^{th}\) Rs. 1000, and for college degree education a sum of Rs. 1500.

\(^{26}\) But not everyone comes forward to avail these benefits only the very needy come forward to beget these schemes.

\(^{27}\) Rs. 300 per month.
The respective state governments have also been initiating measures to afford a pension scheme for disabled and indigent artistes. Either it is done directly or through autonomous organizations created for the purpose. There is a pension scheme of the state of Tamilnadu to aged artists above 60 an application with recommendation from the Nadigar Sangam would have to be made from those totally helpless financially and nothing to depend on. A sum of Rs 500 per month is availed by the beneficiary. The central government through the Sangeeth Natak Academy is providing a pension of Rs.2000 per month for the artists but that is not easy to beget as only those who have rendered outstanding contributions to the world of visual arts get selected. There is no bar to the recipient enjoying parallel benefits from two or more pension schemes at the same time. It can be inferred that the existing welfare measures for the performing artist who is unemployed or retired do not provide a certain benefit rather it depends on a procedures as well as the discretion of the scrutinizing authority. In other words a certain remunerative model is yet to emerge for the unemployed and disabled performer who has fallen on financially bad times.

There are moves to provide insurance cover to the artistes and a provident fund to which the producer and the worker also contribute the problem is that a one-day worker and a hundred day worker cannot be equated. A group insurance scheme is also being formulated but here the age is the problem and the insurance companies are willing to entertain only those within the age of 40. But those who need help and those who are in the artists association are all above the age of 40. And so the companies as well as the producers are not interested. The aforementioned problems point to the obstacles in the way of realizing a social and economic security instrument like insurance owing to the occasional employment in the industry and the age group into which the majority of the subjects fall.

The amount disbursed is from a corpus fund that is for the pension and is limited in its utility. There is no automatic entitlement that happens, as the number of

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26 The Kerala State Chalachitra Academy supervises the disbursal of the pension scheme drawn up by the state government.

29 Interview with Sri Selvaraj, Joint Secretary & Executive Committee Member, South Indian Film Artistes Association, on 14th September 2003 at Chennai.
applicants is disproportionate to the amount with the fund. The eligibility criterion is still not defined clearly other than the fifty years minimum and therefore an assured entitlement does not happen. There are numerous artists who are lesser than fifty and therefore they do not qualify for the pension even if they want to retire and they are unemployed. There is an element of subjective satisfaction involved in selecting the beneficiary and the preferences need not be based on objective grounds.

As for the private initiatives that have been initiated though it does provide relief the amount is meager and is tantamount to mere tokenism. The corpus fund is raised through private contributions and resources raised from the charity show conducted by the artistes organizations. A survey would suggest that the artists who need help would be in the age group of 40 to 50; they are unemployed and have turned out to be misfits for any other job. The very use of the word pension would be a misnomer as it is indigence and erratic employment that the artist is faced with though old age and disability also contribute.

Such initiatives are witnessed in Malayalam film industry too. With the nature of the industry being uncertain the artistes are always in the throes of uneconomic and social insecurity. There are no schemes that entitle the artist to economic and social aid automatically on fulfillment of any criteria that places them in a distress category due to unemployment, old age or illness or other incapacity. The government schemes administered by government agencies have a filtering process that bestows tremendous discretion of pick and choose on the government officials and therefore all those who appear do not avail of he benefit. Further, the constraints are several in this regard. Certain voluntary organizations have begun to help in this regard rather quiet honestly but they do have a limitation of a corpus fund. The association of Malayalam movie artists provides a sum of Rs.2000 to the recipient on a monthly basis. This is evenly distributed to both accomplished as well as those not quiet well-known artistes. A sum of Rupees 1.25 lakhs is being expended for this purpose. The beneficiaries’ ranges from artists like Madhu to Sukumari to several others of lesser standing and credentials in the Malayalam film industry. This is from a corpus amount of Rupees 80 to 90 lakhs that has been added up from the various stage programs
conducted by the society. The beneficiaries are selected from among the different applicants by a committee constituted in the body for the same. The association also at its will and discretion extends help to those in dire straits.

The association has also been instrumental in formulating life insurance and accident insurance schemes by which the artists are covered by these schemes without incurring any further amount other than their subscription to the organization membership. This provides security cover in an industry where any institutionalized insurance cover either by the employer or otherwise was lacking. This is an automatic entitlement to the members of the association where by they become entitled to treatment expenses with a ceiling limit. The highlight of this scheme is that the premium amount to be contributed is being met by the organization.30

The membership of this organization demands a sum of Rupees 1000 every year from the artiste. In this context it is appropriate to be reminded that the membership to this organization is not automatic on being actor or on his readiness to be a member upon payment of subscription fees rather there is considerable discretion on the screening committee to usher the member into the membership of the association. The doors to membership are not open to everyone who has acted. Though during the initial period there was a liberal eligibility for membership even if they have acted in a role in a film, following organizational problems the present move is to be more discerning and clenched with respect to the membership to the organization. Thus there is no automatic entitlement to the benefits for all artists. Further the television artists as well as dubbing artists or play back artists are not open to the membership of this front.

The other resolutions of the association includes the aim of protecting the rights of the artist, to maintain and develop self discipline and professional and social ethics among the members, to attempt remedies on issues concerning the artists, to beget the benefit of the collective efforts where in individual effort could not succeed, to conduct programs like star-nites. The body intends to protect

30 Press release by AMMA office, Trivandrum, Courtesy: Sri Edavela Babu, Joint Secretary, AMMA, on 25-11-2005 at Trivandrum.
members from unemployment and to provide financial help, to act as an advisory body to government departments for the uplift and development of the film industry and to act as arbitrators in all disputes submitted to them for arbitration. The body also intends to amalgamate or affiliate with any other society wholly or partially with objects similar to AMMA.\textsuperscript{31}

The aforementioned initiatives at welfare from the societies and trade unions of artists expose the limitations of the schemes particularly the limited corpus and the process of choosing recipients and the limited number of recipients who can avail the schemes. This surely points to the need for an alternative model that might act supplemental to the charity based on the market forces. The aforementioned account points out that the concept of residual has not entered into the domain of transactions in the industry nor has it ever been debated or contemplated as a viable alternative.

\textit{Categorization Among Performing Artists}

It is important to note that the artists have been divided into junior artists, stunt artists, the cine dancers and the others. Junior artists, stunt artists and the cine dancers are not members of the South Indian Film Artists Association. This feature is common to the western Indian CINTAA as well as AMMA\textsuperscript{32}. The distinction is commonly based on the amount of creative contribution by the manner of acting and rendering the dialogues and the position accorded to the artist by convention and mass appeal. Though the metes and bounds of this distinction have not been spelt out the difference is a glaring one as the junior artists, the stunt artists and the cine dancers are paid according to the hours they put in and according to the tariff fixed with their organizations or according to the minimum wages. They have formed themselves into a separate organization right from the very beginning. Though a junior artist would not be qualified to come under the canopy of the artists association nevertheless the members of the artists association who have slipped into the category of junior artists will not be disentitled to ask for any benefits accruing from the artists association. The

\textsuperscript{31} \textit{AMMA, Byelaws, AMMA, Trivandrum.}

\textsuperscript{32} Though this exclusion is not glaringly evident, nevertheless a look at the membership roles would show main artists and character artistes being the members.
benefits of the collective bargaining agreements can only be availed by the members of the association.

There is no hard and fast rule common to different film industries in India that all those who are engaged to act ought to be members of the association. However, such a stipulation does appear in the Western sector that only members of the organizations/unions should be engaged by the producers who have inked the collective agreement with the workers unions\textsuperscript{33}. Therefore the benefits of any organizational security percolate only to members. The lack of a proper legal regime exposes those who are not members of any association to have recourse to the usual legal means of redressal, which is grossly inadequate.

\textit{Collective Organizations and their Approach to Artiste's Problems}

The association comes to the help of the performer in case of non-payment of the remuneration by the producer. This is usually done by directing the lab not to release the prints to the producer unless and until the money has been paid to the performer. Mostly nobody complains about the payments not being made for fear of losing their future opportunities with influential producers. Others who have the clout and the potential stand up and protest and realize their dues ready to face the repercussions\textsuperscript{34}. If in case the producer does not pay up despite the intervention of the association the common recourses have been boycott and non-cooperation or help the aggrieved in litigation. Though the courts as the last resort is rarely considered the best available remedy.

\textit{Moral Rights - Depiction}

The associations do not tread on the question as to what is a desirable practice their concern being only that what is promised is given to the performer. It can be

\textsuperscript{33} Based on interviews with Sri Raja, Secretary, Junior Artists Association, on 16/8/2005, Mumbai, Himanshu Bhatt, Secretary, Cine Singers Union, 9/8/2005, Mumbai, Shivilal Suvarna, Association of Voice Artists, 10/8/2005, Mumbai (AVA).

\textsuperscript{34} *Malayalam Actors, Producers Lock Horns*, \textit{The Times of India}, May 27, 2002, <http://timesofindia.indiatimes.com/articleshow/11191127.cms> as on August 22, 2004. Actor Dileep who initiated legal proceedings against the producer for non-payment of dues was banned by the Producers Association and fined. Similar actions of boycott have been initiated by the producers' coterie against both artistes as well as directors.
said that the artists association is not only concerned about the economic rights of the members but also the moral aspects of their treatment both on and off screen. The artists cannot be depicted on the screen in a manner against their wishes or in any way demeaning to their honor, dignity and reputation without their consent. In other words they cannot be exploited merely by the fact that they have signed up for the film. Thus representing in a vulgar light far more than what the story line would mandate, to expose the body beyond the lines drawn in decency, to be attributed what another does in the film either by depiction or by reference to name. In such instances the association has intervened in the past and sought the exclusion of the respective scenes from the film. The situation in question related to the obscene depiction involving a leading actress of the Tamil cinema under a well-known director and actor. The actress in the present case was Sukanya and the lead actor kamala Hassan. The producer finally relented to expunge the scenes. The objection was with the obscene use of a double in a nude scene for the film 'Indian'. The association intervened and directed the lab not to release the picture until the issue was resolved. The lead actor wanted the original shot to be retained nevertheless around 400 feet of the film had to be snipped off. Though the exact instances where in the association would intervene is not defined nevertheless it can be said that the association would intervene in case of a complaint regarding unhelpful working conditions and indecent and indignifying treatment both on and off the screen. It can be inferred that many of the disputes are resolved at the desk of the professional body itself through its use of mediations and good offices without recourse to the courts.

The responsibility on the organization is very onerous as there is never a proper script in advance and only a thin story line is narrated to the artist before hand. If the actress is uncomfortable with an actor or a scene then she communicates it to the director. There are no clear-cut rules in this regard. But the actress cannot be forced to enact a scene that is derogatory and in dignifying. It is through mutual cooperation and understanding that the work has to be executed. Even if the script demands it, the actress can object to the scene if she is uncomfortable doing it. But all these situations also raise probable consequences whether the actress can be terminated in such an instance and the amount received from the

35 As narrated by Sri K.Selvaraj, Executive Member of South Indian Film Artists Association on 14th September 2003 at Chennai.
producer given back to the producer or to give her the remuneration for the share of the work contributed. The matter is not something left to the will of the director or the producer alone. The actress is seen to have recourse and can disagree keeping in view the accepted trade practices like informing the lab. Thus there are certain implied norms that have to be adhered to and it is not a one-sided power relationship between the producer and the artiste. This is not a general characteristic in the country though as during the Manisha issue the Association in Mumbai kept mum over the issue. However issues are frequently brought to the attention of CINTAA also for resolution. But the standards and norms are hazy and relative with reasonability and subjectivity being an influencing factor. The guidelines are not clear. It is not uncommon for the actors to have knocked on the doors of the court for a fair depiction either in the film itself or in the advertisements to the film. For example Meena Kumari alleged that posters of her film _Saath Phere_ showed her in a bad light and obtained a stay from the court. The Manisha issue clearly brought this to the fore with the actress seeking the intervention of the courts, the Cinematograph Board as well as the Women’s Commission to beget justice. The episode also brought out the recourse to alternate means of third party mediated settlements as well. Recently in the Malayalam Film industry, the two superstars, Mohanlal and Mammooty objected to the use of a facemask resembling their faces in a dance sequence in director Vinayan’s new film titled ‘Boyfriend’. It is important to note that their recourse was not to the courts but to their association AMMA. A letter asking for the explanation from the director was sent by the artistes association to the director seeking his explanation. Thus in a digital age manipulation of images have become commonplace. The hazards of subjectivity in such judgments is evident and the lack of a legal rationale stark. The aforementioned episode

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36 Interview with Rajeev Menon, Secretary CINTAA, 3rd August, 2005 at Mumbai.
37 Quained Najmi, “Double Deal, A new twist to Body Deal Controversy”, _The Week_, September 5th 2002. She alleged that a dupe had been used but the impression created was that she had posed.
38 Note, “Shashilal Nair Apologizes”, _PTI_, October 5th 2002, <http://www.rediff.com/movies/2002/oct/05nair.htm> as on 1st January 2003. He had to tender an unqualified apology to the division bench of the Bombay high court for having sought the intervention of a third party while the matter was sub-judice.
40 The same superstars did not object to a similar choreography in an earlier film of Lal Jose. However it is a matter of conjuncture whether their permission was sought for the same.
reveals the lack of a coherent legal logic and also the increasing reliance on unions and associations to settle such issues.

**Self Regulation - Role of the Collective Organizations in Standardizing Practices**

It is important to note that the film industries on a pan Indian scale have been inclined to self-regulation rather than being regulated by the state. This is significant considering the fact that any introduction of a copyright based solution or invocation of intellectual property character through the means of statute would also result in animosity from the producing interests. In the south the need for self-regulation was felt by the industry during the seventies. The film industry in Bombay had already adapted to self-regulation practices as well as bargaining since the late fifties. The code of conduct formulated to regulate the film artistes did have a determining impact on the working practices of the artists. But it touched only a fringe of the real problems of insecurity, uncertain contractual practices and the artistes' welfare. The self regulatory norms mandated the need for the script before the commencement of shooting; the shooting schedules had to be filed in advance particularly the call sheets had to be provided to the directors, artists and the technicians. The consent of the artists, directors, music directors and technicians would have to be in writing. The schedules have to be such that the shooting would have to be completed within one year from the date of the first shooting day.

The artistes were to be on the sets on time fixed for the commencement of the call sheets. The producers were to honor all their commitments and be regular in payment as per their understanding with the artists and technicians. It was also mandated that the artists, technicians' studios and others should keep up their commitments and obligations as agreed to by them. It was also mandated that before the release of the picture that all the dues to the artistes and others must be met by the producer. In case of disputes a self-regulation committee would be constituted. In case of nonpayment of dues the committee shall instruct the lab

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41 Interview with Sri Chandrasekhar Gourishankar Vaidya, at Mumbai on the 3rd of August 2005.
42 *Journal of the South Indian Film Chamber of Commerce*, Madras, Oct. 1970, p.13. Though the written contractual obligation was made mandatory through the self-regulatory measure but the consequence of breach has not been spelt out.
not to deliver the prints unless the claims are settled. But such references shall not be made at least seven days prior to the release of the picture. With regard to rest of the areas of understanding in case of any dispute the self-regulation committees' decision would be final and binding upon the parties. Another significant point stressed was that the choice of the technical and other personnel for the production would vest with the producer. It is important to note that the self-regulation committee was serious about the resolve to set their house in order.\textsuperscript{44}

The eighties could be considered as the period in which the conditions in the film industry brought to the fore the dissatisfaction of both the employees as well as the employers. It was the trade unions that began to place fresh conditionality before the producers. The unwritten code system was proving to create misunderstandings and exploitation of the worker as well as the producer. While the trade unions demanded their dues aggressively the producers were known for nonpayment or delay in the payment of wages. The trade unions in turn would demand delayed wages even at the rate of compound interest. The situation led to confrontation and resort to agitation like strikes and lay offs. The consequent effect on the production in the industry impelled the need for corrective measures by drawing up a code of conduct agreeable and adhered to by all sections in the industry.

It is noteworthy that the grievances of producers appear to be targeted against the trade unions rather than the performing artists. Thus while the artists appeared an easier lot to tackle the trade unions were found hard to tackle through accommodative practices. It is significant that in the south Indian film industry the performer (character Artistes) were not organized on the trade union lines or if they were in any manner organized did not enter into periodical tariff arrangements. This could have contributed to the character artists being more pliable and less complaining.

\textsuperscript{44} ld.,p.17. Within a period of two to here months the committee took note of some of the disputes that was brought to its notice. That included questions regarding the amounts due to the artists, call sheets of artists, shooting without clearance certificates and it seemed it had all been tackled successfully wit the cooperation of members.
Self-Regulatory Methods to Resolve Disputes

A mutual agreement was entered into between the FEFSI and the South Indian Film Chamber of Commerce for resolving disputes. The resolving mechanism was to be in place for a period of 5 years. The body called the Joint Consultative Committee would need a quorum of three from either side. A procedural modus operandi was also formulated where the complaint would be processed and attempted to be resolved. The employee can raise a dispute through the craft union and the union will write to the employer to have the issue settled. If this process does not yield results then the craft union would write to FEFSI and the latter would address the employer. At this, the employer can refer the matter to the SIFCC (South Indian Film Chamber of Commerce) and it can write to the FEFSI. The matter would then be referred to the JCC (Joint Consultative Committee) and its decision would be binding on the both the parties to the dispute. Thus mutual mediation is the preferred method. There was still no call from the unions or from SIFCC for a legislation or statutory standard to regulate the industrial relations in the film sector. The SIFCC would advise its members to adhere to the format, as notified in the gazette by the central government under the cinema workers and cinema employees' welfare act. However the representative bodies do not insist upon this. In case of disputes and the agreement is not in the standard form the minimum wages would subsist according to the tariff fixed mutually between the bodies.45

It is important to note that the mandatory legal provisions have an optional character from the perspective of those in the industry. Thus a lot of leeway was provided to the players in reference to the explicit and oral agreements. There were to be no unilateral action from FEFSI side and no disruption in work from either side as well.46 The role of the artists in these deliberations appears to be unclear particularly since it is also an affiliate of the Film Chamber of Commerce.

45 Journal of the South Indian Film Chamber of Commerce, Madras, June 1987, pp.5-8.

46 Ibid.
There was also the tendency of the trade unions dictating to the producers as to who should work for them. The producers also resented this. It is noteworthy that the need for a code of conduct and the need for a dispute resolution body were realized by the producers. The producers began to talk with the FEFSI in this regard. The need for respect of agreements and a pronounced code of conduct to be respected along with recourse to a dispute resolution body was desired by the interests in the industry. Significantly a statutory resolution to the problem was either not contemplated or was not desired by the important players.

However despite these bold initiatives (since the beginning of the eighties) practical difficulties have surfaced in the implementation of the dispute resolution and the agreed code. Implementation appears to have struck a jarring note and adherence was also piecemeal. The showdown between the might of the workers unity and the capital investors continued sporadically requisitioning the creation of more constructive measures. But despite the difficulties in stitching together compromises the industry still strove to self regulate rather than invite the states regulatory frame to bring in order.

Since the year 1989, the standard form agreements have to be reviewed every three years. While there appears to have been no striking participation in the talks by the artistes, there is significantly no standard agreement that has been drawn up with respect to the artistes but a model agreement has been endorsed. The endeavor was to standardize agreements in the entire gamut of the employee – employer relations and to streamline the production of films so that the industry functions without hassles and allegations of harassment in any manner. Interestingly it cannot be considered a voluntary self-regulatory measure, as there was a significant participation and supervision of the same by the state of Tamilnadu. Thus the state had played an important role in the drawing up of the terms and conditions between the producers and the workers under supervision from the labor department.

The reason for this was a standoff and a prolonged strike in the industry begun by the cine ligh men for better wage rates. Even in this impasse the artists do not seem to have come ou stridently to voice their own claims nor is the focus on them
It is important to note that the need for standardization has not arisen owing to any issue with artists acting as a contributory factor though the acting fraternities too have been benefited by these self-regulatory standardization measures. There is no conspicuous presence of any artistes' representative in the tripartite committee formed for the supervision and implementation of the said aforementioned agreement.

One can see similar self-regulatory initiatives both in Bombay as well as in Kerala. There too the artists have not been the reason for these changes. However these mechanisms of regulation like the joint committees have been in vogue in Mumbai as well. Despite the performing artistes being registered as a trade union agreements in the form of minimum wages do not find a place there.

In the eighties, with the break away of the south Indian film industry into their respective states the activity in Madras as a hub of the south Indian movie film production had ebbed. However, production still continued in Madras but the wholesome dependence was lost. Of late with the influx of cable television, rise in the cost of production, change in the public taste and perception and rampant video piracy the film industry in Kerala has not been facing good tidings. The pressure of the industry passing through a critical juncture was being felt on the personnel including the artistes as well as the producers and distributors and exhibitors working along the chain of cinema entertainment. With returns not rising to the costs incurred defaults along the payment line and mirage of adversities began to be seen and arbitrary counter measures began to be proposed in order to ease the pressure or the financial emergency. The countermeasures proposed triggered a catastrophic standoff that led to a total stoppage of all production for over 3 months.

Organizational Moves – Increasing Consciousness of Rights

During the last bend of the nineties one can discern a move to form organizations along trade lines in the Malayalam film industry. This can very well be considered as responses to the changed circumstances where in norms and practices of yore had begun to come under strain. It was also a pointer to the fact that the Malayalam film industry had begun to take roots and a permanency in the state of
Kerala or a self sufficiency within the state itself and its historical ties with the south Indian fraternity was no longer essential. Therefore a wholesome restructuring appeared to be essential as organizations in Chennai were no longer effective to counter and tackle issues of production in the state of Kerala. The Association of Malayalam Movie Artists (AMMA) was formed in the year 1996 and the Malayalam Cine Technicians Union (MACTA) was formed soon after. Both these outfits were formed ostensibly for the welfare of their members as well as for protecting their interests.

Factually one can notice an increase in issues coming to the fore with the organizational developments. Either this is a mere coincidence or by design, but it is a significant factor. Issues about which the writers and actors were not willing to speak about were coming out of the closet and debated at the organizational level and disputes discussed in the public forums and news media. Earlier there was a fear of being ostracized by the producers and so several instances of injustice and unfairness was pushed under the carpets. However the growth of the star images and the realization that market was being controlled not due to the guile of the producers tact but the actors mass following and endearment has perhaps led to a change in the distribution of power within the film industry. One can also notice a growth in the image of the lead stars in the film industry in Malayalam that has grown beyond the borders to an international stature. The actors themselves had turned producers also so they had come to realize the actualities in the production of films. Further the influx of trained hands in the film industry had set in expectations and the need to sustain professionalism in work practices. Issues such as restraint on trade and non-payment came to the fore as the Malayalam film industry tried to grapple with the new dictates of the entertainment market.

Some of the issues that came to fore included the case of bouncing of cheque’s that was becoming a common phenomenon but rarely spoken about but of late, post -organizational endeavor, the actors have come into the open about it. It


also brought to the fore the primitive instincts or resort to practices like isolation and boycott of the creative artist by the industry. The issue showed that organizational interference could ease the pressure on the individuals who earlier found it extremely uncomfortable to bring such issues to the open. The issue also points out the state of practices in the film industry where in written documents is not part of the usual contractual practices and the industry functioned on the basis of faith, goodwill and cooperation.  

A most striking aspect of these episodes was the extreme care taken to keep the role of the government from interfering into the issues afflicting the film industry. The episodes also brought to the fore the growing concern among the artistes, the technicians and others that something drastically had to be attempted in order to secure their economic and social security. The three wings of the industry attempted like their senior counterparts in Chennai to resolve differences by entering into a written understanding according to which the conduct of the constituents would be guided. It was to be supervised by the tripartite body having representatives of all the three bodies. A 21-point agreement was entered into between the three organizations to address the issues thrown up by the adverse circumstances in the film industry. The initial 21-point agreement was entered into by the three principal components of the Malayalam film industry-AMMA, MACTA and the Kerala Film Chamber of Commerce and Industry. It can be seen that the agreement reflects the endeavor to circumvent the crisis of survival that the Malayalam films were fighting out. Besides several economy measures like limiting the number of

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50 According to superstar Mohanlal, it is the kootayma (cooperation unity) that sustains the industry. One of the points that he stressed during the press conferences held in the midst of the film industry crisis.


53 Entered into on 13th of December 2002, Friday. The signatories to the same were Sri Siyad Kokker on behalf of the chamber, Sri K.G. George on behalf of MACTA and Sri Mamumotty on behalf of the AMMA. Bulletin brought out by the chamber during the crisis detailing and reminding the industry that the AMMA was breaking its word on the issue by indulging in stage shows that had been banned in terms of the agreement. Courtesy: The Kerala Film Chamber of Commerce Bulletin.
assistants and other personnel that the performing artist could bring along, the agreement also stipulated that the script should be finalized before the shooting commences. Most importantly the provision with respect to script marks a big change to the manner of functioning of the traditional film industry. Importantly the director, scriptwriter, and producer or the production supervisor on behalf of the producer will have to testify the Script to the Technicians Association. It is only on the basis of the No Objection Certificate provided by MACTA that the shooting can be commenced. Most importantly when the film arrives for title registration at the film chamber, the producer will have to give an assurance that the respective producer has engaged only the members of MACTA. Those of the new comers will at least need to take a temporary or provisional membership of the technicians association. This is a significant clause, which forbids engagement of outside hands, and therefore the security afforded by the association cannot be circumvented. Another significant clause is the complete embargo on the producers, distributors and exhibitors in engaging in television production. Most importantly it has been stipulated that the producers while engaging artistes or technicians should enter into written agreements with them. (Though they had not decided the composition of the agreement). The producers also entered into an agreement with the artistes in the Malayalam film industry. The leading actors and actresses or those with equal importance should stay away from appearing in television serials and regular shows. The same would be brought to the notice of the association of Malayalam movie artists and the latter is expected to take due steps in this regard. Other than the front line actors others must see to it that they do not disturb the call sheet commitments given to films producers and if any disturbance to the shooting schedule happens then the same would be communicated to AMMA to take action. It is mandatory that call sheets are procured from the artists with their signatures on the same and this is applicable to all artists bereft of any distinctions. AMMA is expected to take action against these artistes who are reluctant to sign on the call sheet to the concerned producer.

Most importantly the artistes who are engaged to be acting for any producer are expected to be members of the AMMA. It is for the producers to make sure that

54 Kerala Film Chamber of Commerce Bulletin, 13-12-2003, p.10.
the artiste is a member of AMMA or not. If not, then if the artiste approaches the
association for membership then the association shall certainly make an award to
this effect. However of late there is a rethinking on this from the AMMA circles.
The cine artistes are restrained from either producing any television serials or
from appearing in any advertisement on behalf of any of them. Actors who are
receiving more than rupees 50000 for a film were to reduce their remuneration
25% to 30%. The remuneration should not be increased for the next two years.
Those who are not amenable to this would be liable to action by the chamber and
AMMA.

It has been agreed that that up to 2 lakhs should be paid to the artists at the time
of shooting and dubbing and those who are to earn more than rupees 2 lakhs are
to be paid 2/3rd at the time of shooting and dubbing and the rest 1/3rd only in the
event of the producer producing the lab letter to the chamber and it would be the
responsibility of the chamber to see to it that the rest of the amount is paid to the
concerned artiste.

Most significantly, the agreement mandated the need for written agreements like
in the past in order to protect the interests of the either side and the written
agreement must include the date, the remuneration agreed upon and a copy of
the same should be given to the producers association, the film chamber and the
artists association. Fund raising programs conducted by AMMA as well as
MACTA should have the permission of AMMA and the chamber. The artists and
the technicians are expected to desist from cinema-oriented programs and avoid
giving regular interviews to the television.

This agreement did not hold well with the artistes deciding to unilaterally hold
stage shows to be eventually telecast on the channels for raising funds for the
welfare of the artists. This led to a standoff between the artistes and the chamber.
Shooting came to a standstill for well over three months throwing the industry into
a grave crisis. The episode also saw schisms in the artists unity where in a
significant minority of actors decided to sign and stick to the agreement insisted
upon by the film chamber. They found nothing wrong with the terms of

55 The Agreement was signed on behalf of the Chamber by T.T. Baby, on behalf of AMMA by Sri
Mammooty and on behalf of MACTA by Sri Sibi Malayyil.
56 Vipin V. Nair, "Film Industry in a Soup", The Hindu Business Line, April 21, 2004,
as on April 22, 2004.
restriction imposed upon stage shows or insistence upon arbitration. This led to the artists' association threatening to take action against them. The episode brought to the fore the helplessness of the government to bring the parties to the negotiating table. The government maintained that it had intervened only because of the lives of innumerable workers that were at stake. This revealed the attitude and the seriousness with which the government of the state perceived the problems of the performing artists. While the artistes were keen on government intervention into the problem, the chamber was not inclined for the same.

The episode also brought to the fore the indignation among the artists for a fair level playing field and the question whether the chamber was imposing conditions fairly and whether a unilateral imposition could be termed as the customary pattern of the industry. The episode also revealed the divide in the film industry between the various constituents of creative bloc like the artists and the technicians. The technicians association was staunchly behind the Chamber and found nothing wrong with the conditions imposed. Further they also appropriated themselves to the mantle of creative contributors and the artists as being merely the performers. The incident also showed that it was the artistes who yearned more for governmental intervention than the coterie of producers.

The episode revealed the fact that the formulae (the agreements entered into) as a panacea for all the ills besetting the film industry in the current circumstances lay elsewhere. It also points out the fact that the desperate film industry players were forking out solutions by even riding rough shod on the rights of the artist and technicians to practice their profession and trade that verges on anti competitive practices thereby perpetrating likely violations of the principles of restraint of trade and unfair practices. Instead of adapting to change in the entertainment

environment, the film producers are trying to take an intimidating approach towards the television medium and the artists’ freedom to creativity and practice of profession. Nowhere in the world where in collective bargaining agreements have been entered into has such a curb on the freedom of the artists been imposed even if on the plank of self-regulation. The aforementioned state of affairs in the Malayalam film industry is symptomatic of the state of affairs in the film industry all over the country. The point is that it is only the episode in the Malayalam film industry in recent times that these issues have surfaced out into the open as a stand off. It is noteworthy that other than prescribe the restrictions on the artistes there is very little in the agreement regarding the duties of the producers towards the artists working in the film. The issues such as restraint of trade or unauthorized exploitation by the producer have not yet formed part of issues discussed in the film industry. It is thus not surprising that these measures are turning up to be adhoc and falling short of being a long term solution to the malady afflicting a sick film industry. The real solutions to artists bringing down their demands of increased remuneration lies in providing them long term financial, economic and social security with a sense of certainty.

Practices and Working Conditions in the Film Industry

There are fairly uniform impressions of the form of practices and working conditions in the south Indian film industry and in the Western film industry in India and no indications of any divergence in trends in the rest. While written

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63 The following assessment of practices is based on interviews and doctrinal material gathered from the individuals and organizations in the film industry. A model questionnaire concerning core issues was followed during the interviews to gauge the practices in the film industry. The same was adapted to suit the individual and the organization. See Annexure I.,p.XII for the model Questionnaire for interview. The Interviewees included Sri Adam Ayub (Director, Actor and Producer and founder President CONTACT), Ms. Anupama (Asst. Director), Sri Anwar (Programme Producer –Doordarshan), Ashok.k.Jagtap (President, Cine Musicians Union), Balan K.C.N (Secretary Junior Artists Association), Bhagyalakshmi(Dubbing and Voice Artist), Chandrasekhar Gourishankar Vaidya (veteran Director, producer and Actor and Office bearer of Employees Associations) , Devanand ( veteran Actor,Producer and Director), Dinakar Choudhary (Secretary General IMPPA), Favio D’souza (C.E.O., IMI), George, K.G. (Veteran Director and President of MACTA), Glen( Senior Junior Artistes)), Himanshu Bhatt ( Singer,Hon.Secretary AlPEC and President Cine Singers Association), Haripad Soman ( in cond. on next page)
agreements have been desired by almost all representative fronts of the film artistes, there has been little practical adherence to the same in the film industry. Both the artist as well as the producers has only tried to evade any written obligation considering the fact that any written obligation could inconvenience the multiple assignments that they regularly enter into and the haphazard manner of executing them. There is nothing in the nature of a formal professional practice in the film industry. All understandings are based on an attitude of give and take. There could be certain transactions where in work is executed on the basis of written understanding and standardized procedures but mainly the dealings are based on mutual goodwill and cooperation. It is an environment in which informal relationships thrive. Even if a written agreement is entered into between the performing artist and the film producer, the terms would be make believe and the sum to be paid would be a shade of what is really transacted. There is no law that requires the contracts to be mandatorily written. The organizations do not scrutinize that the same is carried in deed. Even if there are stipulations in understandings between artists’ organizations and the producers’ organizations that there shall be a written agreement, it is rarely that this is carried out in true spirit of the agreement. It is observed more in breach. While the need for a written agreement might have been expressed wherever there has been any organizational effort, at a pan Indian level, the expression that best describes the relationship in the film industry is that of a ‘gentleman’s word’.

veteran dubbing Artiste and Supporting actor Idavella Babu (Actor and J. Secretary AMMA), Jai Sheel Suvarna (voice Artist and office bearer –AVA), Jalabala Vaidya (Actress and Theater Personality), Janani Ravichandar ( Asst. Producer), John Mathew Mathan (Director and Producer), Jose Prakash(Veteran Actor and Producer), Krishna Das Ace percussionist Edakka Player), Late Smt. Leela, P. (veteran playback and recording artist), Louis Mathew (Programme Officer Chalachitra Academy) , S.Chandran(Exhibitor ,Producer & Office bearer ,Distributors Association), Mohan , Oman T.R. Raja ( President of Junior Artistes Association), Rajeev Menon ( Secretary CINTAA) , Rajeev Ranga (ex-President Cine Dancers Association Mumbai) , Rajendra Babu (Script writer and Office bearer Malayalam Chalachitra Parishad), Rakesh Nigam (C.E.O ,IPRS), Rana Prathap (Programme Officer A.I.R.), Rasheed Mehta (Movie Stunt Artistes Association) , Rita Mehta(voice artist), Selvaraj (Director and Office Bearer), Sampath kumar ( Actor), Shivrul Suvarna ( dubbing and voice artist) , Sonic, O.P( music composer), Sri Madhu (Veteran actor ,producer and Director), Thankamma Shetty ( Secretary of AIMPPT), Theodore Bhaskaran ( Film Historian and Author), Upendra Channana (Secretary of Indian Film Directors Association), Vaudevan,T.E ( Veteran Producer), Lt. K.N.Venkateswaran (General Manager ,South Indian Film Chamber of Commerce) , Vishnu Sharma(Voice Artist), Vishwas Njarakkal (Actor).

64 Ibid. While there was a broad concurrence of opinion cited below by all those interviewed in respect of the following inferences, some of the names of those interviewed are cited along with the inferences.
The agreement is mostly for the payment of a fixed amount for the labor rendered by the performing artist and it is rare and restricted to the superstars that additional stipulations granting any other means of gratification is mentioned. Like for instance in exceptional circumstances, through the grant of satellite rights or any particular territorial rights. For the vast majority of artists there is no practice of any repetitive income from any exploitation made of the film. Once the film is made or the acting is rendered then the rights are transferred to the producer and he is the final owner of the film. The concept is not as well articulated; it is important to note that those in the industry only state that there is no further right for the artist generally and they do not speak in the jargon of transfer of rights.

The actors are scarcely aware of the legal issues or the law on the point, as they do not bother about the same. Most of the actors do not bother about these technicalities and consider themselves lucky with the opportunities that they get. While a rigorous regime that follows written agreements and formal contracts would surely help when defaults are made with respect to the promises, a lot of features have to change in the industry if this is to happen, like for instance the pattern of finance in the film industry, the incidence and the manner of tackling piracy etc. In circumstances where in the film industry is fighting against heavy odds there is definitely no room for these honest practices as no one with 'good' money would be willing to invest in a risk borne industry.

Any dispute with respect to the work get settled through mediation rather than through any resort to the formal channels of settlement. The artist represents to the organization, which intervenes in case any request or complaint is made to it. In most cases the issues are settled mutually without recourse to the courts. The artist tries to avoid raising issues in these circumstances because he could be jeopardizing his chances in the film industry vis a vis the same producer or other producers in the industry unless his bargaining power in the industry is beyond these pressures. Boycott of artists are normal practices if they do not bend to the whims and dictates of the industry.

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Interview with Sri Edavela Babu, Joint Secretary of AMMA on 25-11-2004.
Since the commencement of independent production in the film industry varied trends can be seen with respect to practices in the engagement of the artists. Both written and oral agreements are part of the practices with respect to the engagement of the performing artist in the film industry. The practices varied according to the stature of the artist. The written agreement (if it was resorted to) did not have a standard format and included usually a letterhead with dates for the shooting and the payment made. The payment was made initially with an advance; the rest made in scheduled payments with the final installment to be paid either before or after the dubbing was over. Any delay on the part of the producers to execute the contract was adjusted and accommodated between the artiste and the producer. There was no hard and fast rule in this regard. A statement of balance used to be taken from the producer before the dubbing was over. Thus there was accountability with regard to the payments that was received from the producer. As there was a written instrument there was no opportunity to default nor would there be any ambiguity and misunderstanding as to the payments made or to be made in the future. The remuneration has always been fixed. The need for formalities depended on the standing of the star rather than any standardized observance and these varied from actor to actor according to the respect commanded by the artiste. Thus while the stars do not have a bother, the other artistes are insecure with regard to the payment promised.

There is no mandatory dictum, stricture or a statutory rule demanding that the agreements should be in writing. The agreement is drawn between the producer of the film and the performing artist. Most of the deals are made on the basis of informal promises based on mutual accommodation and understanding. In its most informal form as an oral understanding even the date and the period of the project are tentative or not discussed. The film actor merely accepts the token

66 Though the statements are contradictory and there appears to have been an incidence of both versions of contract, nevertheless there appears to have been a greater incidence of written contracts before the mid seventies at least in the south Indian film industry.

67 This seems to be more of a statement of accounts for accountability rather than any agreement with respect to the work done. But generally even that was a rarity. Interview with Madhu on July 16, 2003 at Trivandrum.

68 But versions differ depending on the category occupied by the film artiste. Interview with Sri Madhu of the Malayalam film industry who was a star in his own right during his professional days. Sri Madhu began his career in the film industry in the 1962 at the age of 29 after passing out from the National School of Drama, New Delhi under Chandrathara productions.
sum of advance agreeing to work for the particular banner or producer. Thus the commitment is to execute the work proposed at some point of time and to produce it in mutual convenience. The actor may not even know of the story line or as to who the co actors are and even his own role might be ambiguous and hazy. In case of default very rarely are courts resorted to as a measure of performance of the oral agreement. Informal interventions are made by friends and those within the profession to reach an amicable settlement in the matter. There is no bar to the artiste taking up simultaneous assignments provided he is available when required and these considerations are all flexible with compromises being made. Thus it can be inferred that there is only fixed remuneration in the film for the actor and that is the accepted practice. There is no practice of deferred payment (back end payment) or increment based on the exploitation or on the profits made when the film is put to a new use or exploited on another medium. The stars could raise their remuneration prior to the shooting if they have prior intimation or understanding that the film be dubbed into other languages. But scarcely has any objection been raised when the same film is being dubbed into another language. When the same film script is being re-shot in another language with the same star cast, the stars can demand another remuneration, as it is a new film altogether for which their acting skills are put to test all over again. The presumptive practice has been that the performer has no lien on his labor or no further right on his performance once he has received his down payment or the fixed sum in installments. The accepted practice or norm being that all the payments must have been received by the time the film is processed at the lab.69

The Superstars and Contracts in the Film Industry

Contracts and privileges for the film artiste vary according to the category to which the artist belongs in the film industry. The status of the main artistes and those enjoyed by others vary. The bargaining position is stronger for the former and therefore both with respect to remuneration and the working conditions the main artists are in an advantageous position. This categorization is not an arbitrary one made by any particular individual or coterie rather it emanates from

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69 Interview with Sri Sampathan, Manager of FEFSI on the 11th September 2003.
the popular support among the filmgoers in the country. As long as a film artiste commands a following of fans at the box office, i.e., is considered as a major artiste. The super stars are the crowd pullers many of whom are the reason for the story rather than the other way around. They can dictate their price according to the estimate of the popularity and likely market of the film. The manner of payment can also be drawn according to their preferences, as most often the producer would not be able to meet the cost that has to be initially incurred as star cost. In order to facilitate payment in such cases, the agreements are drawn up which assign exploitative rights to the artist. Either this can be in terms of a proportion of returns from the market or it can be in terms of returns from the territory or it can be in terms of the returns from a medium of exploitation. This arrangement is mostly only in lieu of a fixed amount and not any recognition of a royalty based system based on the notions of intellectual property in the performance. It can be drawn up also in addition to a payment of an agreed fixed sum depending on the demand of the actor and the contract drawn up. There is no general notion of any payment being paid only upon the success of the film in the market or on the basis of a percentage of the collections in the market where the film is exhibited. The likelihood of such contracts being drawn up is with respect to the top stars who cannot be afforded by the producers. The stars of regional films command anything between 25 lakhs upwards per film. Loose estimates hover in the region of 2 crores for some of the bigger regional film stars in markets like Tamilnadu. The stars on the national platform like the film industry in the bollywood command anything beyond this limit. Therefore with respect to the hot stars in the Indian film world different models of agreements or rather packages are being tried out. The stars take into account all forms of exploitation for the present and the future before striking a deal. They are more well advised and know the true exploitation possibilities to quote a fair return for their following in the market. Thus a trend of the producers bearing less of the initial burden owing to star costs has been offset by these arrangements that includes the residual payment based on mutual contracts. There is no customary practice of

70 In this respect it can be said that there is an element of honesty in the film industry.
71 One live instance of the agreements with respect to the mode of payment has been illustrated in Fortune Films v. Devanand, AIR 1978 Bom 17 where in payment was to be made in LIC annuity policies. Megastars like Rajani Kanth (for the film Baba) and Amitab Bachchan (for the film Boom), Aamir Khan (for the film Mangal Pandey) have received remuneration by way of satellite rights and overseas rights or territorial rights.
residual payments in India rather such mechanisms are innovations on the basis of individual contracts.

Problems Facing the Artists

The problem of dishonored payments and cheques occurs frequently in the film industry. This is attributed to the producers' inexperience or their lack of credibility in the film industry. Much of the work in the film industry is done on the basis of personal relationships. Instances of non-payment or cheque bouncing are not resolved by recourse to courts but mediators are called in to settle the issue. The mediators can either be individuals or organizations that represent the performer. The disadvantage that does not inspire litigants to seek judicial intervention can be attributed to the long time consumed by the courts for resolution of the dispute. Apart from the very well known stars who can demand and dictate the bargain, the others who perform above the rank of juniors and the extras do not enjoy the security of proper payment nor the representative valor of the trade unions. It is heart rending that one can even find the artistes with over 25 years of standing dependent on the industry still going without payment for the opportunity or negligibly paid as against what was originally promised to them.

There are those who are wholly dependent on the film industry as they left their lucrative stage and other professional talents to the vagaries of the film world. Thus there is a broad category that suffers economically and is prone to exploitation. In spite of the huge banners under which they have had to work, their remuneration for small character roles was in the range of Rs. 300 to Rs. 500 per day (even today) and not infrequently nothing at all. The business relationships are based on the personal understanding and what is given cannot be called remuneration rather it can be considered as an informal gift.

72 Even superstars have been victims of bounced cheques. In fact Dileep has had to take recourse to the courts for a cheque that did not come good at the bank from Dinesh pannicker supposedly a safe and credible producer with several films to his credit.

73 Today AMMA, representing Malayalam film artistes, takes up the cause of the artists who face any of the problems aforementioned.

74 Interview with Haripad Soman, on 2nd July 2003 at Trivandrum and at Chennai on 11th of September, 2003 at Chennai. An actor in around 200 films as both dubbing artiste and a performing artist in the Malayalam film industry based in madras. But not in the star or popular supporting actor category. Today he lives with a hand to mouth existence in a one-room apartment in Chennai along with his wife and two teenage children ready to do any job that would come his way.
payment ranges from Rs. 3000 to 5000 and it is unrelated to the duration of engagement. It is usually the manager who comes and calls for an assignment. There were no written agreements and it was all orally agreed between the manager or the producer and the character artiste. As for dubbing assignments there was a marginal difference between the remuneration when the voice was dubbed for the superstar and the rest. There was a slight increase when it was to be dubbed from one language to another.

In case of disputes the matter would go to the union and it is on the basis of a compromise that the issue is resolved. That is if it were Rs. 5000 that was promised then it could come down to Rs. 3000 when the dispute was settled and 10 percent would be given to the union for their services. However seeking the mediation services of the union is considered as a minus mark in the film industry and the future prospects for these artistes in the film industry (particularly those in the non superstar and non-junior categories) would be in peril. The artistes feel that neither the institutional mechanisms nor legal regulations work in the film industry.

The unions do not make or impose mandatory observance of having a written contract in order to uphold the claims of the actors under the contract. The voluntary organizations formed for the protection do not inspire much confidence either. Their membership fee is in itself a disincentive to join.\textsuperscript{75} Even when the films in which they essayed a role has done exceedingly well and have topped the box office charts, the artiste's have not received anything more than what he received as a paltry one time payment of a fixed sum.\textsuperscript{76}

The artists do not enjoy any economic or social security. Presently there is no assured pension or any other scheme from the state or the union government. However certain voluntary artistes organizations like AMMA\textsuperscript{77} have begun making provisions for pension (about 1000 rupees). Though it is quiet negligible. It is provided out of the interest accrued from the amount raised out of the performances and functions (stage shows) conducted by the organizations. The

\textsuperscript{75} While the Malayalam movie artists association charges a one-time fee of 7000 rupees and a yearly fee of Rs. 600 the Chalachitra Parishad charges a sum of Rs. 200.

\textsuperscript{76} Sri Haripad Soman began his career in the year 1975 under director Sreekumaran Thambi, a well-known film director. He has acted in numerous films in character roles that have gone on to become super jubilee hits in the Malayalam film industry under well-known banners. Yatra, Padayani, Hridayam Padum, Kailu Karthyani, Vandamam and Chitram are some of them.

\textsuperscript{77} Association of Malayalam Movie Artists (AMMA).
criteria to be fulfilled for eligibility can be unemployment or ill health. But the artiste does not become automatically eligible for the pension once he becomes a member. Rather he has to apply for pension and the office bearers in charge would process the application. There is considerable discretion whether to allot the pension to the applicant. The Artists considers this degrading to his status after having served so long in the industry. The desperate artist is dependent on the help and kindness from others. The state has not yet begun to treat the artiste like any other employee in any industry. As the artists and the industry are contributing to the taxes, it is essential that they be supported during times of unemployment.

Generally there is no insurance during the course of the shoot. For instance, superstar Jayan (Malayalam film industry) who died while shooting for the film *Kollilakkam* was not covered by any insurance. There is neither any welfare fund nor any help otherwise. There is no institutionalized assured system for aid during unemployment.

Thus the perils of the trade for the artiste reflect no standard practice nor mechanism to provide economic and employment security. Besides, there is no social security in the form of insurance or old age pension. Today there are organizations that upon their discretion come to the help of the artistes. The organizations of the actors are not professionally organized and are not headed by those with a long-term vision. A semblance of unity is not materializing. The star system is a major stumbling block for the unity.

Though the question of pension, remuneration, medical and accident insurance, and the need for a legal framework have been discussed not much of a head way has been reached to see these being strictly put into practice at the

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78 Interview with Jos Prakash on 24th November 2002 at Ernakulam.
79 Ibid.
80 If it is prevalent in tea plantations then why not in films asks the veteran actor Jos Prakash now aged 77 and disabled.
81 AMMA and MACTA for the Malayalam film actor and the technicians. Such bodies exist in other languages as well. Most of them following the same modus of discretionary provision for help to the artistes who are their members depending on a lot of imponderables.
82 The office bearers are amateurish and consequently the management is not at all well organized. The leadership including him was and is brainless to do it. Even as the president he was incapable to do it. All are selfish and not concerned about the rest. Even group insurance has to been taken up as an agenda. The reason is the star domination.
83 Interview with Sri Jose Prakash on 24th November 2002 at Ernakulam. Before joining AMMA he was a member of the South Indian Artistes Association as well as the Dubbing Artists Association. Now he is 77 and one of the senior most artistes in the film industry.
organizational level. In fact the reluctance to endorse safe contractual practices can be discerned in the attitude of artists as well as the producers. With the film industry being a safe haven to utilize unaccounted money, the hesitancy to have records of the transactions is easily explained. But this state if affairs helps only those in the higher layers of the star hierarchy. The lack of standard contracts hurts the interests of others who are either not paid or are inadequately paid. However the top stars would find this arrangement inconvenient as it would be constraining their professional commitments that are randomly entered into as adherence to written schedules would make the multiple commitments that they undertake at the same time unmanageable. Therefore the resultant state of affairs is in the interests of the top artistes as well as the producers to make quick money and not externally imposed by any interest in the film industry.

The Intellectual Property Framework Under the Present Conditions

The artistes and others opine that in these circumstances, the adoption of the intellectual property framework could be appropriate and desirable but not advisable under the present Indian conditions. Many facets of the industry would have to be rectified in order to facilitate a residual or copyright model to function, beginning from the need for clean institutional finance to incorporation of provisions, transparency in contracts and legal safeguards and trustworthy collective administration mechanisms to bring about these changes. Even if the envisaged structure would be helpful to the artists lower down, they would not be thinking beyond their chances in the film industry. The artistes would not be agreeable to a complete dependence on this model like for instance the idea of shared profits or delayed payments. As they would not trust any delayed payments in a country with a weak implementation infrastructure. The existing awareness on these issues is very low and none among the artists have dwelled on these issues either casually or with seriousness or been involved at the organizational level.

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84 Based on the feedback and opinions from the aforementioned interviews and other data collected from the artistes, producers and directors in the film industry.
86 Almost all artistes and organizational heads have voiced this view.
87 In the interactions by the research scholar with both artistes as well as different organizations this was a glaring factor. The priority given to this concept was low.
The understanding till now has been that once the artist receives the remuneration for the skills in acting she has no longer any ownership over the product. No sentimental or any other moral claim attaches to the product. They have as yet not recognized any moral claim in this regard. There is as yet no expectation of authorship nor have these issues been discussed.

The attitude is one of pessimism under the conditions prevalent in the industry today. It is felt that though a different format of agreement with the producer would be desirable nevertheless it would not be practical in our country. The size and the economics of the film industry varies in each regional language and therefore the model would not work as it does in western countries with a worldwide market. Importantly it is believed that even if such a system comes into vogue where in the artist would retain his rights in the performance unless assigned, the practice would see to it that he assigns every right in the performance prior to the signing of the movie. The superstars who get their due without fail would not be requiring the help of these provisions and would not be too keen to have agreements in black and white. As for the other artists they would continue to be at the mercy of the producers as they would have to agree to an all out assignment of their rights if any to be cast in the project.

Further unless and until the chain of distribution and exhibition of films in the country is straightforward and transparent the artist would find it increasingly difficult to follow up and administer the rights if ever he licenses the rights granted to him. The organizations at present representing the workers or the artistes cannot be trusted with such an onerous responsibility as they have been inefficient in looking after the responsibilities entrusted to them in the past. In such circumstances, the artists would have no interest in sharing the risk of the film as getting any money in the future is out of question and practically impossible in India. Further the data regarding each and every transaction would be hard to come by. The producers themselves do not have a copyright society to administer the exploitation of their works or scrutinize the same. They do so individually. Though this includes even the webcast and the Internet rights, it is dependent on the individual assignment and licensing of rights. Therefore there is

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88 While all the views were similar, yesteryear superstar of the Malayalam films Sri Madhu was candid in his inference that if such rights were provided by statute hypothetically then the industry would resort to an outright assignment of rights.
The conventional practice in the film industry suggests that once the performing artist consents and performs then the recorded performance is the property of the producer of the film. This is however subject to contract to the contrary. Drawing up a contract to contrary depends on the star value of the performing artist. Thus there are no notions of limited contractual extent or exploitation in favor of the performing artist rather only if there is a contract to contrary is any rights saved for the performer. Interestingly even Sri Devanand who first explored the possibility of a statutory right for performers right by resort to the court is of the opinion that contractual specification is essential if rights are to be construed in favor of the artists as the industry practices presume otherwise.

The transactions between the artists in India and the foreign production companies do not inspire much confidence. Even production companies that come from countries with rights for performers do not extend the same by contract to performers in India when they use the manpower on the Indian soil. For instance the Actor Viswas Njarackal who acted exceptionally in the film "Marana Simhasanam" or "The Throne of Death" received a payment in the range of a few thousand rupees alone. It was a production company based in England run by an Indian (Produced by Preeya Nair and Murali Nair, Director) who received all the accolades and cash rewards even at such acclaimed shows such as Cannes. However there was not even a written contract entered into with the artistes and apparently the film was completed on a shoestring budget. On the other hand a performer in England would have to be paid the residuals.

89 Interview with Dinakar Chowdhary, Secretary General, Indian Motion Picture Producers Association (IMPPA), on 22-8-2005 at Mumbai.
90 Interview with Thankamma Shetty, Secretary, Association of Motion Pictures and Television Producers Association (AMPTPA), on 1st September 2005 at Mumbai.
91 Interview with Sri Devanand, a superstar actor, producer and director for nearly three fourths of a century, at Mumbai, on the 20th of August 2005. He began his career as an actor for the Prabhath Studios in the year 1944 at a monthly salary of Rs. 400.
92 See "The Face of Misery", The New Indian Express (Kochi edn.), May 8th 2004, it carried a photograph of the Actor, Sri Viswas Njarackal at a relief camp trying to get a square meal per day.
93 Interview with Viswas Njarackal at his tented residence right in the middle of a flooded paddy field at Njarackal, Vypeen, Kerala on 1st December, 2001.
according to the collectively bargained contracts as well as the statutory rights. The foreign television channels operating in India taking advantage of the liberalized environment also takes advantage of the absence of a legal regime protecting the performer. The only saving grace being that they insist on a written agreement with a clause that retains no rights in the performer for a single payment with remuneration based on episodes or work per day.\textsuperscript{94}

As for the moral rights of the artists, there is considerable difficulty for the artist to know how the treatment is going to be like considering the fact that the script is rarely ready prior to the signing for the film. There is a lot of distortion and mutilation in the roles essayed by the artists.\textsuperscript{95} Further there is the practice of intermediates incorporating vulgar and obscene bits into the reels too. The present convention is that the producer is provided with all or entrusted with the right to make any changes that he considers essential to the film or modification that he considers essential to the film. The presumption can only be negated following a contract to the contrary that is proved by the artist. The use of the body double too falls into the aforementioned category. If the actor finds anything undesirable in the enactment by his body double then there must be a mechanism to heed his remonstrance. The artist is not consulted before any change is made in respect of his performance. The unions of the artists’ have begun to think about these issues. Though there is nothing expressed in the rules that credit lines should be provided, the practice has come to observe but not uniformly as of a right. It is left to the discretion of the producer. The playback artists are equally concerned about remixing that has been rampant where in the originals sung by them are made often distorted and fused with other new rhythms and backgrounds.\textsuperscript{96} These songs are also juxtaposed on new audiovisuals without seeking the concurrence of the original playback artistes

\textsuperscript{94} Interview with Vishnu Sharma, Office Bearer AVA at Mumbai on the 10\textsuperscript{th} of August, 2005 and with Ms Anupama (Asst Director)

\textsuperscript{95} The Manisha Koirala issue reflected the helplessness of the law to precisely help out the performing artist in this regard.

\textsuperscript{96} See the opinion of Asha Bhosle who says that the permission of the singers also should be taken when remixes are made. See in IPRS Leads Revolt Against Remixes, IPRS, Mumbai.
using their own voices or a version recording is done. There is no one to take any initiative in this regard.\textsuperscript{97}

The artists are not happy with the film industry at present. The center or the state government is not putting in any money into the film industry, as they are willing to do in any other industry. The state does not make nor does it exhibit films. The entertainment tax does not go back to the industry.\textsuperscript{98} Only petty rations like the awards for the best film and the best artists are distributed yearly. The term Industry is only on paper. In other industries a lot of benefits are enjoyed by the labor. In spite of several deputations having gone to the government concerning all these issues there has not been any action so far. There is a need for statutory streamlining as when the law is violated then the artist in the industry can fight on a legal platform.

There should be a right for the performer in the repeated exhibition and derived exploitation unless the contract specifically says otherwise. But the circumstances are such that the producer himself does not benefit from the deal, as at present he does not receive profitable returns from his investment either due to the travails in the cinema industry or because of systemic faults. With respect to derived exploitation from other media, as the exploitation is from songs and scenes, there should be some kind of remunerative arrangement as the channels are earning heavy advertisement revenue. For instance films given to channels for five years are telecast as feature films as well as used for insertions in several other film based programs any number of times. Despite these opportunities, the artist does not receive any returns for his labor.

There is a need for legal awareness among the members in the industry. Even the producers are not taking care to see that the new media like satellite television does not exploit them with an unfair bargain. Initially they used to part with rights to telecast to the satellite companies for as low as Rs.15000/- for a

\textsuperscript{97} Based on the interview with Late Srimathi P. Leela on the 27\textsuperscript{th} of October 2003 in Chennai. She recollected that while she was on the payroll of Columbia Records, artistes such as M.S.Subhalakshmi was with H.M.V. She has had a prolific career both as a play back singer and as a recording artist in all South Indian languages. A veteran singer, since the inception of the playback singing in the south Indian film industry from the year 1947 onwards. She began to sing at the age of 12 in the 1944. But her break was in the year 1947 in the film Kanyadanam.

\textsuperscript{98} Interview with Jos Prakash on 24\textsuperscript{th} November 2002 at Ernakulam.
Now that the possibilities of the new media like cable television or direct to home have become more certain separate commercial treatment for each exploitation should be preferred. In older times the cheque of the music company used to arrive with 5 percent going to the producer and 5% to the singer and the rest to the gramophone company. Today in spite of the tape taking over the cheque with the royalty does not arrive.

In spite of the uncertainties in the model of residual remuneration, the artists would certainly prefer licensing rather than outright transfer. Either there could be rights or contractual instruments – like those enjoyed by certain superstars like Rajnikanth. A model of joint ownership in the film along with the producer is not considered advantageous for the artiste. The percentage royalty formulae would be agreeable provided it is initially met with a maximum single remuneration. The artists prefer a maximum remuneration complemented with a percentage from the earnings because it is neither feasible nor convenient to look to the producer for a punctual share of profits. The same disadvantage is there with regard to the residual payment system after a fixed sum has been paid. But the substantial upfront payment diminishes the latent risk in mopping up the returns arising from the exploitation.

There is a lot of unsolicited and non-remunerative exploitation of performances without the approval of the artists. There should be a law for restraining the use of songs or scenes for commercial purposes through wrongful unsolicited insertions. It must be considered as a breach of contract unless there is specific approval for the same. These additional avenues of commercial opportunity were never contemplated by the performing artiste in films at the time of signing the contract or these terms never found expression in the implied or express contractual terms.

Collective bargaining is preferable to legal mechanisms and statutory provisions as the latter has not proved to deliver results in the short term. The recourse to the courts would be inadvisable as it could take up to twelve years to resolve the issue. There can also be change in the minds of the people and change in the

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100 Sri Jos Prakash used to get Rs. 500 for recording for a film disc.
101 Minimum remuneration guarantee on the basis of seniority or ability would be difficult. Even a carpenter gets Rs 250 daily.
102 Interview with Jos Prakash, veteran actor 24-11-2002 at Ernakulam.
circumstances and fortunes in the industry. Legal framework could turn out to be rigid in this context. Even now issues are being settled through collective bargaining and mediations. Voluntary mediation and self-regulations would be desirable though minimum legal safeguards would be welcome.

Though the idea of a royalty system and the collecting society administering the same is desirable considering the fact that the old age, unemployment and illness are realities with no resolution in sight for the artistes at present, the artistes are skeptical to the idea of the royalty based system of remuneration. The artistes fear that such a society would not be managed efficiently and there would not be trustworthy distribution of the royalties received. This is based on their experiences with the voluntary organizations in the past that have been representing their interests. The functioning of the representative associations in the past does not bolster confidence in the artistes that a model of remuneration based on delayed payments would be efficiently implemented. They point out that when the down payment promises often do not get fulfilled then how can a system of delayed benefits be considered trustworthy.

The producer in the Indian film industry undergoes enormous amounts of stress in the process of reaching his product to the consumer. Mostly the film producer is heavily indebted to the financiers at exorbitant rates of interest. There are frequent occasions where in the negative rights of the film is vested with the financier as security for the payment of liabilities by the producer. The consequences are that the producer becomes alienated from the product in the chain of relationship with the financier and the distributor. It is the financier who interacts with the film distributor. In order to realize the value from the money lent for the film the financier also deals with the same to the satellite channels with no hold on it for the producer. Thus at the practical level there is an alienation of the product in contrast to the legal and implied understanding about the ownership of the film. The chain of transactions and the systems of commercial deals that

103 All the industry associations including the producers who were interviewed were not averse to the idea of residual payments in the collective agreements or statute but every one including the artistes were apprehensive and had misgivings about the delayed payments and the transparency that was required including the infrastructure that was required to implement it efficiently.

104 Interview with Actress T.R.Omana and others at Chennai on 24-10-2003.

105 Interview with T.E. Vaudevan

106 Interview with Director Selvaraj held on 14-9-2003 at Madras.
are entered into by the producers at present too would have to be standardized and made more transparent if the returns have to be honestly accounted for. Thus within the web of transactions, the notion of performers rights must be fused into these realities and dealings. If ever performer is to beget statutory residual rights his position must be safeguarded in instances where in the original producer has alienated or bartered away his own rights. The benefit of each transaction must also float down to the performer by means of presumptive norms transferring the performers rights along with that of the product to the new owners or exploiters. In other words a mere grant of rights to the performer would not do any good unless all the sectors from production to distribution to exhibition and marketing were standardized.

A point of concern at any future grant of rights in the nature of residuals has been that multiplicity of rights would need to be cleared and this could cause problems in the exploitation of the entertainment unless it was all bestowed for clearance under a single body. It is a matter of concern to them that the imposition ought not be at the cost of the interests of the lyricists, the composers and the publishers. There still exists reservation on the basic issue whether performing artists should be eligible for copyright or intellectual property protection. It is pointed out that other than follow the instructions of the music composer or the director the singer or the artists do not create any thing by themselves. Both the producers as well as the co contributors like the composers and the lyricists question the claim by the artists towards a copyright. This is on the basis that the artist does not make any creative contribution other than sing according to the dictates of the music composer. A most important argument being relied on by the music publisher with regard to film music is the lack of a direct contractual relationship (or privity of contract) with the contributors or artists to the film music. The film producer is the person responsible for the rights of the music and he either validly licenses or assigns the rights to the music publisher. In fact there is the practice of the film producer indemnifying the assignee from any

107 Interview with O.P. Sonic (Director-IPRS), Music Director and Hassan Kamaal (Chairman-IPRS), Lyncst at the IPRS office in Mumbai on the 10th of August 2005.
108 Interview with Hasan kamaal (lyricist and writer)— Chairman, IPRS and O.P. Sonic( composer) (Director-IPRS) on the 10th August 2005.
claims based on an agreement of guarantee. Therefore the music publisher
claims to be least bothered with regard to the claims made by the artists or the
lyricists or the composers to whom any thing might be due either based on the
statute or based on the contract with the film producer. Till date there is no
obvious deference shown to the designs of the Section 38. The counter question
being raised is that if those who enjoy real copyright do not get their wholesome
rights as prescribed by the Act then what about the performing artists who are
provided with a special right alone. The law is replete with ambiguities. The
position of the contributors have been further dampened by the case law
pronounced by the Supreme Court in IPRS v. Eastern India Motion Picture
Association, AIR 1977 SC 1443, which narrowly construed the right of the
contributors who are otherwise vested with copyright. There is the need to have
a re-look at the case law in the light of the changes made in the statute.\textsuperscript{110} If
those who enjoy real copyright do not get their wholesome rights as prescribed
by the Act then what about the performing artists who are provided with a special
right alone. The law is replete with ambiguities.\textsuperscript{111}

It is important to note that the IPRS (Indian Performing Rights Society) as
well as the Indian Music Industries have started to collectively license music
distributed by means of webcasting or Internet streaming. However the
performer does not receive any remuneration from these modes of unforeseen
exploitation. This is despite the fact that the original contracts have never
envisaged these technological means of exploitation.

An Analysis of the Content of Written Agreements

When the production company follows the mode of a written agreement with the
artiste or any other contributor, there are common provisions, which are usually
found in them\textsuperscript{112}. The agreement mentions the name of the production company
and the artiste or technician concerned. It is noteworthy that the agreement is for
utilizing the services of the artist\textsuperscript{113}. The agreement mentions a host of means to
which the services would be applied that includes different languages (Indian),

\textsuperscript{110} Interview with Rakesh Nigam, CEO of the IPRS, on the 10\textsuperscript{th} of August 2005 at Mumbai.
\textsuperscript{111} Ibid.
\textsuperscript{112} The copy of a usual written agreement. Source FEFSI. See, Annexure II, p.XIV.
\textsuperscript{113} Annexure II (i).
the technical application and also any devices. Thus unless qualified or restricted, the contract specifies and grants rights for a wide application. Importantly with respect to the payments only a single one-time payment of a fixed sum is stipulated though it maybe paid in installments before the release of the picture\textsuperscript{114}. The dates have to be, mentioned and it should not be interfered with owing to the multi engagements. It is specifically mentioned that the dates are the essence of the agreement\textsuperscript{115}. It is significant that it is specifically mentioned that with respect to the director and screenplay writer, the remuneration will include the dubbing and remake rights into other languages. It is restricted to the specified languages with regard to the artist. While the artist has to attend to the shooting, he does not have any say in the costumes, which fully rests with the discretion of the producer–director. The artist has no right to interfere with the making of the film other than follow the instructions of the producer/director\textsuperscript{116}. In case of non-cooperation with the Director/producer the producer is vested with the right to dismiss the artist\textsuperscript{117}. Significantly in case of dispute it is an alternate dispute forum of the producer’s council that is preferred. Very importantly it is mentioned in the last line that all the rest of the terms and conditions would be as per the terms of practice trade\textsuperscript{118}. From the agreement it is evident that there is neither mention of the right to the script nor any right to the credit or any right to be consulted or to the role. They are merely to do as is bid by the director or the producer once they have consented to serve for the amount. Most pivotally there is no mention about any intellectual property ingredient. However the extent has been mentioned which is unlimited. The final clause placing everything at the altar of practices of trade makes the conventional practices take over in issues where the agreement is silent.

The Performing Artist and Collective Agreements in the Film Industry

Just like the attempt to find traces of practices in the film industry that indicate any resemblance to those models being followed in the countries like United Kingdom, united states and France, it is important to weed through the standard agreements that have been formed amongst players in the industry to see

\textsuperscript{114} Ibid. Clause 1.
\textsuperscript{115} Annexure II (ii). Clause 3.
\textsuperscript{116} Ibid. Clause 7.
\textsuperscript{117} Ibid. Clause 8.
\textsuperscript{118} Ibid. Clause 10.
whether there are features that reflect a framework where in a intellectual property model would work. Artists other than the junior artists, the stunt artists, dubbing artists and the dancers are all treated equally in the fledgling culture of standard contractual practices taking root in the industry. There is no distinction between the superstars and character artistes with respect to the minimum guarantees to be enjoyed under the model agreements drawn up under the aegis of the Joint Action Committee. It is important to note that the performing artists in all the three industries taken for study do not enter into any collective bargaining agreement stipulating minimum wages. Other than the model agreement that evolved in the south Indian film industry and the general norms agreed upon between sectors in the industry there is no periodically renewable agreement of rates and conditions with the performing artists. Interestingly out of the confrontationist atmosphere that prevailed in the south Indian film industry mainly between the trade unions and the producers there has emerged sample agreements pertaining to the performer artists as well. Though nothing is stated as to how this was formulated and who all were taken into confidence while this was being drawn up. This appears to be courtesy the Telugu film producers' council and it has been referred to be kept as a guide while entering into an agreement with the artists. The agreement is with regard to the artist on the one part and the producer on the other. (There is no definition as to which the artiste is to whom this agreement is supposed to apply to). The agreement does not seem to form a part of the agreements or memorandum of settlement that have been entered into between the joint action council and the diverse crafts under the aegis of the Commissioner of Labor, Tamilnadu. But it has been included as a reference guide. There appears to be no structured implementation format for the same. Other than reflecting the practice sentiments in the industry it cannot be said to do any thing more by way legal or dispute resolution recourse.

119 AMMA has entered into a 21-point charter along with MACTA and the Film Chamber. The CINTAA is affiliated to the Federation of Western India Cine Employees (FWICE).
120 Joint Action Committee (JAC) had compiled all the agreements entered in the south Indian Film industry and published it in 1989 under the title JAC; the agreement is reviewed and revised every three years. J.A.C., Joint Action Committee of South Indian Film Producers, Madras (1989), p.14.
121 This also dilutes the mandatory nature of the sample agreement in that as it is a guide it need not strictly followed.
The role that the artist is to portray in the picture is to be mentioned in the agreement. The agreement contains the details of the remuneration and the manner in which the same would have to be paid to the artist. The same has to be paid in convenient installments before the completion of the picture. The advance has to be paid together with the signature on this contract and the amount advanced is specified on the agreement entered into. The artist is expected to render services to the entire satisfaction of the producer. The artist would have to attend the shooting indoor and outdoor as per the confirmed call sheets that have been agreed mutually.

The artist also has to attend the rehearsals of both music as well as dialogues whenever required. In case of re-shooting and retakes on account of administrative reasons or from the censor board side the artist cannot ask for any extra remuneration. The producers are endowed with the full right to dub the picture into any other language and also the right to use the voice for both music as well as dialogue and the artists shall have no right to question the same. Even if the artist can dub his own voice the producer reserves the right to use some other voice to dub the same. Thus the artist does not retain any right to retain his own identity and original creativity and is fully at the mercy of the producer. There is not even a need to consult the artiste in this regard before the producer can take liberties with his performance. The artist is expected to obey the director and cannot conduct himself contrary to their instructions. -There are no exceptions to this contractual stipulations thus the artist would have to allow himself /herself to be used in the absence of a script in the manner as directed by the director or the producers. This is not desirable as there are no exceptions to these inflexible strictures even when what is demanded is unjust and contrary to dignity. The artiste was to be under the supervisory control of the producer or his nominees with regard to the work in the picture or the general behavior while in work.

Most importantly the producer reserved to himself the right to terminate the services of the artist without stating any reason if they are not satisfied with the artists work. The artists' services can be terminated if they suffer a loss of form or figure .any further remuneration would not be paid but the artist can retain what has been paid. However the decision is not hard and fast the decision thus
regard, in case of dispute would be taken by the joint coordination committee of the film producers council and cine artists association.

There is no instance or situation cited were in the artist can walk out of the production in disagreement with the producer. At least this circumstance has not been made part of the model agreement meant to guide the producers. Further the there is no time limit or duration for the work of the artist is completed or the number of calls sheets. There shall be an attempt to provide the artist with dates in advance. On which the artist shall be present on the sets and on the hour’s specified. Thus even if the duration of the shooting extends for months or years the artist cannot complain unless the film is completed. Thus there is no security for the artist nor is there a definitiveness for the artist. This creates both financial and employment uncertainty. There is nothing in the agreement that reserves any right for the artist. The artist is considered as nothing more than a service provider employed by the producer for a contractually agreed sum of money. The bargain is heavily one sided with no discretionary or artistic and minimum rights for the artist. There should not be any lapse on the part of the artist. Though this is the model rule. This might not be carried into practice in letter and spirit. But this certainly shows the way fir the trends and attitudes in the film industry with regard to the status and relationship between the producers and the actors.

In the western film sector under the general terms of the original agreement signed to which the CINTAA is also a signatory, certain clauses intend to set down norms of conduct pertaining to the industry. It is provided that it shall be the duty of the employers and their members on employment by them to issue in writing a contract of employment or letter of appointment with all necessary details unambiguously such as the date of commencement of unemployment, duration of employment, amount of emoluments, mode of payment, nature of work etc., and that the contract or letter of appointment shall be issued before the
This brings to fore the need for contract and the importance attached to the terms of the contract. In the absence of a contract, it is stipulated that the minimum terms of agreements would apply. However this would not apply with respect to the performing artists as there is no minimum rate stipulated in this regard. Further though this rule is in existence there is no duress from the CINTAA that only written contracts should be followed.

According to convention followed, in the absence of contracts and in case of disputes, rates that are contemporaneous with the times and standing of the artistes would be awarded. It is significant that in the absence of any thing to the contrary, it is conventionally understood that the rights in the performance in the film pass over to the producer. In fact in a more colloquial sense once the performance is rendered, the produce of the labor belongs to the producer. There are no preordained norms or rules with respect to the manner in which the performance may be incorporated or used by the producer. Though complaints do often arise in this regard, it is resolved through the process of mediation. In the Malayalam film industry as a result of the recent agreement between AMMA, MACTA And the film chamber written agreements have come to be considered as mandatory. There is the need for call sheets to be signed. A most significant aspect is the need for the artiste to be a member of AMMA if they have to be in the industry. This points to the mandatory need for union membership. The manner of payments have been stipulated taking into account the phases of film production.

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123 Clause (3) of the Agreement between Indian Motion Picture Producers' Association and the Film Producers Guild Of India Ltd. and the Federation of Western India Cine Employees, Bombay signed on 18th March 1966.p.2
124 Ibid. Clause (5) of the agreement.
125 Interview with Rajeev Menon, Secretary, CINTAA, Mumbai on 3rd of August, 2005.
126 Interview with Sri Rajeev Menon, Secretary on behalf of CINTAA at Mumbai on 3rd of August 2005. Based on interview with Sri Chandrasekhar (he has been an actor, producer and director and came to the film industry in the early forties as an extra). He is senior most member of the film industry a past office bearer of both CINTAA as well as Federation of Film Employees. Interviewed on the 3rd August 2005 in Mumbai.
127 According to Rajeev Menon frequently on such issues such as treatment on the sets or the way the performance is sought to be used, the artistes do approach the association. But a compromise is worked out.
128 Entered into on 13th of December 2002.Friday. The signatories to the same were Sri Siyad Kokker on behalf of the chamber, Sri K.G.George on behalf of MACTA and Sri Mammootty on behalf of the AMMA. Bulletin brought out by the chamber during the crisis detailing and reminding the industry that the AMMA was breaking its word on the issue by indulging in stage shows that had been banned in terms of the agreement. Courtesy: The Kerala Film Chamber of Commerce Bulletin.
production presently. It has been agreed that up to 2 lakhs should be paid to the artists at the time of shooting and dubbing and those who are to earn more than rupees 2 lakhs are to be paid 2/3rd at the time of shooting and dubbing and the rest 1/3rd only in the event of the producer producing the lab letter to the chamber and it would be the responsibility of the chamber to see to it that the rest of the amount is paid to the concerned artiste. Thus it can be seen that all the major film producing industries in India display similar characteristics that profoundly for the purpose of this study includes the fact that the collective agreements or model—sample agreements do not exhibit any notion of residuals or intellectual property right being attributed to the performers performance.

There are no specific pronouncements regarding the credit lines or any need for permission to distort or manipulate the performances, though customary practices of trade has started providing the character artistes with a bylines. However it remains unclear in the Indian context whether it can be traced to any conventional right. It is however significant that in the absence of any contract the remuneration of the star would be depends on the contemporary rates for the artiste. This could mean the market value, which could be a sum, arrived by taking into account the diverse means of exploitation of the product and the likely extent of exploitation.

The Junior Artists

The junior artists form a significant segment of the performing artists in the audiovisual industry. Their importance has been evidenced by the early unionization by them both in the western as well as in the south Indian film industry\(^\text{129}\). It is of note that the categorization into major artists and junior artistes had taken place considerably early in the film industry. The criteria though a bit confusing when looked at objectively nevertheless points to the

\(^{129}\) In the South Indian Film Industry in the aftermath of the deadlock between the various interests in particular the trade unions and the producing interests in the film industry in 1989 steps had been take in order to come to an agreement with respect to practices in the film industry. The agreement related to wages, the working conditions as well as the sections that would benefit from the same. J.A.C., Joint Action Committee of South Indian Film Producers, Madras (1989). These rules are always updated e very three years.
importance to actor owing to the following and the characters represented on screen. Thus the creative value of the performer is taken into account in this categorization. The benefits in terms of higher pay and working conditions differ between the major artists and the junior artists. The junior artists in turn have been further categorized according to their worth. This categorization is relevant as seen in the context of intellectual property attribution of rights in the demands creativity and originality. The practices of trade have already brought forth a distinction based on creative factor. The junior artists in contrast to main artists have been eligible to receive daily wages alone based on the hours of work and often on the kind of roles.\textsuperscript{130}

A most significant highlight of the standards set has been that the producer shall have the inherent right to employ any person of his choice as union artist or artistes for the picture. The junior artists can also work with the producer of his choice. This casts away any terms dictated by the unions or the producer to the artists to act or not to act under any banner. Further recruitment of junior artists need not be through the union alone. This means that the producers in the industry too can recruit those who are not union members. This also suggests that the recruits both who are with the union and those who are not in the union would be governed by the terms of the standard agreement. The junior artists have been classified into four on the basis of their work and so is their remuneration relative to their classification\textsuperscript{131}. The classification has been on the basis of the requirements that can be expected in an average Indian film\textsuperscript{132}.

\textsuperscript{130} The call sheet timing varying between -9 hours. Thus the call sheet timing can be between 7 a.m and 2 p.m., 9 a.m and 6 p.m., 2 p.m and 10 p.m., 10 p.m. To 6 p.m, and 6 p.m to 2 a.m. This shall be inclusive of the tiffin and the food break. There is also a distinction between the local and outstation shooting. The latter meaning outstation work involving overnight stay. J.A.C., Joint Action Committee of South Indian Film Producers, Madras (1989), pp.57-81.

\textsuperscript{131} \textit{Ibid}. For instance the payment shall be on a call sheet basis with A grade artist given Rs. 60, the B grade artist Rs.50, special grade artist being paid Rs.90 and the special character artist being paid in the amount of Rs. 120 per call sheet. These rates have been subject to periodic review every three years.

\textsuperscript{132} \textit{Ibid}. Thus the special grade artist includes playing characters such as judges, police constables, police inspectors and other police officers, Gurkha, soldier-military, folklore, historical and mythological, customs officer, doctor, maids in historical, folklore and mythological (interestingly the maids in social pictures do not come under this category, Airport officers, nurses, carrying of dead body and pallak, dance movement, bit dialogues, ladies with swimming dresses and other revealing dresses, rishis, tribal, naval crew, Arabian character are included
The effort of the artiste has been taken into consideration in arriving at his remuneration. Very significantly for risky shots and special effects shots there is a provision for additional remuneration but for this no standard common has been set and this was to arrive at mutually between the parties concerned. The agreement would have to be in writing and entered into before the commencement of shooting.

Another important feature has been that for a double version film the wages equivalent to one and a half wages per call sheet would have to be paid to the junior. This is heartening in that it shows that the value of the services is linked, though marginally, to the extent of exploitation. Another noteworthy feature is that with respect to work rendered for foreign films double the usual amount is charged. Contingencies such as cancellation of shooting owing to any natural causes or unforeseen reasons within two hours from the call sheet without a single shot being taken then half the call sheet wages along with the traveling allowance would have to be paid. A provision that would enhance the security of the performer is that the wages would have to be paid within a period of seven days after their work is over.

A feature that had been found amiss is the lack of a provision for credit lines of junior artistes and their lack of any say in the manner in which the movie is made and edited. Further there is no practice of any residuals or royalty payments in proportion to the manner of exploitation. There are no honors and awards for the junior artists for their contribution either from the industry or from the state. It is noteworthy that there is no general understanding that agreements with the junior artists ought to be in writing. The state help has been dismal in terms of the time taken and the amount availed.

within this grade. Special character shall include clean-shaven heads, body with paints, devils, rakshasas, motorcycle and car driving.

133 Ibid. For those who are cycling in a song sequence one and a half wages per call sheet would have to be paid. Similarly for outstation work involving overnight stay the junior artist would have to be paid none and a half wages per call sheet. In case the junior artist is engaged to act as a dupe for a hero, heroine or villain they shall be paid Rs. 100 for local and Rs. 150 for outstation shooting involving overnight stay.

134 An oft-heard complaint is that this amount is often eaten away buy the middleman without informing the producer. Interview with Glen.

135 This is more conspicuous in the Bollywood. Interview with Sri Raja, General secretary of Junior Artistes Association in Mumbai on 16-8-2005.

136 Voucher slips are provided after the work is over.
Unemployment is a crucial issue affecting the junior artistes. The engagement of non-members by production houses is also seriously affecting them. There is no certain social and labor security for the junior artists. The organization tries to meet medical and other needs from its limited corpus. There is no assured insurance cover as of now despite the risky nature of the work at times. There is no retirement pension and the only earning is when the card of membership is sold to a new entrant for Rupees 80000/- or 1 lakh. Even when dire medical necessities arise it is not unusual for the junior artistes to sell their membership to meet the needs and survive.

Thus from the aforementioned terms and conditions it can be inferred that certain factors have been taken into consideration in order to arrive at a fair remunerative module for the junior artist. Time spent for work, the effort taken at certain roles, the factor of a double version picture, outstation work, dupe for major stars, risky shots are all taken into consideration. What is conspicuous is that while a straight line cannot be drawn between the junior and major artists it is unclear as to when one would slip into the shoes of the other. The deciding factor with regard to that status appears to be the personnel discretion and the ratings in the film industry based on inarticulate premises such as popularity and determining presence of the star. Further the prior designation, as a junior artist would have no influence on the fortunes of the artist as regards extra remuneration from the producer if he has played a determining impact on the films fortunes.

The Stunt Artistes

The stunt artistes have become indispensable to enhance the alluring character of the film as an entertainment medium the world over. Their vocation is fraught with immense thrill and danger. From the perspective of the study it is important to note that the stunt artistes have been categorized separately as regards their work, contractual obligations and rights. Both in the south as well as in the western sector of the film industry the stunt artistes have consolidated

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137 This is in violation of the fundamental understanding that the signatories to the collective agreement shall engage only members.
138 Interview with Mr. Glen, an experienced junior artist, on 16-8-2005 at Mumbai, who has been with the film industry for well over 30 years. His wife was also a junior artiste. Had to sell her membership card for seventy five thousand Rupees in order to treat him after he sustained a fracture at work.
themselves into unions — as a trade union. The categorization indicates that despite the relevance of this trade to the industry they are not treated at par with the major artistes. The unionization was impelled by the prevalence of contracts right were both oral as well as written, even the basic wages were denied, the working hours had no limits and most importantly the stunt artistes were used for multi tasks. The stunt artists despite the creative skills essential for the execution of their jobs were not receiving their due.\textsuperscript{139}

The unionization and consequent collective bargaining has led to streamlining of working hours and wage rates from time to time.\textsuperscript{140} One of the conspicuous features of the stunt artistes working condition is the absence of written contracts in their engagement. The reason adduced is that the stunt artist is a daily wageworker. However the possibilities of exploitation has been diminished with the amount in the bills being distributed through the association. The entries of their respective engagements are entered into a ledger at the office. It is noteworthy that the stunt artistes are graded and categorized and payments are proportional to their category. They are categorized into fighters, assistant masters and duplicates. The wage is dependent on the shift and includes a minimum wage as well as allowances.\textsuperscript{141} It is significant that duplicates are paid more owing to their value in deputing for other major artistes in the execution of their scenes. In other words the creative value and labor is accorded importance in the categorization. The south Indian film industry is more sophisticated and has clear cut provisions regarding enhanced payments for the stunt artiste when they dub or dupe\textsuperscript{142}, when they work in more than one language versions of the film, more is paid for donning certain specific roles, for certain risky shots\textsuperscript{143}. If the

\textsuperscript{139} Based on Interview with Rashid Mehtha (Secretary, Movie Stunt Artistes Association) interview held on 6-8-2005 at Mumbai.

\textsuperscript{140} The Movie Stunt Artistes Association was formed in the year 1959 in Mumbai.

\textsuperscript{141} For a Hindi film budget over 50 lakhs, the agreement between the film makers combine AMPTPP/FP Guild and federation of Western India Cine Employees with effect from 1-1-2003 provides a revised wage of Rs. 1046 for fighters, Rs. 1268 for Asst. master and Rs. 22157 for duplicate. Source: All India Film Employees Confederation (AIFEC), Mumbai.

\textsuperscript{142} Importantly in case of dubbing, for every dubbing the stunt artiste a sum of 200 should be paid for every call sheet on the spot. For every film produced in more than one language for every shot taken half the rate of the particular language shall be paid in addition to the full rate of the highest rated film to the stunt artist working taking into account the number of schedule days fixed for the sequence concerned irrespective of location. J.A.C., Joint Action Committee of South Indian Film Producers, Madras (1989), pp. 93-101.

\textsuperscript{143} Ibid. No extra wages would be paid for stunts that do not involve any risk. However the instances were in risk is involved are the following- diving through a glass —Rs. 1250/- -for each
stunt artiste also works as a dupe he shall be paid both the wages. In the event of any accident all medical assistance shall be rendered to the injured artiste. In case of any disability or death suitable compensation shall be paid in accordance with the prevailing statute.

The wages would have to be settled within 3 days from the end of the fighting sequence. If on any other reason there would be the need for replacement then the issue with regard to the remuneration dues would be settled basing on the quantum of the work or period of service including issues with regard to the mane or names that have to be given in the credits. In case of dispute the decision of the joint consultative committee shall be final.

The instances of improper payment or non-payment of bills regularly surface for the stunt artistes. The stunt artistes make a complaint, either oral or written to the producer, to the federation. The producer is served with a notice and then the Joint Settlement Committee would decide on the dispute. In the event of failure on the part of the producer to comply then punitive measures such as non-cooperation would be imposed. It is striking that the emphasis is on alternative dispute resolution rather than on the judicial system, which according to them is a drain on resources time, money and energy. Therefore there has hardly been any recourse to the judicial system.

From this it follows that, as at present the working conditions of the stunt artistes do not contain any component of the notion of intellectual property or any thing similar to it in the like of contracts based on royalty payments. Even now their concern is with the realization of the basic wages and to standardize the same in tune with the cost of the times. Importantly royalty payments have started coming up in the discussion forums but the lack of supportive mechanisms is proving to be a discouraging factor.

time. They are paid rupees 1250 for jumps involving motorcycle, car, jeep, scooter, tempo, and autorikshaw. The producer, director and stunt artiste would decide the number of jumps. For burning fire proof suits a sum of Rs.1250 per call sheet. the dresses shall be supplied by the producer. There shall be a medical attendant during each risk shot.

144 These are clearly expressed in the collective agreement of the South Indian film industry. See J.A.C., Joint Action Committee of South Indian Film Producers, Madras (1989), pp.93-101.
145 This points out to the tremendous drawback that statutory streamlining would face as the judicial option is least resorted to.
In the absence of any statutory remedy therefore for any protection the membership of the union becomes a sine qua non. The artistes because of the long process involved do not favor the little that the state provides as welfare and the limited possibilities involved in availing of the same. Very rarely do stunt artistes avail of the option. In such a risk borne vocation it is astonishing that there is no insurance or other security instruments to cover the artiste in times of misfortune. Further the stunt artiste has a very short life span of profession, he retires between the age of 45 –50 or earlier if he is afflicted with illness or physical disability. The association has striven to create conventions to meet the exigencies in this regard by making the producers pay up to meet the medical costs if the injury happens during the course of their shoot. Loans are also advanced free of interest which they are expected to pay back from their work. In other words the declaration of the film trade as an industry has not impacted the worker positively.

It is important to note that the stunt artists in the country are disadvantaged even when they dupe or dub in that they do not receive a senior grading though they are provided with a marginal increase in the fees. They do not receive credit lines according to the custom followed in the industry. There is nothing in the nature of a royalty payment or notion of intellectual property on the industry at present or remuneration tagged to the performance of the film in the market. Even when the film is dubbed to another language the stunt artiste receives only a marginal increase in daily wages even though this shows that additional exploitation has been taken into reckoning in fixing the wage. The wages it can be noted depends upon the duration, the nature of the work and the risks involved.

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146 The membership of the association is dependent on passing a test conducted by the stunt directors. The applicants have to comply with certain fitness specifications. The skills of the aspirants are tested frequently and certificates are granted to them. Interview with Rashid Mehta, Secretary of the Stunt Artistes Association in Mumbai on 5th August 2005.

147 To quote Rashid Mehta, "those with dignity will not be going there."

148 The private insurance companies that do propose to cover the circumstances require high rates of premium. When the associations are unable to meet it then the individuals would find it extremely demanding and daunting.
The Child Artiste

As a child artiste this predicament is more acute as it is the guardian who accepts or rejects opportunities and in most instances a career and remuneration does not cross the mind of the child artiste. In most instances there never was nor does the artiste ever sign any formal contract nor was it in vogue that a written consent was essential. Other than on certain occasions where in the producers credibility was in doubt owing to unfamiliarity. Thus most of the opportunities were based on informal contacts and acquaintances in the industry. Particularly since the career of the aspiring artiste takes off or the opportunity just comes by chance owing to personal relations with the moviemaker or through personal channels. In the standard agreements reached between the producers and the various unions with respect to wages and working conditions in the south Indian film industry and in Bollywood, no special agreement has been reached with regard to the conditions in engaging child artists. Therefore all the agreements reached between the major artistes equally applies to the child artistes.

Dancers

Dance has formed a pivotal part of the film narrative in India. Therefore dancers either in groups or in solo have always added to the appeal of the film and the entertainment sensibilities of the Indian filmgoer. Much time and effort and cost is incurred in preparing and choreographing dance sequences. Highly talented and professionally skilled dancers, both male and female execute the steps making it an awesome and winning performance. In India both in the south and in the western film production sector dancers have formed themselves into unions from the fifties. The pattern of remuneration reflects the relationship that the artistes have with their performances once they have rendered the same for the audiovisual. It is just like all other performers, a mere provider of a service of

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149 Interview with T.R. Omana on the 24th of October 2003. T.R Omana has worked in the film industry in the capacity of film artiste and dubbing artiste in film, radio and television medium since 1962. She has contributed and acted in over 500 movies since the age of 12.

150 The Cine Dancers Association affiliated to the Federation of western India Cine Employees (F.W.I.C.E.) formed in the year 1958 and the South India Cine Dancers Association, Madras.
labor for wages. The dance director who only has a direct relationship with the producer most often calls upon the dancers. The rate is agreed upon with the dance director and the dance director has to distribute the money to the dancers. Either it is a contractual lumpsum amount that is agreed upon or it is based on the wage rate agreed upon by the collective agreements of the union. Interestingly the dancers prefer to call themselves as an independent union.

There is no compulsion for the agreement with the dancers to be in writing nor is there any representative status granted to the dance directors on behalf of the dancers. There is no reference to the single dancer only groups (perhaps that is the general way it would happen). It is important to note for the purposes of the study that no rights in the nature of residuals or royalties are prevalent either in the practices of the trade or in the collectively bargained agreements. However significantly it is stipulated in the agreement that for a double version picture the amount equivalent to a one and a half wages would have to be paid. For every additional version another half payment shall be paid. This points out that the different mode of exploitation has been tagged to the wages in a limited way.

In the absence of mutual contracts the minimum wages operate which is based on the duration of work, whether it is outstation or local. The maladies of uncertain payments and lack of written documentation plague the dancers in the

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151 For instance under the JAC agreement in south Indian Film Industry the producer shall make a written agreement with the dance director regarding his or her remuneration in the absence of a remuneration rupees 2500 shall be the Remuneration per dance sequence for the purpose of settlement. The remuneration of the dance assistants and the dancers are as follows rupees 500 for 12 hours that is 11/2-call sheet. Rs 300 for the second day of 12 hours of work. Rs 200 for the third and subsequent days of 12 hours of work. Until completion of the particular dance sequence. In case any fresh dancers are engaged for the second day or for subsequent days for the first time they will be paid the first days rate that is rupees 500/- J.A C., Joint Action Committee of South Indian Film Producers Association, Madras (1989), p.81.

152 For a double version picture the amount equivalent to a one and a half wages would have to be paid. For every additional version another half payment shall be paid.

153 Under the JAC agreement the rates are applicable both for the local and outstation shootings. If shooting is extended up to four hours after the first days shooting of 12 hours an additional amount of Rs. 165 shall be paid. If extended above 4 hour. If there is a delay of seven days in the completion of the dance sequence the payment shall be paid one after consultation with the dance directors an additional amount of Rs. 165 shall be paid. If shooting is extended with the second and subsequent days after 12 hours of work up to 4 hours an additional amount of Rs. 100 shall be paid .If extended beyond 4 hours another Rs.100 shall be paid.
same manner as it has other performers. Further the immense competition leads to a great deal of under cutting by the middlemen from what is promised. be it the contractually agreed amount or the wages promised under the tariffs.

In the union agreements it has been specifically mentioned that the payments to the dance directors and dance artists would have to be paid directly within a period of seven days after the completion of the particular dance sequence. There is no valid reason by which the dancer can excuse him-self upon legitimately sound reasons. There is no suggestion of any insurance facility. It is of note that in case of dispute it shall be mutually settled based on the quantum of work rendered including the name of the persons whose names ought to be given in the credits etc. this points out that the practice of giving credits is part of practices of trade. In case of issues that are not covered in the aforementioned agreement they will be discussed and decided by the joint consultative committee of the film industry. The dispute resolution would be by the joint action committee that is dominated by the producer interests.

*Musicians and Playback Singers*

The playback singers' form a very important constituent of the Indian film industry. The importance of these artistes can be found uniformly spread across the various regional industries and the Hindi film industry. Besides the voice imparted on the screen, audiocassettes based on the same is also brought out. In the early years of the recording industry the gramophone companies were making the recording artists sing on the basis of royalty payments from the sale of the records. There was no minimum payment but only royalty from the number of discs sold. But then the payment used to be regular and proper. It can be

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154 Interview with Rajeev Ranga, ex president of the Cine Dancers Association, Mumbai on the 23rd of August 2005. The association is in the thicket of legal battles between themselves and therefore is in the hands of the administrators' appointed by the courts.


156 Based on the interview by the author/research scholar with late Srimathi P. Leela on the 27th of October 2003 in Madras. A veteran since the inception the playback singing in the south Indian film industry from the year 1947 onwards. She began to sing at the age of 12 in the 1944. But her break began in the year 1947 in the film *Kanyadanam*. While she was on the pay rolls of Columbia records artists such as M.S.Subhalakshmi were with His Masters Voice (H.M.V.). She
inferred that the idea of royalty payments have not been alien to the contributors to the audiovisual industry though the revenue has to come in from the audio exploitation of the same. The artistes in the early years were under contracts with the different record companies such as Columbia and the HMV.\textsuperscript{157}

There was a difference between the way in which the playback artist in films were treated and the way in which the audiocassette companies treated the recording artists. In the early fifties when the play back trend began the artistes was paid in the region of Rs. 250 to Rs. 750- 1000 per film. It was a one-time payment. This was in contrast to the record producers who paid in the royalty system. The contractual practices included both written contracts and oral agreements. It was not considered an indispensable part of the practice of engaging a play back singer. The payment was made after the recording was over and not before. It had its fallouts in the sense that the performing artist often had to face the situation of the payment not being made at all. While the radio used to have a written contractual system, it was also based on a one time fixed payment system. There is as yet no pension scheme for the playback artiste from the state though there are state awards that have been instituted. The artistes form a part of the Cine Musicians Union, which represents and acts on any complaint that they may have. The union being affiliated with the Film Employees' Federation of South India was registered as trade union\textsuperscript{158}. As regards television coverage of the performances no permission of the artists are taken for the live stage shows being covered in India. In foreign countries the permission of the group was taken before recording the show. For shows exclusively for the television there were no written contracts other than for Doordarshan. There were only a one-time payment made and no royalty based systems existed. The Joint Action Committee self-regulatory code refers to the playback singers only in the agreement concerning music directors and musicians. It is specifically provided

\[\text{has had a prolific career both as a play back singer as well as recording artist in all south Indian languages. She has sung more than a 1000 songs in career spanning over five decades.}\]

\textsuperscript{157}\textit{Ibid.}

\textsuperscript{158} The artistes are generally unhappy with the functioning of the association and it has not yielded much in terms of economic and social security. Though it would be better to have a collecting society, as the royalties do not pour in punctually it would need a very healthy management. Even now the record companies are not regular with the royalty payments. \textit{Ibid.} Interview with late Srimati P. Leela.
that it is the inherent right of the producer to employ any person of his choice as the music director /musicians and singers.\textsuperscript{159} It is also mentioned that it is the inherent right of the music director, singer and musician to work under any person, employer or producer. Specific call sheet timings are also provided. The payment of the singer, the music director and the musicians has been structured around the duration of the song\textsuperscript{160}.

It is important to note that with respect to the music directors' remuneration, there is a mention about royalties. The producer shall enter into a written agreement with the music director containing details of the remuneration and the duration of the picture and specifying the eligibility for record royalties and the all India radio royalty. A standard rate has been prescribed in the absence of a written agreement.\textsuperscript{161} If the music director willfully or otherwise abstains the producer is vested with the right to remove him and engage another person and pay the person the money for the effort that he has put in. This includes the taking into account the credit to be given for the effort.

Significantly standard rates have been prescribed for musicians.\textsuperscript{162} It is however mentioned that the payment to the musicians shall be made on the spot in cash.\textsuperscript{163} At the time of the spot payment the payment shall be made against individually stamped vouchers duly indicating the name of the player, the register number of his membership of the union, instrument he has played together with the full address of the recipient. While the production executive has to make the

\textsuperscript{159} J.A.C., Joint Action Committee of South Indian Film Producers, Madras (1989), p.101. There appears to be a distinction between musicians and singers as the latter do not seem to fall within the former term and there are differences in treatment.

\textsuperscript{160} If the duration of the song exceeds 5 minutes extra payment would have to be made. If it exceeds five minutes and goes up to 6.5 minutes then one and half remuneration of the song needs to be paid. If it exceeds 6.5 minutes then double the remuneration for the song has to be paid. It is specifically mentioned that this has to be paid to playback singers also.

\textsuperscript{161} J.A.C., Joint Action Committee of South Indian Film Producers, Madras (1989), p.101. This has been upgraded to Rs. 75000 and 50000 respectively in the revised and renewed agreement of 2001. All rates are subject to change periodically. For a Tamil or Telugu film the rate being rupees 25000/- and for a Malayalam /Kannada film the rate being rupees 15000/-.  

\textsuperscript{162} For recordings or composing work each musician shall be paid Rs. 130 per day or per recording. of the last call sheet of a rerecording program if extended beyond 9.30 p.m (including the grace time an additional \textit{batta} of Rs. 130 shall be paid and the remuneration shall be added at \half call sheet amount for every additional two hours or part thereof. Cine Musicians Union, byelaws, 2001, p.31. As per agreement with film chamber with effect from 2-5-2001.

\textsuperscript{163} J.A.C.; Joint Action Committee of South Indian Film Producers, Madras (1989), p.102.
payment individually to the players a copy of the bill has to be sent to the musicians union for reference and record.\textsuperscript{164}

For solo singers it is mentioned specifically that the remuneration shall be fixed in advance. This means that there is no standard rate applicable as regards the solo playback singers. For group singers the conditions are different. Though it has not been mentioned. The remuneration for the musicians has been separately mentioned categorized according to the instruments they play. The aforementioned collective bargaining standard agreement points out to the subtle yet significant classification inherent among the musicians and singers. There is no mention of any standard term in the agreement granting a right to a royalty to any one particularly the musicians and the singers. This it appears requires a specific incorporation into the contract. The solo playback singers do not even have a standard rate to fallback on in order to get a minimum remuneration in times of misunderstandings or non-honoring of promises. There is no stipulation that there should be a written agreement with regard to the musician and the playback singer.

In Kerala film industry there is no separate organization representing the singers, musicians and the music directors and unless they could all come under the Malayalam Cine Technicians Association (MACTA). The playback singers do not have an organization of their own in Kerala. The musicians do have an outfit but it is non functional. It did have a tariff rate card but no royalty payments and no notion of any intellectual property in the performances. However in recent times as a fall out of the government order banning the live accompaniments in youth festivals the performing artists formed the All Kerala Performing Artists Association to give a voice to their problems\textsuperscript{165}. Though the organization is at a fledgling stage, it promises to fill in the vacuum with respect to the needs of performers who live from the cultural prosperity of ‘Gods Own Country’. According to him no rights in the nature of moral right to a credit or title is prevalent in the industry. The difficulty often cited being the large number of performers. The performance is left to complete use of the producer who uses in

\textsuperscript{164} This has been upgraded to Rs. 130 in the 2001 agreement. A conveyance allowance of Rs. 30 has to be paid to the orchestra player and junior playback singers for one call sheet or for a day whichever is applicable. The rates are subject to review every three years.

\textsuperscript{165} Interview with Tripunithara Krishna Das, an ace Edakka (a variant of the drum commonly used in temple rituals) exponent on 25-10-2005 at Tripunithara. He is the Secretary of the new organization.
every conceivable manner. The computer can take a small sample of the performance and use the same in any variety of situations in the same language or another language without compensating the performer in any manner. The private television channels provide just a voucher for the receipt. There are no further conditions in the voucher but it is understood that they have the rights to the performance and for the repeats of the same without any additional expense to the artiste. The duration of the call sheet is supposed to be for ten hours long. The onus is only on the remuneration for labor. Once the labor is rendered then the ownership of the recorded performance is vested with the producer, in other words, there is no notion of intellectual property or copyright with respect to the performance. Any such ideas would require special inscription by way of contract. There is no hard and fast rule regarding the need for written agreements and therefore commonly it is only the word of mouth and goodwill that sustains the industry.

In the western sector or Bollywood, a most profound distinction maintained since the commencement of play back singing has been the categorization into lead singers and the chorus singers and back ground musicians. This is a major distinction as the valuation of the services varies from category to category. The lead singers have always valued distinctly from the other two categories. While the organization called the Cine Singers Association formed in the year 1956 is a front for all the vocalists in the film industry nevertheless the practices have treated the two segments distinctively. (For the musicians —the Cine Musicians Union is the representative trade union formed in the year 1956). The Cine Singers Association is also a registered trade union registered in the year 1956. Though under the canopy of the Cine Singers Union both the solo lead singers as well as the chorus singers are clubbed together nevertheless the discomfiture at this categorization has been evident. There have been attempts in the past by a section of the lead singers to step out and try to forge an identity and demand

166 Ibid. For an eight-member troupe a sum of 25000 rupees would be received from channels and have to be divided between the members.
167 Ibid. Eve for films the experience has been the same with not even an acknowledgement in the titles. Krishna das had played one enchanting beat in the award winning film Devasuram for the actor Oduvill Unnikrishnan essaying the role of the percussionist in the film, but not even a credit line was provided to the playback artiste.
168 Based on interview with Sri Himanshu Bhatt, Secretary of the Cine Singers Association on 9th of August 2005 at Cine Singers Association office in Mumbai.
rights and interests different from those provided to the generality. The issue of royalty has been one such issue. Whether the issue of royalty was an issue of contract or emanating from intellectual property consciousness remains foggy. But the idea appears more from the need for remuneration emanating from contract rather than emanating from the aspect of intellectual property. However there was no unanimity of opinion among those comprising this splinter group and the initiative failed to take off. So it can be considered that it was generally felt that the lead singers ought to be eligible for royalties in addition to the single payment of an agreed sum that they procured.

The Cine Singers Union is a member of the Western India Cine Employees, which in turn is affiliated to All India Film Workers Confederation and is bound by its rules and limitations. It enters into a periodic agreement with the producers associations to fix the tariffs and other working conditions. Normally the tariffs are fixed after a period of three years has elapsed after the prior agreement. In case the new agreement is not entered into after the said period then the rates unilaterally fixed by the association would come into force. The tariffs are based on the shift worked for the assignment. There fore it is dependent on the hours of work. It is a minimum tariff and the employer is at liberty to pay more than the minimum tariffs.

It is important to note that this clearly points out to the status of the singer as a provider of service labor rather than a creator of any intellectual property. There is no system of royalty payments based on the use of the performance in the collectively bargained agreements. The singer is entitled to no further remuneration than the shift based tariff. This also points to the lack of any specific agreement or the need for any, as it is a daily rated wage. Thus a pay

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169 Ibid. In the year 1969, Latha Mangeshkar and Mohammed Rafi decided to form another organization for the playback singers. However difference of opinion cropped up over the issue of the need for royalty and the movement lost its momentum.

170 There is a different rate prescribed for films costing below fifty lakhs and above fifty lakhs. For the former Rs. 1141 is prescribed for a four-hour shifts that is inclusive of lunch hour of one hour. Conveyance allowance of Rs. 50 and late night allowance of Rs. 50 has to be paid. For the regional films the rate is a shade lower at Rs.1027. For overtime and rehearsals an amount of Rs. 285 have to be paid for each hour. For films costing above 50 lakhs, the pay per song would be Rs.1194 per song for 4-hour duration shifts. With overtime and rehearsal charges at Rs.299 per hour. Similar rates apply for back ground scores as well. Courtesy: All India Film Employees Confederation, Mumbai. Agreement entered into between federation of Western India Cine Employees /Film Makers Combine /A.M.P.T P./F.P. Guild Employees on wages of Cine Singers Association for the period from 1-1- 2003 (this is periodically revised).
slip or a voucher would alone suffice as a testimony of the service rendered. As
for the lead singers most often it is a mutually agreed rate per song that is agreed
upon to be paid rather than the minimum tariffs. In the collective agreement no
separate treatment is provided to the solo lead singers either with respect to
special tariffs or royalty payments. Thus the customary practice with regard to
lead solo singers is different from the others under the singers association.

In other words when the recording is used for a different purpose, under
the rules agreed upon there is hardly any reprieve for the singer other than base
the issue on the norms of implied contract. When the recording is used for dual
versions of the movie for instance both in English and in Hindi, as is the trends
today or dubbed into another language while retaining the same songs there is
no additional remuneration paid with regard to the singers. This is particularly true
with regard to the chorus singers as the hours of work are taken into
consideration rather than the film banner or the song in question. The extent of
exploitation is not a factor that is taken into consideration to decide on the
quantum of compensation. Despite the fact that no separate categorization is
made on behalf of the solo singers, the industry has adapted to the reality that
they cannot be categorized in to the lot of generality of singers covered by the
tariffs. However there is no system of royalty payments as a customary practice
unless it has been mentioned specifically in the contract. There is no additional
compensation in proportion to the quantum of exploitation, as it is in the general
practice of the industry understood that the rights vest totally with the producer
once the payment has been rendered. Even the use of the same song in another
film is left to the choice and the right of the producer and the permission of the
original singer are not sought for. Similarly when the song is being played in
diverse media distinct from the film as an audio or an audio visual, no additional
compensation even if the agreement has been silent regarding all these means of
exploitation. The concept of intellectual property being absent once the lump
some payment has been provided then the work is understood to belong to the
producer.

Though the need for written agreement is required is insisted upon under
the terms of the collective agreements in force since the nineteen sixties, the lack
of it is not considered an offence or a serious anomaly in conducting business in
the industry. This is considered as normal as there are the tariff rates to fall back
upon. In case of disputes and non-performance to the promised payment then the dispute settlement mechanisms of the federation would be invoked. In case of the decision not being carried into effect by the indicted party then a notice of non-cooperation would be promulgated against the violator.

A significant aspect of the practices is the secondary significance attributed to the legal means of redressal. The impetus is placed on alternative means of dispute resolution consisting of the members of the workers federation and the producers association. The judicial means for resolving disputes is rarely resorted to by the parties as it has been found to take a long amount of time and incurs enormous expense. Such time and effort in a fast paced media industry is a meaningless waste.

It is important to bear in mind that while those unions relying on a tariff rate falls back on it in the absence of an agreement to the contrary, those which do not go by a tariff rate need to have a specific agreement entered into by the parties individually. In the absence of which the reliance would be on the contemporary bargaining power of the party to be decided upon implied terms and practices in the industry by the dispute resolving authority. Those artistes who have a tariff rate to go by but those who have been promised a higher sum by the producers or employers need to show proper documentary proof of the higher wage promised failing which in case of dispute the resolving authority would have to fall back on the tariff rates. In other words there would be a lesser effort by the resolving council to go into the implied terms in the absence of cogent documentary proof to the contrary.

Need for Membership

A conspicuous feature of the cine singers and the practice of their functioning or working in the industry has been the mandatory need for their membership in the organization. Neither are the producers expected to engage the workers who are non-members nor are workers expected to work with non-member producers. In case of violation of this understanding then the workers and the producers who violate this understanding stand to be penalized and fined by the machinery

171 The party against whom the finding is made would have to pay 10% to the federation as costs for the efforts at the resolution.
constituted for this purpose. However instances are a legion where in the non-workers are roped in to sing or to otherwise perform.

New Trends

The Singers Association of India is a relatively young registered organization formed by the lead singers of the industry \(^{172}\). The organization has been formed with the purpose of securing the rights and obligations of the singers. The reason has been attributed to the fact that there exists no organization representing the singers. The actors receive all the attention. The Cine Singers Association, in existence since the fifties, which did and does have the lead singers a well on the rolls does not appear to have inspired confidence on the lead singers. Earlier in the sixties too there had been an attempt to form another association but the effort did not bear fruit over the differences that cropped up between Latha Mangeshkar and Mohd. Rafi. The present attempt was meant to be a continuation of the efforts made by the Mangeshkar Sisters, Kishore Kumar and Mohammed Rafi in the sixties, which fell off due to difference of opinion between Latha Mangeshkar and Mohd. Rafi over the question of royalties. The impetus has been given to the interests of artists who are either old or ill and have fallen on bad times (in oblivion). According to Sonu Nigam every singer has a time graph after which they would require support and help. The organization has vocally stated that it does not intend to interfere into the rates charged by the artists and it has been left to the bargaining entered into individually \(^{173}\). However royalty rates and issues pertaining to it have been issues that have been stressed by the organization \(^{174}\). However as yet no collective attempt has made in this direction by this section of elite lead singers nor has any pressure been brought to bear on the industry either with respect to standardization of practices or the question of royalty model of remuneration. Therefore a determining impact is still

\(^{172}\) Sonu Nigam, Alka Yagnik, Kumar Sanu, Udit Narayan, Asha Bhosle and Lata Mangeshkar are all members of this initiative. The founder president being Alka Yagnik as the organization stands today. It has been registered as a society and not as a trade union. Upala KBR, "Sonu Takes on Film Industry", *Midday*, 31\(^{st}\) March 2004, <http://in.nri.yahoo.com/050331/1562kh5q.html> as on 21\(^{st}\) August 2005. The organization is seeking to raise its corpus from the programs conducted by its members.


\(^{174}\) Interview with Himanshu Bhatt, Secretary of the Cine Singers Association, and the Hon. General Secretary of the All India Film Employees Confederation in Mumbai, interview on 10\(^{th}\) August 2005.
to be felt. There is a certain emerging unity between the artistes and the music directors in this regard particularly with respect to royalty rates. 

The main issues have been the denial of credit title of the artistes and the issue of royalty. The singers are being sidelined during the promotion of the film music with the major focus on the star actors. Secondly the singers are not even acknowledged in the credits when the song is being used in telecasts in various film-based programs on the television and other presentations. Thirdly, the remixes and the version recordings too present problems as the sniggers either by statute or by means of the contract most commonly do not receive any royalties. There is also the problem of the original performers not having any right with respect to the song and that need the permission of the producer or the IPRS even to render on stage the song or perform the song that they themselves had sung. This is owing to the conventional practice that once the remuneration has been begotten then they no, longer retain any rights vis a vis the song. 

Despite the multiplicity of avenues for the exploitation that includes the songs being played over the radio, the television and the Internet there is no remuneration from these repetitive performances that have debilitating hit the sales of copy sales like cassettes and the compact discs. 

Thus despite issues being stressed that often have solutions from the copyright framework, it can be seen that the parties do not ever refer to the copyright act or to the intellectual property paradigm. On the other hand the endeavor is to bring these issues within the practices of trade in a collective manner, there is no reference to a statutory solution.

The Cine Musicians in Audio and in the Films in Bollywood

A section that has been seriously affected by the increasing electronization and digitization of music has been the musicians who accompany the singers in the

176 Singer Sunidhi Chauhan in Delhi was stopped from singing songs that she herself had already rendered for the music producers, as she had not taken the license from them to perform the same.
audio as well as the audiovisual recording. The number of cine musicians required for the recordings have dwindled drastically from the engagements that came their way a decade ago. The additional accompaniments are reduced, as the equipments are today able to recreate almost all the instruments that were separately played by hand. Besides the digitized theft of opportunities, the musicians are also struck by the influx of television and radio channels that have eaten into the live performance opportunities that used to exist in the past. In this scenario of dual disadvantage the musicians are in an unfair bargaining position leading to practices in the industry that hands out an unfair deal. Even the minimum wages fixed in the industry are not paid to the musicians and they are at the mercy of those in the industry. The path to opportunity is littered with middlemen and commission agents who demand their pound of flesh before parting with what is due to the musicians.

Cine Musicians Association is a registered trade union and has represented the musicians since the year 1952. The union is a part of the All India Film Employees Confederation and the union enters into a periodical - triennial agreement fixing the working conditions and the wage rates. The wages are fixed according to the number of hours put in by the musician on a shift system worked out by the terms of the agreement. There is no need for a separate agreement to be drawn up, as it is a daily wage rate that is followed. The workers are free to receive any thing beyond that is affixed by the minimum wages in the agreement.

There is no system of royalties for these background musicians and no concept of intellectual property is evidenced in respect of their efforts in a contract.
collectively bargained. There is no separate rates fixed for solo performances of
the artiste and it appears that the same tariff rate applies for both the classes of
performers. It is found that the same tariff card is followed for both the audio as
well as the audiovisual recordings of performances.

It is noteworthy that there is absolute absence of any safeguards against
unauthorized exploitation and any distortion or misattribution of the performer in
the collective agreement. Once the wage ids procured there is no more a link of
the artist with the performance. It is significant that despite the incorporation of
section 38 in the year 1994, in both audio as well as the audiovisual the same
practice is followed.

The economic and social security system is a self designed one with limited help
from the government that is common to all the other trade unions. The
association has set up a family benefit fund to be provided to the nominees of the
deceased members families. A medical aid fund and an old age benefit
fund. These are all based on the processing of the applications made by the
association. The number of applicants varies from year to year. The funds are
canalized from the collections and corpus maintained by the association. There is
no help in this regard from any external agency. It is on a first come first served
basis.

The cine musicians are trying to do away with the uncertainty created by
middlemen and lack of credibility and transparency in transactions by trying to
evolve a system where in the employer engages the musician through the
association. Direct interaction of the middlemen or messengers with the musician
has resulted in a situation where in the corrupt and exploitative trends have come
to hold sway. The management of the contracts by the association and
documentation by them is expected to secure them against this. Another
significant proposition made in recent times by the association has been for the
initiation of the royalty payment.

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182 This is from a fixed deposit earmarked for the purpose. There is no insurance scheme as the
eligibility for the same was for people below the age of 65. See, Fifty Second Annual General
183 For those above 70—a sum of Rs. 2000.
184 Fifty Second Annual General Report and Statement of Accounts, Cine Musicians Association,
185 Letters regarding this has been sent by the Association to various authorities and interests in
the industry. Fifty Second Annual General Report and Statement Of Accounts published by the
It is conspicuous that despite the changes made in 1994 and the incorporation of the Performers’ Rights into the Copyright Act there has not been any influence of this with respect to the rights of the cine musicians. They have not yet been recognized as entities worthy of any additional remuneration if their contracts do not cover the total extent of exploitation that it is put to. This anomaly has been brought to the notice of the authorities including the Indian Performing Rights Society, the Ministry of Human Resource Development as well as their Federation. But no response has come their way. From the correspondence it can even be surmised that they have been made to understand that the law that was passed did not include them within the purview at all. Further the IPRS too did not include them within the purview for the reason that they were only playing the music as directed by the music composer and therefore did not come within the ambit of the performing artist. The letter also exposes the misconception that there exists a Performance Artists Royalty Act. This points to abysmally low awareness and absence of guidance being rendered to the unfairly placed musicians in the industry.

Dubbing Artists

The experience of dubbing and voice over artists appear to be uniform across the country with the western sector of late showing an initiative to take to trends existing abroad. The unionization trend appears to have struck the dubbing sector rather late when compared to other sectors—it seems to be an eighties or nineties phenomenon. The unions face a lot of adversities to claim their rights in the industry on behalf of the members. For instance the outfit in Kerala does not have a mediation council to intervene into disputes. The fact that all the office bearers are also dubbing artists further constrains the enterprise to take up

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186 ld.,p.2. In counter to this point the association points out that the musicians also render a creative service as most often the music directors only provides a rough sketch, which the musician has to develop in his role as a music arranger. This defensive notion also points to the fact that they are under a belief that an extra creativity has to be proved in order to be eligible for protection.
187 ld.,p.3.
188 The South Indian Cine Dubbing Artists Association was formed in 1985; the union in Kerala was formed in the year 1995 and Association of Voice Artists was formed in the year 1999 (Western sector).
issues on behalf of the artists, as their opportunities would be affected in the
industry. The dubbing artists are also undergoing an identity crisis as they
neither falls into the mantle of performing artists nor do they fall within the ambit
of technicians in the mould of directors and scriptwriters. Their resolve to
strengthen themselves by aligning themselves within either of these has been
thwarted by these associations, as they do not consider them to be part of either
of these fraternities\textsuperscript{190}. In Mumbai or the western sector of the film industry, the
Association of Voice Artists represents the dubbing and voice artists in the
industry. A subtle distinction is drawn between the two segments by virtue of the
work they do. While the voice artists do not provide voice to the artistes
onscreen, the voice artists provide voice over to such media work such as
commercials and documentaries. The manner of treatment and tariff rates are
different for each of these streams. The point of similarity being that both perform
the functions of background voices. The Association also functions under the
umbrella of the federation and is a registered trade union since the year 1999. In
the association in Madras, the association through the federation enters into
triennial negotiations with the producer bodies and the working conditions and
tariff rates are fixed accordingly. It is noteworthy that not all the associations are
working with a minimum tariff card. Associations like Associations of Voice
Artistes have only recently introduced a rate card with a variety of improvisations
making the practices at par with the trends in the western countries. It takes
account of the uses and the extent of utilization\textsuperscript{191}

The dubbing artist is not the beneficiary of any welfare scheme from the
government. They do not beget any insurance or medical cover either. However
the unions formed for the purpose have created provisions to help those in
distress and other incapacities from their limited resources. The dubbing artist
Association is given a representation in the State Chalachitra Academy and has a
say in the consultation with respect to the cinema and television industry.

\textsuperscript{190} Interview with Bhagyalakshmi. The association in kerala does not possess a card tariff rather it
is mutually negotiated.
\textsuperscript{191} Associations like Associations of Voice Artistes have only recently introduced a rate card with
a variety of improvisations making the practices at par with the trends in the western countries. See
Annexure III, P.XVI for the Tariff Card of Voicing.
Since the year 1985 a union of dubbing artists had been formed in south India. Several dubbing artists in the south Indian film industry also became the members of this outfit. Though the dubbing artists never received recognition but for recent measures initiated by the state to recognize them. There appears to be not much difference between that which was earned by the major artistes and the rated dubbing artistes.¹⁹²

During the seventies the dubbing artistes never received any recognition by way of credit title acknowledgement. Thus an even moral right of attribution to their intellectual effort was not granted to them. The practice of giving titles to the dubbing artists had commenced only in the last 15 years.¹⁹³ The fundamental drawback that is being faced by the dubbing artists in the country is that their distinct artistic personality needs to be seriously recognized. Though from the nineties onwards after a tremendous campaign to elicit recognition from the government, the state of Kerala finally instituted the best dubbing artist award in the state award category.

The dubbing artist does not have the right to know the story line or what shape or quality of work the script is going to take shape. There is no connection between the artiste and the script. The artist is not involved with the copy given to him for presentation. The voice artist has to render the script even if it is full of mistakes. There is no time for the voice artist to relate to the script as the exercise takes place in a short period of time. Further there are no practices or norms respecting the involvement of the voice artist or the need to respect his sentiments.

The dubbing artist has not yet been identified as a creative artist whose choices matter in the execution of a film. There is an absence of norms in the film industry to impart respect to the dubbing artist in this regard. The dubbing artist has no right to stop the use of his voice in a work, which he later finds objectionable or distorted from the original version. The dubbing artist has not been incorporated into the curriculum of the film and television schools in the country and this points

¹⁹² T.R Omana has dubbed for the National Urvashi award winner Sharada for the film Thulabharam without any reference or credit for the same. According to her even as a radio artist or dubbing artist there has not been any instance in India where in any body has claimed any royalty.

¹⁹³ Interview with Ms Bhagyalakshmi on 25-11-2004 at Trivandrum. Senior dubbing artist and winner of several State and National awards. One can find subtle variations between the trend in this regard in Kerala and other states.
to the dearth of importance imparted to the vocation and those who practice the
same and make a difference to fortunes of the characters and the film.
The dubbing artist is at the receiving end as he is never recognized in the feature
and in the television serials. (This can be noted, as distinctive from the situation
in the south Indian film industry where credits have begun to be provided to the
dubbing artists). Despite the fact half the creative work of the artists is
accomplished owing to the efforts of the dubbing artiste, they are not provided
with even a credit line.194 This is despite the fact that the law recognizes the
proprietary nature of the voice of the artistes but the trends in the industry do not
reflect this. There was no assuredness whether after the voice was used it would
be retained or not. If it was not found appropriate no compensation was
provided to the dubbing artists for their effort. The moral right of the artist is not
respected and even when the voice is changed there is no reference or
consultation with the prior artist.

Economic rights

With respect to economic rights, there was neither a guarantee with respect to
the payments nor were they adequate or commensurate with the efforts. There
was a hazard that as the dubbing was to take place at the end of the filmmaking
and the producer in most instances would have been in financial dire straits and
therefore he would not be able to make prompt and proper payments. No artistic­
creator status personality was bestowed on the dubbing artists. They were
advised against seeking such recognition as the recognition and the identity of
the performing artists would be affected by the credit being shared with them.
Though there were also those with extreme sentiments who were opposed to
encouraging the use of dubbed voices in films, as that tends to belittle the
contribution and also to promote the true skills of the artist nor expose the artist to
the true tests of acting. In other words the complete actor is not formed till the he
crafts his own voice as well. There was also this opinion, which proposed that
those who used a dubbing artiste should not be reckoned for national awards as
they are only worth half the credit. It also lent an element of disrespect to the
artist who took help of a dubbing artist. However opinions in this regard were not
uniform and slowly certain directors of repute began to provide extend credit to

194 This feature is more apparent in the Bollywood or the western sector.
the artists. This was accentuated by the consciousness by the mid eighties that a disciplined approach to dubbing skills was essential as it was an art form in itself. The importance of this component was realized and a more serious approach to the skill began to be taken both by the dubbing artists as well as the sound-recordists and film directors. It was realized that dialogue delivery required voice modulation and application of a very high standard.

The status of the dubbing artist is nothing more than that of a junior artist. It is through the production executive that the dubbing artist gets the engagement. There is therefore no direct link between the dubbing artist and the producer. This shows or indicates the status enjoyed by the dubbing artist in the production canvas. Therefore if the production executive defaults in the payment then the dubbing artist does not have any relief from the producer as his dealings are only with the production executive. The dubbing artist is totally disjointed from the producer. It is the production executive who has to disburse the monetary benefits to the dubbing artist. There is virtually no communication with the producer who is the person legally accountable for the production.

There has always been a categorization between the dubbing artists on the basis of the category of the artistes to whom their voice is lent. Those who provided voice to the top stars received or could demand a higher remuneration than others. The payment was for the picture and that did not apply for the duration of hours that were put in or the work done. With regard to dubbing rendered for television, the dubbing artists are provided Rs. 1000 per episode for the main performers and Rs. 300 for the others. There is no minimum wage criteria being followed and for payments made in the film industry no voucher is given. In the film industry today there are those who work for top heroines and get paid as high as Rs.15000 to Rs. 20000 per film and those who are paid re.750. But desperately there are those who work for as low as Rs. 250 also. The payment depends on the status of the artist and those in great demand can enjoy the

195 During the eighties a sum of 5000 /- was received for a movie if one dubbed for a major star. Sometimes the dubbing assignment for a movie went for over 10 days. The dubbing artist the eighties had to put in much more effort, as it was the loop system technology that was being applied.
perks like a driver, vehicle and a bata being provided by the producer for the same.

Formalities of Remuneration

As there was never a written contract there was no confidence to turn to the courts for redress. Recourse to the union for redress was of no avail since they feared that it would provoke the producers to boycott the dubbing artist for any further assignments. The only action of recourse in the hands of the union was to seize the print till the payment was made or the issue settled by the union. But this would invoke the displeasure of the producer community, which no dubbing artist wanted to risk incurring.196

With respect to artistes and dubbing artistes too the producers are vested with the freedom to choose anybody to work for them and the artiste can also work with any producer of their choice.197 The use of the words inherent right is significant in the sense that it means that no other agreement or understanding can waive this freedom. With respect to the remuneration it is specified that the contractual remuneration for the dubbing for the entire picture shall be Rs. 3000 (minimum). It is significant that the term used is contractual remuneration and not minimum or call sheet based remuneration. Thus it is irrespective of the hours of work the dubbing artist puts in. There is a further classification between the dubbing artists on the basis of whom they are lending their voice for.198

196 The bargaining power of the dubbing artists has further waned owing to the fact that the dubbing has diminished in importance with more impetus being given to spot recording. The artists have also become more adept at use of their voice and most if them prefer their own voice being put to use. Further the dubbing artist cannot certainly ask for an equal status with that of the performing artist vis a vis the remuneration nor the effort that is required. Further there is no physical strain in dubbing as much as what the stars have to undergo. All these opinions have been uniformly voiced by the artistes and their organizations in Mumbai, Chennai and in Trivandrum during the interviews and data collection.


198 For the villain and other important artists it would be Rs. 2000/- for the entire picture. For any one of the other characters it would be Rs. 1000/- and for bit roles Rs. 750/- is the minimum rate. For track changes for giving voice to the hero/heroine the remuneration has been fixed at Rs. 5000/-, for the 2nd hero heroine Rs.2000/-, for any other character it would be Rs.1500/-, for any other bit character roles Rs. 750/-. 
The general voice for other artists shall be on a daily call sheet basis irrespective of the number of characters to whom the voice has been lent. The remuneration shall be Rs. 120 per call sheet. The wages are to be paid at the end of the day’s dubbing. The call sheet time shall be eight hours. While no conveyance allowance provision has been made food allowance has to be paid when the producer does not provide the same.\textsuperscript{199}

Two aspects stand out with respect to the fact that any number of characters can be given voice and secondly the duration of the performance would not be taken into consideration. For instance the work on a single character can take over one month but the contractual remuneration would be only rupees 5000/- for the entire picture. On the other hand for those who are working on a daily wage basis they have to work for irrespective of the number of characters that may have to be attended to. Further the remuneration is qualified only with respect to heroes and villains there is no higher remuneration when he does it for a mega star or heroine whose remuneration would be in the order of crores. However in this regard one can notice a distinction between the western and south Indian film industry for in the latter it is important to note that a tariff rate is fixed according to the hours of work rendered by the artiste.

There is no system of royalties being provided to the artiste and no notion of intellectual property attributed to the performance.\textsuperscript{200} Besides the wages received for the services there is no separate remuneration fixed for extended exploitation or fresh exploitation in a new media. There is no agreement drawn up for receiving the service of the performing artist. However depending on the application of the recording for diverse uses a separate tariff is provided based on the hours of work put in. That is the shift system. It is significant to note that despite the immense means of exploitation of the performance made available to

\textsuperscript{199} J.A.C., Joint Action Committee of South Indian Film Producers, Madras (1989),p.49. If the service of voice artists on daily wage basis were cancelled within 2 hours from the call sheet time then half of the call sheet wages would have to be paid .an additional one-third amount would have to be paid if the artiste works for more than two hours of the call sheet time. If more than 2 hours work is put in then an additional amount of the basic wages per call sheet shall be paid and if it is more than 4 hours an additional full call sheet amount needs to be paid. For any extra dubbing arising out of the censor cuts no payment need be made

\textsuperscript{200} This is a uniform feature in all the three industries analyzed. Further no alternative trend has been reported from any other industry in India. Though in recent times in the advertising sector certain moves have been made in this direction through a monitoring organization called the INTAMM.
all corners of the globe in diverse media other than the tariff wage they are not amenable to receive any thing more. This is made all the more acute with the prevalence of middle men who take immense commission from the producers and also slashes the fees to be paid to the performing artist. There is often no direct interaction between the performer and the producer with the latter having sub-delegated the work to another person for a price. Even foreign television channels that have set up shop in India are making use of the lax legal regulations in India and even if written contracts are in vogue then the provisions in them make it a point to take away or assign away all the rights.

The conditions of work in the industry despite this unionization are yet to look organized. Despite the tariff rates in force, the artistes are not paid the standardized fees for their work. There is a distinction between the dubbed voices and master voices. The latter are paid much higher than the former. The dubbed voices receive as low as Rs.200 to Rs.300. In contrast to the master voices in English and in Hindi for advertisements that fetch between Rs. 10000 to 50000, the payments to the dubbing artist are uncertain in other applications like narrations, documentaries, feature films and television serials to which their voice is put to. The payment structure cannot be compared to the treatment received by the voice artists internationally. The prevalence of middlemen who charge 15 to 95% as commission in the industry further drains what the dubbing artist finally receives. The commission is excessive if the artist is a fresh entrant. There is no awareness among the artistes about the amendments made in the year 1994 be it in their services for audio or the audiovisual. There has been no attempt to explore possibilities under the canopy of the Copyright Act. The artistes desire a direct link between the artists and the producers so that the middlemen do not operate. A payment based on the royalty system based on the extent of exploitation. The artist would receive remuneration each time the performance is used similar to the way the system works in western countries.

201 Dubbing artists are also working in deplorable conditions in that they are often asked to sleep in the studios with a nominal food being provided to them.
202 Interview with Sri Vishnu Sharma, an ace dubbing and voice over artist on his experience with the Disney Channel. He refused to sign the contract as he found the terms discriminatory.
203 "The Art of Voice Acting", USP Age, October 2004, p.44.
204 If a client pays Rs.15 to 30 lakhs for a commercial to the producer. The artist receives a pittance. It is never proportional to the value of his performance nor to the extent of exploitation.
based on the copyright model. Commencement of the slap on system where by the artist must be paid for the number of applications to which the voice recorded is put to. A minimum fee for taking into account the different applications of recordings has been propounded in recent times and a tariff card based on that has been released. This is required to be reviewed every 6 months. Even though not in the nature of a residual system nevertheless it aims to take into account a payment based on the time of recorded performance, the medium and the application to which it is put to. A most significant need voiced has been to build unity among the diverse associations spread across the country and bring them under one umbrella as both unity of aims as well as the financial strength to achieve administrative purposes can be realized.

Contractual Practices in the Digital & Web Based Realms

The new convergence media like the Internet and mobile communications have become a major source of exploitation and concern to the entertainment industry particularly to the audio realm. But it is only a matter of time when the digital possibilities become a reality for the audiovisual as well. Already, movies have begun to be down loaded through satellite servers to the theatres. Though there are numerous sites from which movies can be down loaded, the legitimate ones are few and the scourge is yet to hit the Indian movies. The reason for this could be the limited penetration that PC’s have had into India and secondly the broadband possibilities being still in a state of development. The

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206 The data and analyses of the association of voice artists (affiliated to the Federation of Western India Cine Employees (F.W.I.C.E.) is based on interviews with Jaishheel Suvarna (Hon. General Secretary), Vishnu Sharma, Shivraj Suvarna, Ritu Patel at the Association of Voice Artists office(AVA) on the 10th of August, 2005 at Mumbai. The author was a special invitee at the meeting to take stock of the industry and the changes envisaged. A memento was also presented to the author/research scholar for his participation. Their media advisor, Niranjan Naik also attended and made a presentation about their future plans at this meeting. Significantly he stressed the need for an all India unified body to represent the voice and dubbing artists.
producers individually license or assign the web casting rights and collective licensing activity has not commenced among them.\textsuperscript{211}

A noteworthy feature of the Internet space providing transactions has been that the consumer who is in need of the 'virtual plot' is required to execute no standard agreement with the lessor of the space. There are lots of agencies in India that act as the retail arm of the Internet service providers. These service providers give space and other ancillary facilities on rent for a minimum period of one year. The rate fixed depends upon the amount of space and also for the domain name registration. The domain name is registered through the Internet through the domain name registration service and the space is brought from the Internet service provider. The retailer get a percentage from the ISP for the transaction based upon the rate for the space provided or the domain registered. (Whether a status of agency can be attributed or that of a franchisee can be attributed to the retailer is debatable as also his extent of the liability of the retailer as regards the space provided by the Internet service provider). However it appears as to the guarantee of the space being provided to the user – lessee for the period promised.

The retailer also undertakes to extend the services of developing the website that includes designing and execution but these are only services that he renders as an addition to the function of the letting the space. They charge separately for the website development function. In both these respects from the intellectual property stand point both as the lessee of the space or the website developer, there is no formal guarantee from the lessee to the Lessor that the materials to be used on the web space or content be it literature or the art work are legitimate or properly authorized.\textsuperscript{212} Neither does the retailer ask for any indemnity or guarantee nor does the lessor or the Internet Service Provider demand the same from the lessee of the service. Thus prior to the use of the website and even after the up linking there is no scrutiny filtering the space of any unauthorized material.

There is not even a guarantee required to be produced by the user that he shall only use legitimate material or that the liability shall be restricted to the user or that he shall indemnify the service provider and the retailer from any legal action

\textsuperscript{211} This is reflected in the advertisements placed in film Journals or in newspapers by the buyer or the seller announcing either their acquisition of rights or sale.

\textsuperscript{212} Interview with Sri Vineesh, Website Developer for Flashwebhost.com on 22\textsuperscript{nd} of November 2005 at Kochi.
what so ever. The Internet service provider stalls the use of the site only if any aggrieved person makes a complaint in this regard. The Internet service provider would inform the retailer and steps would be taken to bring down the servers. The same principle and practice applies with regard to those providing space for audio and audiovisual streaming as well. There is no way that the unauthorized audio and audiovisual material can be filtered before hand or can be stalled before its appearance on the site. The Internet Service Provider is situated mostly on overseas soil. It is significant that the complaint is not made or to be made to the local provider of the space that is the retailer but the Internet Service Provider themselves. There fore under the current practice the retailer is not apparently responsible of any infringing material or abetment by providing space for hosting unauthorized material nor is he deemed to have any responsibility with regard to the same.

In this context it has to be noted that the collective licensing by both the IPRS (Indian Performing Rights Society213) as well as the PPL (Phonographic Performances Limited214) in India has commenced with respect to their repertoire215. But relevant for the purposes of this study is the fact that the performer does not receive any remuneration out of the same. Even if rights can be read in under the present statute or in the future, as aforementioned there is no way infringements can be preempted before putting the material into the digital trajectory through a process of prior filtration or standard documentation.

The Television Contracts and the Performing Artist in the Broadcasting Industry

Government Controlled Media- Television and Radio

The history of the growth of the broadcasting through television and radio throws light on the significance accorded to the performers in these media in India.


214 See, for the collective licensing functions of the PPL, the Internet is also covered. <http://www.pplindia.org/aboutus.html > as 1st January 2006.

215 According to Favio D'Souza, CEO, Indian Music Industries, for instance the Rediff.com and the Sound buzz .Com have been licensed to stream the music until now. This points out the enormity of illegal streaming and copying happening across the web. It has hit the music industry badly. Interview held on 29th of August, 2006.
Doordarshan began its operations in India since the year 1959. In the year 1977 the B.G Verghese Committee had recommended the amalgamation of Doordarshan and the Akashwani into Akash Bharathi as both were dealing with electronic media.\textsuperscript{216} The distinction between audio and audiovisual was considered a moot point and just the technical and administrative similarities were considered. Later on the P.C Joshi committee in the year 1979 made four volumes of recommendations. An attempt was made to study the development of software personality for television. The state of the television industry was not considered up to the mark. The succeeding government that came to power chose to ignore the recommendations. The idea was to keep the industry within the government. Privatization was not to be allowed within the sector. There was neither any commercial policy nor any program policy. The department was to continue as part of the Department of Information and Broadcasting. The Doordarshan was to act as an arm of the Central Government. The government fixed no distinct qualifications for the personnel recruited for working in the television medium. It was from a common pool of the Union Public Service Commission. For 45 years both for the Doordarshan as well as the All India Radio the common pool has been the source of work force in the creative as well as other departments. The distinct requirements of the two media have not been taken into consideration. No functional difference has been noted from the government standpoint. Even the technical hands in the television require a creative input distinct from that required in the radio division.

The same logic has been followed with respect to performers in Doordarshan too. The patterns of model agreements with performing artists have also been borrowed from the Akashwani. The panel of artistes is created both for Doordarshan and for Akashwani as well. Even in the remunerative pattern the only difference has been that fifty percent more is paid by way of remuneration to the performing artist on the television. The value of the image in the commercial sense of the term has not been acknowledged separately. The value of the visual image of the personality has not been taken into consideration. The total telecast right of the performance is granted to the Doordarshan. It is the largest terrestrial network in the world but it is still ruled by the archaic government rules and the

\textsuperscript{216} Based on interview with Sri Anwar, Program Officer and News Producer of Trivandrum Doordarshan Kendra conducted on 28-11-2004 at Trivandrum.
hangover of government undertaking despite the formation of the Prasar Bharathi Corporation. A significant policy shift has not happened nor has any particular policy been formulated to encourage the best talent. Despite the enterprising changes in the constitution the Prasar Bharathi follows the set and staid norms of yesteryears. Without bifurcation into distinct functional entities, the needs of the audiovisual department would continue to languish with revenues being shared by the two departments with AIR being in loss and the Doordarshan making all the profits. While the revenue of Doordarshan was around rupees 18 crores for the preceding year, the Akashwani made only around 40 lakhs. Both continue to have the same official structure thereby working with 10 producers is the habit despite totally different functional and qualitative requirements. Despite far greater reach and technique superior technology being put to use through digital applications as distinct from the analogue mode. There has not been any delectable change in the approach towards the functioning of the Doordarshan.  

With respect to performing artists who render performances for other organizers, the Doordarshan does not enter into any direct contracts with them. It is only with the organizer that a contract is entered into. Most of the coverage is insisted upon by the organizers who send invitations in this regard. They in turn get heavier sponsorships for the event as the sponsors would get an indirect publicity when the event is telecast. The artist may be quoting rates with the organizer taking into account the audiovisual coverage. There have been instances where in the artist has objected to the coverage and the cameras and recording instrument had to be removed. The understanding appears to be that unless the artist objects expressively the broadcaster or the affixer can record, as the intention to record is discernible for the artiste. With respect to such agreements with the respective organizers, the Doordarshan enters into a memorandum of understanding drawn up especially for the purpose and ratified by the director general of the Doordarshan Kendra. The organizer would also have to submit an indemnification bond that immunizes the Doordarshan from all likely actions infringement. The right to telecast the program that is vested with one Doordarshan Kendra cannot be used by another.

217 ibid.
The producer airs independently produced programs on the Doordarshan upon a payment for the time provided by the channel, which works out to rupees 15000/- per 25 minutes. 150 seconds is provided to the producer to bring in the sponsored advertisements that is the main source of revenue for the producer. The producer is to execute an agreement with Doordarshan for the telecast. Only a single telecast right is vested with the Doordarshan. At times there is a repeat telecast but the producer does not have to incur any additional expense towards the time slot. In fact this is a means to secure greater advertisement revenue for the program that there is also going to be a repeat telecast. The advertiser is enticed in that his product receives exposure twice over for a single payment of a fixed sum. Doordarshan importantly demands an indemnification bond that secures it from all the claims that the producer may have from or against the creative contributors and other rights holders with respect to the film. Thus it is important to note that even the model state television corporation does not exactly scrutinize the contractual terms signed between the creative contributors which includes the performing artist and the producers and whether commitments to the creative contributors have been complied or not.218 The software rights is retained with the i.e. the ownership right is retained with the producer and after the telecast according to the contract DD does no longer have any rights in the program. The producer is free to use the software on any other channel for further exploitation. It is noteworthy that the performing artist does not receive any additional remuneration in this regard.

Feature films are telecast on minimum guarantee basis and on the basis of out right licensing of the film from the producer for a period of time. In the former instance a minimum guarantee is made to the telecaster and an agreed amount is paid to the producer of the film. This is only with respect to new films. On this basis the producer gains considerably upon each telecast. The ratio between the amount for the film and the producer could be in the ratio of 15: 3. That is 15 lakhs is the amount grossed by way of selling the free airtime on the channel then an amount of 3 lakhs has to be paid to the producer.

218 Interview with Sri Adam Ayub on the 23rd of November 2004 at Trivandrum. Sri Adam Ayub is a producer, scriptwriter, director and actor associated with the audiovisual industry for well over 25 years since he graduated from the Film and Television Institute of Tamilnadu at Adyar. He is the founder president of the first association representing the interests of those associated with the television industry that includes performers in the medium called CONTACT based in Trivandrum.
The old films—of non-commercial value are bought for a longer period of time like say for 40000 rupees and the producer is provided a royalty amount on a percentage for in the range of say 25% per annum. For new songs from recently released films, the producer has to pay Doordarshan for the songs at the rate of rupees 6000 per song, as it is a promotional initiative. The songs from the old movies are taken for Rs. 6000 or Rs.5000 and telecast any number of times in a year. The telecast can be made only from the concerned Kendra. In all these circumstances the need for an indemnity bond is insisted upon.

The above mentioned study of the avenues of exploitation over the national broadcaster and telecaster points out that the avenue of exploitation of the entertainment software is endless and timeless—subject of course to copyright laws. The producer is the sole beneficiary of these avenues and subsequent exploitation even in media non-existent at the time of the first affixation contract does not provide any additional percolation to the performer or the other creative contributor. Unless the same has been specifically written in the form of a contract, which is rare, and instances might be counted on the fingertips. The state broadcasters, which include the radio and the television, now comes under the canopy of the Prasar Bharathi Corporation— a public sector undertaking from the year 1999. This gives it autonomy to perform and freedom from governmental interference. It also makes it at par with other competitors in the field with no immunity of being a governmental arm. Therefore commercial viability and survival amongst the fiercely competing interests in the media sector is of paramount interest to the corporation. But it must be noted that because of its state character as regards investment and decision-making it retains the character of the state from a constitutional perspective and thus has to conduct itself as a state entity should according to the tenets of the constitutional principles. This characteristic becomes important with regard to the contractual responsibilities of the corporation, as the contracts should exude the qualities of fairness and equity.
Contracts with the Performer for Original Programming

Drama Section

With respect to the original programming rendered by the Prasar Bharathi for the television, written agreements are mandatorily entered with the actor/performer or the producer. The agreement has to be signed by the concerned actor or performer or producer and returned within a stipulated time frame. The agreement states the conditions that the artiste has to subscribe to in order to carry out the terms of the contract. The Station Director intimates to the artist seeking his services with the title of the program, date of broadcast/telecast and time, the duration and place of broadcast/telecast together with the fees for the same.

The artist agrees to attend the rehearsals as are in the opinion of the All India Radio/Doordarshan necessary for the production of the program. The artist agrees to follow the instructions of the producer or any other officer in charge to be appointed by the Doordarshan/AIR. The artist shall warrant at the time of signing the agreement that he is not under any engagement or (otherwise barred by any contract) precluding him from fulfilling this agreement and that he has not concealed any change of professional name or description. The AIR or Doordarshan reserves the right to record the whole or any part of the program for rebroadcast/re-telecast without payment of additional fees. Notwithstanding any thing contained herein AIR/Doordarshan shall have the right to release or allow any of its agency to release this program or part thereof through discs or tapes and cassettes manufactured commercially by paying an amount not exceeding four basic fees to the author/talker. Save and except making one-

219 See, Annexure IV., p.XXI for a copy of the standard agreement between the artiste and the AIR/Doordarshan.

220 The attached confirmation sheet has to be returned by the actor, performer or producer within three days from the receipt of this intimation. Source: Doordarshan (Trivandrum) procured on November 2004. Terms as set down in the contract and confirmation sheet for the drama section of the All India Radio/Doordarshan.

221 Clause 2 of the conditions of the contract.
222 Clause 3 of the conditions of the contract.
223 Clause 4 of the contract.
224 Clause 5 of the conditions of the contract.
225 Clause 5(a) of the contract.
time fees as stated aforesaid. AIR shall not be required to observe any other or further formalities (it is noteworthy that the specific mention in this regard has been only with respect to the All India Radio and nothing is mentioned with regard to the telecaster or Doordarshan).

In the event of any artist being a government servant, the broadcast /telecast of his program and the payment to him of the fee shall be subject to his obtaining the sanction of the head of his office or department to this effect and this sanction should be forwarded to the station director before the date of that broadcast /telecast. It is important to note that broadcast/ telecast means radiation of the item from one or more transmitters of any broadcasting or telecasting organization. It raises a significant issue whether cable transmissions and other communications to the public would come within the terms of the agreement.

In the event of the artist alleging incapacity to perform by reason of illness or physical incapacity the certificate of a qualified medical practitioner, proving the fact of such medical incapacity shall forthwith be sent to All India Radio /Doordarshan by the artist stating the nature of the illness and that in consequence there of the artist is unable to perform. AIR/ Doordarshan in such an event shall not be liable to pay any fee or remuneration to the artist except for performance actually given by him.

Should the artist for any reason (except for illness or physical incapacity certified as herein before provided or such other unavoidable cause as may be proved to the satisfaction of the station director fail to appear and perform as stipulated in the agreement, he shall pay to All India Radio /Doordarshan as and for liquidated damages a sum equal to the sum which the artist would have received for such appearance and performance in addition to the cost to all India radio/Doordarshan of providing a deputy and any other costs, damages and

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226 ibid.
227 Clause 6 of the conditions of the contract.
228 Clause 7 of the conditions of contract.
229 Even though till date no one has raised these questions.
230 Clause 8 of the conditions of the contract.
expenses incurred by All India Radio/ Doordarshan by reason of default to the artist.\textsuperscript{231}

It is important to note that the All India Radio/telecaster reserves the right without assigning any reasons whatever to determine the contract. In such an event the artist shall not have or make any claim against All India Radio/ Doordarshan except for the fee, which shall be determined by All India Radio/ Doordarshan proportionate to the work actually done by him under the contract.\textsuperscript{232}

Other than the aforementioned set of conditions there is no specific obligation specifically spelt out by the agreement as regards the economic rights or royalty rights other than when it comes to the commercial application of the recorded program other than by way of repeat telecast (four basic fees). Even this is not on the basis of the number of uses of the program. There is no bar to repeated telecast or broadcast of the program by the Kendra or by the national broadcaster and the option is specifically reserved to the broadcaster. Therefore the initial intimation regarding the date, time and place of telecast is rendered superfluous by this clause. There is no specific right spelt out with respect to the moral right of attribution or the right of integrity against distortion or mutilation of the program. The definition of the term broadcast does not seem to take into account the other means or popular means of communication to the public.

\textit{Music Section}

There is a subtle difference with respect to agreements relating to performance of music for the Akashwani and the Doordarshan.\textsuperscript{233} Some of the salient highlights of the agreement of relevance to the topic under study are as follows. The written consent of the artist is essential and the artist has to be intimated about the envisaged performance including details about the place of the performance, the duration of the performance, the character of the program, fee for the broadcast

\textsuperscript{231} Clause 9 of the conditions of contract.
\textsuperscript{232} Clause 10 of the conditions of contract.
\textsuperscript{233} See, \textit{Annexure V}, p.XXIV for the terms of the Agreement between the performing Artist and the AIR /Doordarshan.
telecast and the fee per broadcast/ telecast of a mechanical reproduction of the performance.\(^{234}\)

It is specifically provided with respect to music (but this is absent with respect to drama-discussed earlier), that AIR /DD shall not be liable to the artist or to the legal personal representatives of the artist for any loss, damage or injury to the artists person or property during or in connection with this engagement unless caused by the negligence of AIR/DD or its own officers or servants and recoverable on that ground under the law applicable in India.\(^{235}\)

Significantly, it is stipulated that the artist shall at all times keep AIR !DD indemnified in respect of the consequences following upon any breach of the aforesaid warranties and undertakings and in respect of all actions, proceedings, claims, demands and expenses whatsoever which may be made or brought against or suffered or incurred by AIR/DD in consequence of any breach of any such warranty or undertakings or on the ground that any such work as aforesaid is an infringement of any rights of any other person or is libelous or slanderous or controversial or obscene or indecent.\(^{236}\)

It is significant that the broadcaster shall be entitled to, without any further payment, to make a mechanical reproduction of any rehearsal or of the performance, broadcast /telecast and to use it for purposes not involving public performance, and to broadcast /telecast extracts there from in documentary and historical programs, and in trailer programs.\(^{237}\) It is however important to note that specific purposes not involving a public performance is what is allowed.

AIR /Doordarshan shall be entitled upon payment of the additional fee shown overleaf to broadcast/ telecast a mechanical reproduction of the performance or extracts thereof.\(^{238}\) The additional fee will not be paid if a mechanical reproduction is broadcast /telecast in lieu of the broadcast performance. A similar right exists in the AIR/ Doordarshan for commercial release through tapes.\(^{239}\)

\(^{234}\) Source: Doordarshan (Trivandrum) procured on November 2004. Terms as set down in the contract and confirmation sheet for the music section of the All India Radio/ Doordarshan.

\(^{235}\) Clause 6 of the conditions of contract in the music agreement.

\(^{236}\) Clause 7 of the conditions of contract.

\(^{237}\) Clause 8-a of the conditions of the contract.

\(^{238}\) Clause 8-b of the conditions of contract.

\(^{239}\) Clause 8-c of the conditions of contract.
Physical incapacity or illness is a reason that can be adduced for the absence from execution of the contract.²⁴⁰ Should the artist for any reason (except illness or physical incapacity certified as herein before provided or such other unavoidable cause as may be proved to the satisfaction of the station director fail to appear and perform as stipulated in this agreement, he shall pay to AIR/Doordarshan as and from liquidated damages a sum equal to the sum which the artist would have received for such appearance and performance in addition to the cost of AIR/Doordarshan for providing a deputy and other costs, damages and expenses incurred by AIR/Doordarshan by reasons of default of the artist, but nothing in this clause shall affect the right of AIR/Doordarshan to apply an injunction to restrain the artist from performing in breach of this contract or right of AIR/Doordarshan to determine this agreement under clause 13 below.²⁴¹

When this agreement related to a troupe of two or more performers working under the control or management of the artist, the artist shall at the time the contract is signed, furnish AIR/DD in writing with such names of the performers as the station director may require and shall not substitute a performer for a person so named without the written consent of the station director. The artist shall further secure the written consent of the other member or members of the troupe to the terms of this agreement. The artist agrees to pay to each member of the troupe the proportion of any fee payable to the artist to which the member is entitled.²⁴² If the artist is removed then pay for work proportionate to that rendered has to be provided to him by the employer.²⁴³

The employer has the right to forbid or reject the performance if the artist is not sober or in a fit state of health to perform according to the standard expected of him. In such cases the artist will not be entitled to the fees agreed upon or any portion thereof and to any compensation whatsoever.²⁴⁴

From an assessment of the terms and conditions pertaining to drama and music section it is intriguing why certain sections in one are found amiss in the other. While there is a specific mention of additional fees in the music section there is none with respect to drama section for the sake of telecast or mechanical

²⁴⁰ Clause 10 of the conditions of contract.
²⁴¹ Clause 11.
²⁴² Clause 12.
²⁴³ Clause 13.
²⁴⁴ Clause 16.
reproduction. Though the officials maintain that no such additional fees are in vogue today. Those provisions are cut before being sent to the performers for their ratification and acceptance.

One can deduce that agreements entered into by the state enterprise with the performing artist are in writing. Payment is made according to a pre-set grading and tariff table. There is no discrimination based on the standing of the artist. A grading is provided according to the audition test. The remuneration is laid down and granted accordingly. Only in exceptional cases a higher scale is granted. The payment for Doordarshan artistes is only 50% more than that given to AIR artistes. No greater weightage is given to the audiovisual artist. A wide right of exploitation is granted to the state entity through the conveyance of mechanical reproduction and re-telecast rights. No right to moral credit is provided. There is neither any right to integrity of the performance being preserved; it is left to the discretion of the telecaster without any reference to the need for consent of the performing artist. The artist conveys all the rights upon the receipt of a fee set according to a tariff table. There is also an embargo on artists being employed for more than a specific number of times within a particular period.

The All India Radio functions as another wing of the Prasar Bharathi. There is a definite categorization of the artists on the basis of audition tests carried out by the organization. The remuneration is paid on the basis of this categorization according to a tariff table set down. All artists including creative contributors are paid according to this scale. There is no distinction between those who may otherwise command a higher standing commercially or others with a lower standing.

For instance for a drama script of 15 minutes a sum of 1000 Rupees is given to the scriptwriter and for duration of half an hour a sum of Rupees 1500 and for 1-hour script Rs.2500 is paid respectively. This is the same for both AIR as well as the Doordarshan with marginal increase for the latter. The script can be solicited and unsolicited. The scriptwriter can use the script for other purposes. The broadcaster to which the right to broadcast has been granted can translate the same into other languages and broadcast as well. For which no additional

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245 This is to see to it that the performance is not monopolized in a few hands. Based on interview with Rana Pratap, Program Officer of All India Radio, Trivandrum on 24-11-2004.
remuneration would be granted. When the same is telecast as a national program then the rate would be different.

With respect to lyrics, there is an internal committee that decides. Which is in the range of Rupees 1000 to 500. It is not for further use. The lyric writer can publish but cannot broadcast through any other broadcaster. When once he consents the same to be broadcast through the AIR.

For drama artists an audition test is conducted and grading given as B, B-High, A and A- Top. The Delhi committee decides the last grade while the committee of the local Kendra decides the rest. While the artist in B grade gets Rupees 500, the B-High artist gets Rupees 700, an A artist begets Rupees 1000 and an A-Top artist begets Rupees 1500. A uniform T.A and D.A allowance is also provided though those in the higher grade beget higher perquisites like air-conditioned travel. All this is inclusive of the pay for the rehearsals as well.\textsuperscript{246}

While for musical performers a similar system is followed, a new grade has been created for accomplished artists. For folk music singers too a similar auditioned grading system is followed. However repeats of the performances are not allowed. A date chart is provided and there should be a gap of at least three months between one performance and another. The contract is sent earlier and the cheque is kept ready as soon as the performance is over. The use of un-auditioned artist is rare. The percussionists are also treated in the same manner. Double the usual rate is provided to the artist only when they perform before an invited audience and when it is twice recorded. Another station would require the permission from other station to use the software or the artist auditioned in one station.\textsuperscript{247}

Programs like film music songs and pop albums are also sourced from outside. An agreement based on royalty has been entered into between AIR and the South Indian Film Chamber of Commerce at around Rupees 5 per song. There is also a direct agreement with the film producers who provide the song free of cost for broadcast. A royalty agreement is entered into with the producer of the album on a separate tariff rate with respect to the pop albums. But it is important to note that in none of these agreements is there a need to pay royalty to the performing artist.

\textsuperscript{246} Ibid.
\textsuperscript{247} Ibid.
There is a grading on the basis of positions held like for example Vice Chancellor (Rs.1000), MP's and MLA's (Rs.750) with respect to news programs like invited audience discussions. There is an upper limit for the tariff rate of Rs. 2000. Though the written contracts, which are the relics of an earlier age, do contain provisions, which ordain additional remuneration for the repeat utilization of the recorded performance presently the practice has ceased according to the officials of corporation. The policy in this regard has undergone a change and repeats do not beget any further revenue for the performer, the scriptwriter or any other creative contributor. A fixed one-time payment is all that they are entitled to. The royalty-based remuneration is no longer operational. The officials invoking the contractual clauses or inappropriateness of the contractual undertaking have not noticed a single litigation pertaining to these agreements entered into with the state undertaking. Interestingly the agreements do not show the intent of assignment of the rights being expressly reflected in the agreement rather it would have to be read in impliedly into the contract. Secondly it is difficult to make out from the contract whether the broadcasting and the telecasting right has been exclusively granted to the state entity or only licensed with the right to retain the further right of similar exploitation. That is any further grant of a similar right to any other entity could be infringement of the present transfer. There is ample imbalance between the allowance of repeats and the payment, which is afforded to the creative contributors as remuneration for their services. The ambit of use is not restrictively specified rather it is left unspecified with reference to geography as well as the durational element. This raises a valid question of an unfair bargaining position when seen in relation to the single fixed payment given to the artiste. Further the repetitive use through an infrastructure as huge as that of the Doordarshan and the AIR would very well limit the commercial value in the performance and other channels and avenues may not exude as much interest in the work once telecast or broadcast. Thus the proportion of payment to the exploitation of the work does not seem to be balanced with one another. This is however partly offset by the positive aspect that there is a written agreement and the corporation pays the performer promptly after the recording.

248 Interview with Rana Pratap, Program Officer of the AIR Kendra at Trivandrum on 24-11-2004.
This agreement when seen in the context of Section 18 and 19 of the Copyright Act will devolve back on the creative contributor at the end of five years and the geographical area of use can only be India unless otherwise specified. But in the face of satellite distribution, the footprint of the satellite would need to be guided if it is not to violate the terms.

With respect to the performing artist in the aural medium of broadcasting, the agreement is a major advancement over the requirement of a mere consent that is required to be elicited from the performer under the terms of Section 38 of the Copyright Act. It is a written agreement and therefore a more credible authorization. Further, consent is provided for the recording, broadcasting and the particular purposes for which these are to be applied are also stated therein. But it can be noticed that there is the need for only a single consent for all these applications and extent of use. From a simple scan of the provisions of the Copyright Act pertaining to performing artists in the aural medium, it can be said that the contract complies with its requirements. But whether the terms are fair or not would be debatable that is particularly with respect to the remunerative adequacy and the extent of exploitation.

The Television Industry

An assessment of performers’ status in the television industry can best be realized by sketching the structure of this industry and what it is poised for in the future. The television industry has overwhelmed the media sector since the color transmissions began in 1982 following the Asian games. Until then there were only a few initiatives in this sector from the state enterprise of the Information and Broadcasting Ministry called the Doordarshan. Foreign investments in the media segment was discouraged by the Government of India following a policy decision taken in the year 1955. Following the gulf war in the year 1990, there was a sudden channel explosion with the telecast of satellite television from foreign broadcasters. By 1996 the number of channels had crossed fifty. The software producers enthusiastically responded to this new demand for programs as now the entertainment needed to be beamed 24 hours through 365 days in an year.

At the distribution level, the arrival of Multi System Operators (MSO) saw the shakeup among the 60000 odd cable operators who had sprouted up\(^{250}\). The MSO's could provide access to more channels at a time. The situation also saw the loss bearing satellite channels switching over to be pay channels.

The Government of India began to brood over the statutory regulation of this rather chaotic industry. The Cable Television Act was passed in the year 1995\(^{251}\). However the broadcasting arena was not yet legally streamlined but the government did attempt a broadcasting bill. The present trend to usher in cable less transmissions through Direct to Home (DTH) processes has further run into walls with differences in the government. But with it a new economy transplanting the old would take place within a space of ten years\(^{252}\) which could further be modified by the broadband availability that would create a convergence of entertainment and information medium through the computer conduit. Television could either be coexisting with the computer or could succumb to its possibilities and advantages.

The television industry promises an increase in the demand for content, increase in programming rates and increasing revenue from television advertising. These is an almost assured trend of consolidation in this industry with integrated Models being the reliable model for consistent production and output in the long run. Content providers would have a presence across diverse media platforms in order to derive maximum value\(^{253}\). This would be a playing field of huge players and this is evident from the trend of most corporate entities grazing the unlimited market expanse\(^{254}\). The high degree of corporatization is a continuing syndrome even today.

There are two popular revenue models for Television content marketing a, the commissioned programming mode and the sponsored programming method. In the former model the broadcaster commissions the content provider to produce

\(^{250}\) Ibid.
\(^{251}\) Ibid.
\(^{252}\) Ibid. Though Rupert Murdochs Ku band has been put on hold, News Corp. is carrying on with a subscription of 20000. But with Doordarshan propelling the Direct To Home (DTH) dish, the future of the next five years has begun in India.

\(^{254}\) In the year 2000, five prominent companies accessed the capital markets raised resources through initial public offerings to the tune of Rs. 2.03 billion. There are several listed television companies on the stock market that have consistently sustained market appreciation and remain buoyant by their performance. Id., p.38.
content on a cost plus margin basis. (The margin would be 15-25% of the costs; the broadcaster picks advertising revenues. The majority of cable and satellite televisions follow this model except for Doordarshan and a few other south Indian channels. In the latter, model the content provider makes an upfront payment to the broadcaster and buys free commercial time (FCT) from it, depending on the duration of the program. (3 minutes for program duration of 30 minutes). The content provider recoups its investment whether by getting program sponsors or by selling FCT to advertisers. The copyright in the content stays back with the content provider and reruns can be hoisted exploited in this regard. However the trends in the industry have been changing with these models being more flexible. As the demand for quality content increased so in commissioned programming the content provider is now able to participate in the revenue if the performs beyond Expectations on a scale such as ratings based on surveys. The content providers are able to bargain and retain the copyright in the content for further exploitation too. Here the content providers in a more advantage round bargaining position than the broadcaster. It is the content provider that mostly engages the performing artist and other creative contributors but these reruns do not percolate as new sources revenue to them. This is so even in the absence of any written contract or specific oral agreement. However the practices with respect to performing artists in this media does not inspire any confidence as a fallout of professionalism and transparency in practices is not reflected in the engagement of personnel in the creative department. Besides producing for the domestic and the export market new media platforms are also being tried out though the trend is at a fledgling stage. As early as in the year 2000 webcasting was being attempted by media houses such as united television through their portal Sharkstream .com and Pentamedia graphics (NUMTV, a pay platform that hosts a bouquet of regional language channels). The earnings from this sector are negligible as the required bandwidth was not available. But it is poised for a mega leap forward with the mega conglomerates like the BSNL and Reliance info and TATA Indicom laying siege to country by laying down optical fibber across the length and breath of the country.

\[255 \text{Id., p.36.}\]
It was only with the advent of satellite television that the television industry as a source of employment generation and artistic opportunity truly took off. Ever since massive upheaval in the audiovisual mass communications in the country there has not been any policy with respect to the labor employed in the television industry in contrast to the limited attention given in this regard to the cinema industry. Though the industry is hardly in its fifteenth year of functioning nevertheless it has proven itself to be a cultural, commercial and an economic facilitator with immense employment potential. It could be considered by any credible hypothesis to have overtaken the film industry in terms of output as well as regular employment as well as revenue generated. However the Government of India as well as the state governments have not extended any package to the television industry like it has to the film industry. There has been a slow but steady change in this regard with the television industry being organized on professional lines. The television producers have organized in certain states and the artistes have also in recent times organized themselves. But these are in its fledgling stages. Nevertheless they have been able to cast their influence through their represent offices and gain favorable foothold and government attention to their grievances. The efforts are paying off. The gains have been varied from different states but the progress is discernible. The governments too have changed their attitude towards the television industry with the slow effacement of the early-distanced attitude.

Practices in the Television Industry with Respect to the Performer

The artists in the television industry were totally unorganized till the mid nineties. In Kerala prior to 1996 there was no organization representing the creative contributors in the television sector. Even the welfare schemes of the government of India and the state governments were being extended only to the cinema workers and creative contributors therein and the television industry was left outside the purview. Autonomous institutions that had commenced working in

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256 Based on interview with Sri Adam Ayub, on the 23rd of November 2004, he recollected his experience working for several producers for serials including a much popular one that catapulted Manoj K. Jayan - a character artiste of great repute (he received Rupees 1000 for acting in this popular serial in the early 90's) into stardom - Gumilagal. Sri Adam Ayub, the founder President of CONTACT received Rupees 5000 for acting, directing and scripting the serial.
the realm of cinema were also at a formative stage and therefore it too did not
cater to the television sector. For example the Chalachitra Academy that came
into being around the same time did not include the television industry within its
purlview. But this attitude was abandoned due to consistent pressure from the
newly organized forces in the television industry. The pension and the welfare
schemes being operated by the Chalachitra Academy on behalf of the state
government were extended to the television industry with the same criteria as
exists for the film industry.

Prior to 1996 there was no practice of any written contract being entered into
between the artist and the producer. The oral agreements that were entered into
were not fulfilled to the full extent of the promises made. But no one could
complain because of the uncertainty of the promises and survival in the television
industry lest the producer lobby was offended. There was also no organized body
to turn to for help. This was the same for both the artist as well as the technician.
(There were artists who are major film stars who during this period were paid
rupees one thousand for twenty-five episodes) and writers, directors and
scriptwriter actors who were paid rupees five thousand for their efforts.257 There
were no litigations with respect to contracts entered into between the artist or any
creative contributor and the producers during this period.

However ever since organizational efforts started certain norms have begun to be
observed though nothing is as yet in black and white. There is no stipulation
either from the organizational side or otherwise what the agreements between
the artist and the producer should be written nor is there any understanding with
respect to the conditions and terms. However certain norms have come to be
observed, at least with respect to the technicians working conditions that their
shift shall be considered to be eight hour long and that a minimum of rupees 150
needs to be paid to the technician. Further there is a body to turn to if one is
terminated without any explanation or there is a default of payment. Prior to this
the artist or any creative contributor could get thrown out without reason by the
director or the producer. When the serial becomes popular, the artist tries to
raise his wages. But this is resented and his work is terminated. Even the
character is continued using a different artist in case he dissents. The

\[257\] Ibid.
organization does try to resolve issues if the artist makes a complaint to them. The body then would try to call upon the other party and resolve the issue. In case the other party does not cooperate then the legal option is the only recourse.258

Today the artists do not have much grievance regarding the quantum that is paid to them which ranges from Rupees 500 to Rupees 20000 per day. This is dependent on the standing of the artists and their reputation. The artistes who act in television serials demand the highest remuneration. The junior artistes are paid a minimum of Rupees 150 per day. This is without any collective bargaining agreements and a tariff chart. The junior artists for the cinema industry do not fall within the ambit of junior artists for the television industry the tariff chart arrived at through collective bargaining in the film industry is not applicable to them.

At present the lack of importance granted to written agreements and standard forms is because if these were pressed then there would have been greater discipline in the industry which would impede the flexibility currently being enjoyed with regard to the work and assignments. The artists undertake multiple assignments on one hand and on the other the producers enjoy the freedom of flexibility that suits their convenience and economics. Most of the serials do not have a prior script written which is shown to the performing Artists. The confidence in the performing artist with respect to the deal is on the basis of the confidence in the banner and the continuing opportunity to act. Further when the artist becomes inconvenient or in any way objects to the story line the producer can easily remove him, as there is no prior cogent agreement written down. Further the practices in the television industry have also raised such expectations. The performing artist can be paid on the basis of per episode basis or on the basis of work per day. There is no uniform basis that is followed among all the performing artists. The only recourse is to what has been orally agreed and if there is any default or deviation there is scarcely any standard norm to fall back on. Though after the mid nineties norms are supposedly being practiced impliedly without any expressive pronouncement either organizationally or statutorily.

258 ibid.
From the aforesaid narration of the practices in the television industry it can be surmised that there is no practice of the nature reflecting the economic rights in neither the copyright ladder nor are there any rights explicitly recognized in the order of moral rights. Though the right of attribution is practiced, it has not developed into a norm and is therefore avoidable. For instance, in order to provide more space to commercial advertisement or to the program software these formalities are sniped off\textsuperscript{259}. Further there is very little hold for the performing artist over the way performance would be dealt with by the director or the producer. The artist does not have any sway over the final product even if it is mutilated or distorted or even completely removed. In case of unceremonious exits there is no compensation provided by the producer to the performing artist. (Though there may be some exceptional circumstances and experiences but these are not the rule\textsuperscript{260}).

The oral agreement does not take into account the diverse possibilities of avenues of exploitation. It has not commenced taking into account the new digital pathway through computer-generated transmissions as well. Digital transmission has commenced being used by major players in the satellite television segment. This facilitates access as and when the receiver needs to view the program. The program is permanently accessible for the recipient. It is an interactive arrangement but it does not envisage a single transmission at a time chosen by the broadcaster but envisages a continuous access at the demand of the recipient at the time and place chosen by him. This state of affairs is significant from two standpoints that is to the performing artist well as the producer.

In dealings where in the producer sells the program out rightly on the broadcaster for a price; he should have taken into account the new avenue of exploitation while assigning the rights. If he had taken into account the traditional broadcasting right even if in the digital medium that would not encompass the digital transmission through computers. Unless and until these rights are distinctly stated. But even if these have been conveyed while stating the value for the product, the new form of exploitation has not been taken into consideration till now. Perhaps it is at a fledgling stage.

\textsuperscript{259} ibid.
\textsuperscript{260} ibid.
With respect to the performing artist too, the price quoted by them too these new avenues of exploitation has not been taken onto account while arriving upon the single lump sum remuneration. The possibilities of repetitive exploitation perennially and picture perfect reproduction and downloading –storage possibilities are yet to be taken into consideration by the performing artists as factors in the agreement while fixing their remuneration.

There is no social or economic security for the personnel working in television production. There is neither insurance cover nor are there any automatic welfare measures such as a pension scheme from the part of the interests in the industry. The production houses can be relied on to intervene and respond to emergencies of a medical and like nature not because the law demands such an intervention or gesture from their part but on humanitarian grounds and moral premises. While some of the television productions have begun to be insured (like for instance Kaun Banega Karor Pathi and some of the test matches in cricket, there is nothing like mandatory insurance of all projects). This is particularly so when the channels are delegating the production to production houses with tight shoestring budget. Though the entertainment sector has been declared as an industry, the provisions under which it has been so declared has no means to protect the labor interests or ensure a proper infrastructure for the same (It is still ambiguous whether it is the entertainment sector or the film sector that has been declared as an industry and whether the film industry can be considered to encompass the television sector). The artistes as well as the employees do not have any statutory or industry initiated protective cover. The employees’ organizations do take up the cause of employees in this regard and they have a protective cover in which a contribution of rupees 25 is to be paid per month per member. Most instances of accident on the sets are settled through informal mediations and settlements. The resort to the judiciary or approaching the


262 Ibid.

263 See “Niki Hits Back”, available at <http://www.indiantelevision.com/special/niki.htm> (as on January 1st, 2004) says Niki Aneja in an interview to Harsh Khot said, ‘that this industry is not worth it. There are hypocrites in this industry. I feel every actor should insist on his/her security. ... I still get told, “Don't go to press with this story or they'll bar you. They'll label you as taboo.” Niki Aneja is one of the few actors who decided to take on the might of the powerful in the Indian television industry by seeking legal recourse.
police for intervention and resolution of the problem are not part of the ways in the industry. Production houses would be willing to settle the matter out of court by asking for the withdrawal of the files from the courts. Even the association that represents the artistes (Cine and Television Artistes Association) requires that the litigation should be withdrawn. The resort to the police and the judiciary would invite resentment and boycott. Other than on humanitarian grounds there is no legal obligation on the part of the production houses to extend any compensation to the victim. The problem is compounded with the present workmen compensation rules not covering number of unspecified artists engaged by means of a contract. The absence of regularized and standardized contracts lends a large amount of uncertainty to the artists in such circumstances. The performing artists are not isolated in their travails with respect to uncertainty of tenure and economic and social insecurity in the television industry—the other creative contributors like the directors too are plagued by such fears constantly. Their survival depends on a lot of factors including the TRP ratings of the program. Most often the directors are dumped mid way and replaced by another giving scant regard to the contribution given by the former. The contracts do not specify any duration of assignment.

The directors are treated as mere executors and do not have any identity commonly associated with the creator of an artistic work. The position of executives in the industry is not different either with the industry being susceptible

264 ibid. For instance, Niki Aneja, a television actor met with a car accident during the shoot and the production houses were hesitant to help her financially nor medically.

265 See “Shrey Guleri Defends Himself”, available at <http://www.indiantelevision.com/special/shrey.htm>, as on January 1st 2004. Shrey Guleri in conversation with Aparna Joshi, the producer on behalf of Prime Channel said ‘this was probably the first time in the industry an artiste approached the police after an accident on the sets. Now, let the court take its course and we will pay up accordingly’. ‘According to the contracts, I am not liable to pay any compensation in case of any mishaps. Even when a channel asks us to make any specific serial, there is usually no provision of third party insurance. This is the way the industry works’. Shrey Guleri echoes most other production houses in the country when he says that he is willing to offer compensation to Niki on humane grounds, but is not bound by any regulations to do so. For a comparison with the international scene. See <http://www.indiantelevision.com/special/international.htm>, as on 15th January 2004.

266 ibid.

to changing trends in the market\textsuperscript{268}. Though there is an immense difference between the artistic contributor and the administrator's responsibilities and rights. The foreign television channels too carry only the same rights for the performers in their implied or express contracts as their Indian counterparts with the only added feature that it is more formal and sophisticated. Taking care that no residue of any rights is left with the performing artist, all rights are taken away by an express transfer of rights clause. This is strikingly in contrast to the practices in the west. It is the same treatment with both the performing artist as well as the dubbing or the voice over artist\textsuperscript{269}. The common customary notion is that once the oral consent has been granted to the producer to perform and to affix the performance then the rights in the performance passover to the producer.\textsuperscript{270} The notions in the television industry are equally disadvantageous to the other creative contributors.

Organizational Preparedness and Work for Performing Artists in the Television Sector

The first organization to come into existence in Kerala representing all the constituents of the television industry was the 'CONTACT\textsuperscript{271}' in the year 1995. It has been registered as a charitable society. It was to be a representative organization for the major section involved in the television production industry in the state of Kerala. The personnel who have worked in the following capacities in the television media were eligible to be members of the association. The sections included the directors, producers, artistes, cameramen, sound

\textsuperscript{268} See <http://us.indiantelevision.com/special/y2k4/ex-tv_execs.htm> as on 1\textsuperscript{st} January 2005.

\textsuperscript{269} Interview with Ms. Anupama, Assistant Director (Disney Channel) and Vishnu Sharma, dubbing and voice over artist (member of AVA) at Mumbai. Also based on interview with Tripunithara Krishna Das, a performer of the Edakka (percussionist), whose work is much sought after by television channels both Indian and foreign. Interview with Bhagyalakshmi, ace-dubbing artist, also establishes these inferences in the television medium.

\textsuperscript{270} Significantly the pattern is uniform all over the country. Even the foreign television production companies in India and channels do not follow any different mindset taking advantage of the absence of the Laws and collective bargaining practices.

\textsuperscript{271} The Confederation of Television Artists Commercial Operators and Technicians (Reg. No.t. 1093). See rules and byelaws of the organization in, CONTACT, Niyamavali, published by CONTACT.
recordists, makeup men, music directors, art directors, dress designers, graphic
technicians, sound effects technicians, production manager and eruptives, script
writers, dubbing artists, studio owners, out door unit in charge, stringers,
marketing agencies, all assistants in all departments, still photographers and
public relations officers. Therefore the Association had a wide array of interests to
represent that included the artists and technicians as well as the investing
producers. It was to be more of a representative towards the state rather than a
self- regulatory body though that too was one of their aims. This is discernible
from one of the primary demands put forward by them for extension of welfare
benefits to the personnel in the television industry. After the Chalachitra academy
was launched and television was also brought within its canopy the state
recognized the medium at par with cinema in recognition of talent and also in
extending benefits of welfare to the personnel in the television sector such as
pension benefits.

Some of the important objectives of this body are to develop the spirit of mutual
cooperation, and brotherhood and to create conducive conditions to realize
this\textsuperscript{272}. The objective is to strive for implementing programs towards the social –
cultural and economic upliftment of the members of the society. To create a
sense of unity among the members of the society and to settle disputes among
them in a peaceful and a conciliatory manner. To formulate programs of action in
tune with the financial capacity of the organization to extend help to the artists
and other members who are beleaguered by either physical or practical
difficulties\textsuperscript{273}. The society would strive to protect the rights of the members and to
inculcate in the members discipline and a sense of responsibility towards the
society. To create partnerships and contacts with likeminded societies in other
countries of the world and to affiliate with other organizations working in the field
with similar interests and resolve disputes amicably. The society also intends to
act in an advisory capacity in this sector for the government.\textsuperscript{274}

In Tamilnadu too similar efforts have commenced since November 2003 when
Chinna Thirai Nadigar Sangam\textsuperscript{275} came into being ostensibly for the upliftment of

\begin{footnotesize}
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\item \textsuperscript{272} Id., p.1.
\item \textsuperscript{273} Id., p.2.
\item \textsuperscript{274} Ibid.
\item \textsuperscript{275} Akila Dinakar, “Small Screen, Big Show”, The Hindu, Chennai (edn.), November 4\textsuperscript{th}, 2003, p.2.
\end{itemize}
\end{footnotesize}
the economic and labor status of the performing artist in the television industry. The Bollywood has a representative organization for the film and the television artists in the country. The members resort to its help in times of being in distress or any dispute with the industry. Besides representing artists' version before the industry and the government of India, the association holds star shows and other functions to honor its members. The organization also has formulated several welfare measures to help the artists in distress. The organization has not indulged in any collective bargaining practices like that of their southern industry counterparts. There does not seem to be any striking differences between the organizational preparedness with respect to performing artists and that in the south Indian film industry. The workers and technicians are also organized along trade union lines just like their southern counterparts and affiliated to All India Film Employees' Confederation (AIFEC) functioning from Mumbai. The contracts are more or less on the same lines as the practices in films if not cruder and less clear.

276 The Research Scholar had the privilege to be present at the inauguration of the association in Madras on the 3rd of November 2003, as it coincided with his visit to the city for material collection. He was asked to attend the inauguration by one of the office bearers, Director Sri Selvaraj.

277 See, "Veteran Stars Felicitated", Indian Express (Bom.), Oct 3rd, 1999, <http://www.indianexpress.com/e/daily/19991023/ije23073.html> as on February 4th 2003. The Cine & TV Artistes Association (CINTAA), Mumbai, felicitated veteran artistes like Shakila, Anita Guha, Jagdeep, Kalyani Bai, Achala Sachdev, Shammi, Johnny Walker, Jairaj and Nirupa Roy along with newly elected MPs Sunil Dutt, Vinod Khanna and Raj Babbar. The CINTAA has set up a Janata Group Accident Insurance Policy ranging from Rs. 50,000 to Rs. 1 lakh for each of its members, the premium for which was being paid from the interest accrued from the Rs. 2.5 lakh donated by Amitabh Bachchan. The Association has also acquired land admeasuring 1,100 meters where it plans to construct a building.

278 During the inauguration of the Chinna Therai Nadigar Sangam (Small Screen Artists Association), President of the Association Sri S.N. Vasanth said that there were several problems for the actors and actresses working for the mega serials who are caught in locations with no time to rest and with most directors working on a tight budget and they have to take even their own costumes. Akila Dinakar, "Small Screen, Big Show", The Hindu, Chennai (edn.), November 4th, 2003, p.2.