Page 1114 - 1126 **DOI:** *https://doij.org/10.10000/IJLMH.114943*

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 6 | Issue 3

2023

Comparative Study Between India and European Union [EU] on Performers Right to Single Equitable Remuneration and Exploring Issues Related to Performers of Traditional Cultural Expression

PURNASHRI DAS[1]

ABSTRACT

Copyright Law protects the rights of performers like actors, singers, and dancers, by giving them certain rights, one of which is, right to get remuneration for their performance, for example when a singer performances a song in a studio, and when such performance is recorded and communicated to the public, the singer also has a right to get remuneration because the sound recording includes singers contribution also. To ensure that such performers get their due compensation, under the WPPT under Article 15(1), performers are given single equitable remuneration for communication of their work. But under Article 15(3) of WPPT, it is provided that any member nation has the option to not apply this provision in their national law. India used this provision and decided to not apply the single equitable remuneration to the performer provision of WPPT. This research work analysis the reasons behind India's declaration while adopting the WPPT and its implication on performers' rights. A comparison with European Union Legal Framework is done regarding Stand on Grant of 'Single Equitable Remuneration' To Performers. For comparison, EU is taken because they provide for equitable remuneration which India has mentioned it would not provide, so the author would compare the implication on performers rights in both jurisdictions and this would help to find the reason behind India declaration for not providing single-equitable remuneration to performers in India.

Then the second part of the research work finds out the issues related to traditional cultural expressions and its implication on performers of TCEs and also those authors/performers who uses them and apply them in contemporary and modern songs. For this Baadshah 'Genda Phool' copyright dispute case is used specifically to show how modern artists affect the traditional folklore and the rights of the author of such folklore which come under TCEs.

Keywords: *single equitable remuneration, Performer rights, WIPO Performances and Phonograms Treaty, Traditional Cultural Expressions, Performer.*

[1] Author is an Assistant Professor at B.S. Anangpuria Institute of Law affiliated to MDU University, Alampur, Faridabad, Haryana, India.

 [ISSN 2581-5369]

I. INTRODUCTION

We are focussing here on Analysis Of Implication On Performers Rights After India Adoption Of Wipo Performances And Phonograms Treaty Accompanied By 2 Declarations In Comparison With European Union Legal Framework In Context Of Equitable Remuneration.

The privileges of the performers were not perceived globally until the reception of the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisation, 1961. To further safeguard performers' rights, **WPPT** was introduced to protect performers against exploitation of their work, particularly in the digital environment.

India, on December 20, 1996, adopted at Geneva of its instrument of acceptance to the **WPPT.** This accession act was accompanied by two declarations. One of which was that India would not apply the provision of the treaty dealing with single equitable remuneration of performers. The said Treaty came into force in India on December 25, 2018.[2]

Performers are provided under, Article 15 of WPPT a right to single equitable remuneration in respect of broadcasting and making available to the public of their performance. This remuneration seeks to enforce the fundamental principle that performers, should be adequately remunerated for their performance. It is interesting to note that the TRIPS Agreement of 1994 does not talk about equitable remuneration rights of the performers.

Now let's see when single equitable remuneration for performers can be provided. Rome Convention talks about it.[3] Single equitable remuneration for performers is to be paid when phonogram is published for commercial use or for communicating to the public, for example, when such music is played on music-related Apps like Gaana, Saavn, etc where only one can hear the sounds from the phonogram which is incorporated in those Apps. Also, Phonogram does not include audio-visual work.[4]

Since India has not ratified the Rome Convention, 1961[5], so India was not under any obligation, to provide single equitable remuneration to performers which Rome Convention talk about under Article 12[6], and this could be a reason that since India has not ratified the Rome Convention 1961, India chose to deny the right of single equitable remuneration as mentioned

[2] WPPT Notification No. 92, WIPO Performances and Phonograms Treaty, Accession by the Republic of India, September 25, 2018, available at: TREATY/WPPT/92: [WPPT] Accession by the Republic of India (wipo.int),< TREATY/WPPT/92: [WPPT] Accession by the Republic of India (wipo.int) (last visited on 28 December 2020).
[3] Rome Convention for the protection of Performers, Producers of Phonograms and Broadcasting Organisations, 1961, art. 12.
[4] WIPO Performances and Phonograms Treaty, 1996, art 2(b).
[5] United Nations Treaty Collection, Educational And Cultural Matters (United Nations Treaty Series vol. 496 UNTC)< United Nations Treaty Collection> accessed on 27th December 2020.
[6] *supra* note 2, art.12.

under Article 15(1) of WPPT as well.

Under both Rome Convention 1961 and WPPT 1996 the word 'shall' is used with equitable remuneration under Article 12 and Article 15(1) of respective conventions, this means that paying single equitable remuneration to performers would become compulsory for countries with the exception under both conventions[7] that countries can have reservations on the applicability of single equitable remuneration clause in the form of declarations which India did.

II. EUROPEAN UNION (EU) STAND ON GRANT OF 'SINGLE EQUITABLE REMUNERATION' TO PERFORMERS

Before further analyzing why India while adopting WPPT gave the declaration that a single equitable remuneration clause as mandated by Article 15(1) of WPPT[8] would not apply to performers in India, let's see European Union's stand on granting of single equitable remuneration to performers. We have taken EU because they provide for equitable remuneration which India has mentioned it would not provide, so we would compare the implication on performers' rights in both jurisdictions.

Under EU performers are qualified to get "single equitable remuneration" if their work is broadcasted or made available to the public.[9] Further, a performer may transfer the rental right but the right to remuneration for the rental which the performer would get is inalienable.[10] Under this EU Directive, similar to the WPPT provision it is mentioned that the single equitable remuneration is to be provided for both phonogram producers and performers.[11]

In EU, in a case[12] the plaintiff objected that the Irish government violated EU law in absolving hotel operators from the responsibility to pay equitable remuneration to performers for use of performers' work in hotel rooms.[13] The *CJEU* agreed with the plaintiff and said that such an exemption to hotel owners was in breach of EU law as no such exemption is mandated in the EU regulation with regard to right of remuneration to performers.[14] So, no such exemption can

[7] Id., art 16; supra note 3, art 15(3).
[8] It talks about single equitable remuneration for performers.
[9] European Parliament Directive on rental right and lending right and on certain rights related to copyright in the field of intellectual property, 2006, art 8(2); It is also said that the equitable remuneration should be shared between phonogram producer and performer.
[10] *Id.*, art 5(1) and 5(2).
[11] Atresmedia Corporación de Medios de Comunicación S.A. v Asociación de Gestión de Derechos Intelectuales (AGEDI), C-147/19, 16 July 2020, (SC Spain).
[12] Phonographic Performance (Ireland) Limited v Ireland, Attorney General,(2012), C-162/10, (ECJ).
[13] *Id.*
[14] *Supra note* 8 Directive 2006/115/EC, It was said hotels who provide television or radio services in their rooms has to pay equitable remuneration.

be given to hotel operators and so the performer should be given the remuneration by the user as stated in EU law.[15]

So we see in the EU, the judiciary, and the Council of the EU is tilted more in favour of performers in the context of their right to remuneration for their performance. That is, performers have to be provided single equitable remuneration[16] under EU jurisdiction, which is not the case in India as we have seen above.

In a recent judgment, the CJEU ruled that Member States cannot say that they will not provide the benefit of equitable remuneration as provided in the Directive to performers who are nationals of States outside the European Union.[17]

But this is subject to and which is also an important point in this judgment was that "*the European Union and its Member States are not required to grant, without limitation, the right to a single equitable remuneration laid down in Article 15(1) of the WPPT to nationals of a third State which, by means of a reservation notified by Article 15(3) of that international agreement, excludes or limits the grant of such a right on its territory*" [18]

This means that countries that have used the reservation against single equitable remuneration to performers in their territory while adopting WPPT like India, their nationals would not get the right to single equitable remuneration without limitation in the EU if the member countries of the EU choose to do it. The EU Court might have said this for protecting the rights of EU performers in other countries, as this could be an incentive for other countries like India, to think about their reservation against non-grant of single equitable remuneration in their country, as by such decision, now Indian performers would not get the benefit of single equitable remuneration which performers from other countries would get in EU, just because India adopted its reservation against single equitable remuneration.

III. CONSEQUENCES ON PERFORMERS OF INDIA AND ANALYSIS OF INDIA RESERVATION WHILE ADOPTING WPPT

To understand the consequences of this reservation by India, we would see the concept

[15] *Id.*
[16] Reinbothe, J., and von Lewinski S, The WIPO Treaties on Copyright – A Commentary on the WCT the WPPT and the BTAP, p. 394, (Oxford University Press, 2nd edition. 2015).
[17] RAAP (*Recorded Artists Actors Performers Ltd) v PPI (Phonographic Performance Ireland Ltd)* for producers, *[2019] 3 3 IEHC* .
[18] *Id*.

 [ISSN 2581-5369]

of national treatment, which is one of the basis of equal treatment in the international Intellectual Property Rights arena of nationals of different countries. National Treatment means that countries shall not discriminate in providing Intellectual property rights between their own nationals and nationals from other countries. That is if a National from the EU is getting a right to rental in the EU, the same right cannot be denied to a national from India in the EU. But according to Article 4(2) of WPPT, the principle of national treatment does not apply, when countries like the USA or India, who have notified reservations on their territories with regard to equitable remuneration rights of performers.[19] In such a scenario, the principle of reciprocity applies, so, the Member States could put restrictions on this right to remuneration for performers from countries who take reservations against compulsory remuneration to performers.[20]

This *principle of reciprocity application is left to individual member countries to decide, but if the country decides to apply the principle of reciprocity, then Indian performers would be at a disadvantage in foreign countries concerning grant of equitable remuneration rights, like in EU.* Since the right to equitable remuneration for performers is not recognized in India, so Indian national performers who would be performing outside India, by applying the principle of reciprocity the Indian performers will not get the right of single equitable remuneration outside India also, which is disadvantageous for these performers, as this payment ensures that the performers would get the due remuneration when sound recording of their performance is played in public and Indian performers would not be entitled for this remuneration, but whose benefit the nationals of other countries in EU would get who have not adopted any reservation against equitable remuneration. This is a major drawback of not providing single equitable remuneration in India.

In India, Bollywood is a big industry where movies earn in crores sometimes, the performers like the singers, lyricists, etc, who provide songs which are to be incorporated in the cinematographic works, these by implication of Article 2(b) of WPPT[21] does not come under the purview of WPPT. This means that a singer's song which is incorporated in a film, that singer would not come under the definition of the performer in the context of WPPT.

[19] Equitable Remuneration For Performers And Producers: Has The CJEU Hit The Right Note?, AVALIABLE AT: ALTIUS - Equitable remuneration for performers and producers: has the CJEU hit the right note? (last visited on 16 December 2020).
[20] *ID.*
[21] "phonogram" does not include a performance incorporated in a cinematographic or other audiovisual work.

Since WPPT excludes such performers whose work is produced in the audio-visual form in cinematographic films, India might have thought that giving single equitable remuneration would not be of much importance in the Indian context because in the digital era major revenue for performers come when their work is in audio-visual form or incorporated in a film. In Bollywood, there are usually 4-5 songs in a film, and especially in India, music is consumed through films, and people recall the music through the actors and not the singers.[22] So if that aspect is not included in WPPT, then India would have thought that giving single equitable remuneration to performers would not be of much use. Further India provides rights to performers of audio-visual works and sound recording by granting the right to receive a royalty.[23] Performers get their share in exploitation revenues through what has been stated in the production contracts.[24] This remuneration which is stated in the contract that performers receive from producers is considered as the "primary" revenue source.[25] However, in practice, performers usually get one-time remittance in the form of lump sum money for their work.[26]

This practice of paying to performers through production contracts where contractually agreed remuneration to performers which they receive from producers is mentioned, in such a scenario India might have thought that compulsory single equitable remuneration is not required to be paid within India and make things difficult for producers of phonograms. Since in production contracts the performer and producer can negotiate with each other the remuneration to be provided, India might have thought it would be better to leave it to producers and performers that how they want to settle the payment of remuneration without undue pressure legally on the producer to pay single equitable remuneration to the performer. No doubt India has adopted a producer-centric approach in denying single equitable remuneration. But there is also the problem of the unequal bargaining position of producers and performers in negotiating the amount in the contracts for the exploitation of their work.[27] The producer sometimes due to unequal bargaining power and influence over performers is able to put in place unfair contractual remuneration for performers for licensing of their rights in their work.[28] This is another drawback of not having compulsory single equitable remuneration in India.

---

[22] Soundcharts blog, available at: Indian Music Industry: Market Stats, Analysis, & 2020 Trends (soundcharts.com) (last visited on 14 February 2022).
[23] The Copyright Act 1957, (Act 14 of 1957) S. 38A.
[24] European Commission, ''Remuneration of Authors and performers for the use of their works and the fixations of their performances''(2015), available at: 1593<pdf (ivir.nl)
[25] Prof. Raquel Xalabarder, International Legal Study On Implementing An Unwaivable Right Of Audiovisual Authors To Obtain Equitable Remuneration For The Exploitation Of Their Works (1st ed May 2018), available at: AV Remuneration Study-EN.pdf, (last visited on 29th December 2020)
[26] *Id.*
[27] *Id.*
[28] *Id.*

 [ISSN 2581-5369]

Equitable remuneration rights ensure a fixed income to performers for exploitation of their work, regardless of the contractually determined remuneration by producers. This ensures that the unequal bargaining power between a producer and a performer is kept under check.[29] Now the performers can be sure that they would get the single equitable remuneration which the producer cannot temper with.

One important point from the perspective of the producer is that the single equitable remuneration which can be a lump-sum payment may involve risks for the producer if the work of the performer is not successful in the market and in such case the lump-sum payment which is given beforehand by the producer to the performer can be disproportionate in comparison to the profits of the producer in the market from the work.[30] In such a scenario royalty is a good option as it is based on the post-release of work. This could also be one of the reasons why India did not accept single equitable remuneration for performers.

IV. ANALYSIS OF PROTECTION OF TRADITIONAL CULTURAL EXPRESSIONS[TCES] IN CONTEXT OF PERFORMERS RIGHTS

"Traditional cultural expressions" and "Expressions of folklore" are used synonymously in international policy discussions.[31]

There are instances when the author is often the performer as well, like the dispute on Baadshah song 'Genda Phool'. Badshah had used some lines of the lyrics of Ratan Kehar song which was a bengali folklore where both the writing of lyrics and the singing of the folklore was done by Ratan Kehar. So, through the study of this case we would analyse the right of 'performers of expressions of folklore' in context of intellectual property rights. That is, in such situation how far the rights of Ratan Kehar is protected as a performer is what we would evaluate which would focus on issues in protection of TCEs in context of Performers rights.

It is said a work based on or inspired from a traditional culture and adding new elements to it would be a new work. [32] So by this Badsah song 'Genda phool' can be said to be 'new work' but then question arises if badshah song comes under 'new work' then what about the some of the lyrics that he copied from Ratan kehar work without crediting him? The author believes that

[29] AEPO ARTIS, Performers' Rights in International and European Legislation: Situation and Elements for Improvement (December 2014), (available at aepo-artis.org)
[30] WIPO, WIPO Intellectual Property Handbook, (WIPO PUBLICATION No. 489, 2nd edn, 2004 Reprinted 2008), available at WIPO Intellectual Property Handbook, (last visited on 4th January 2021).
[31] WIPO, Intellectual Property And Traditional Cultural Expressions/Folklore (WIPO Publication No. 913(E) booklet no 1), available at Intellectual Property and Traditional Cultural Expressions/Folklore (wipo.int)> (last visited on 4th January 2021).
[32] *Supra* note 29.

 [ISSN 2581-5369]

some clarification is required in present law regarding this, that how much limit is permissible legally for a contemporary artist to take the lyrics from an artist work which is a folklore, which should also not affect the protection afforded to expressions of folklore.

Expressions of folklore are protected under the IPR regime are generally protected by copyright law. For example in Hungary and Tunisia, folklore-based literary and artistic works are protected under Copyright Law.[33]

V. PROTECTION FOR TRADITIONAL CULTURAL EXPRESSIONS [TCES] IN INTERNATIONAL ARENA

The Berne Convention says that all literary and artistic works are covered under copyright, and no limitation by reason of the mode or form of their expression is permitted. [34] So even if expressions of folklore is not explicitly mentioned under the convention, by perusal of Article 2.1 of Berne Convention, we can say that expressions of folklore come under literary work, for example, in the form of lyrics of a Bengali folklore in 'Genda Phool'- Baadshah song dispute. So, TCEs can come under the subject matter of copyright protection.[35]

Under WPPT,1996 under Article 2(a) the definition of performer has been extended to expressions of folklore, which was not there in Rome Convention 1961. This shows that with time it was realised that performers whose work include folklore needs to be specially recognized.

The Beijing Treaty gives certain rights to performers when their performance is used in audio-visual form.[36] Beijing Treaty explicitly mentions about performers of folklores.[37] The implication of this is that TCEs are given protection under this treaty.

Next is the Tunis Model Law on Copyright for Developing Countries, 1976 . It provides specific protection for works of national folklore.[38]

Further WIPO-UNESCO World Forum on the Protection of Folklore[39] has adopted a "Plan of Action" which talks about the importance of striking a balance between the community owning

[33] *Ibid.*
[34] Berne Convention for the protection of Literary and Artistic work, 1886, amended on (September 28, 1979), Article 2.1.
[35] Anurag Dwivedi and Monika Saroha, ''*Copyright Laws as a Means of Extending Protection to Expressions of Folklor*e'', Vol 10, Journal of Intellectual Property Rights
[36] Main Provisions and Benefits of the Beijing Treaty on Audiovisual Performances (2012), available at: wipo.int), (last visited on 3rd January 2021). These rights include right to broadcasting and communication to public.
[37] Beijing Treaty on Audio-visual Performances, (2012), Article 2(a).
[38] Tunis Model Law On Copyright for developing countries, 1976, s. 1(3) and 6, No. 812 (E), WIPO and UNESCO Publication, Paris and Geneva [1976].
[39] Pursuant to the recommendation made during the 1996 Diplomatic Conference, the WIPO-UNESCO World Forum on the Protection of Folklore was held in Phuket, Thailand, in April 1997.

 [ISSN 2581-5369]

the folklore and the users of expressions of folklore.[40]

So we see in the International arena steps have been taken to protect the rights of performers of TCEs.

VI. INTELLECTUAL PROPERTY AND TRADITIONAL CULTURAL EXPRESSIONS [TCES] IN CONTEXT OF PERFORMERS RIGHT- EXPLORING ISSUES

It is important to mention that Indigenous and traditional communities are concerned with preservation and safeguarding their cultural heritage.[41] The indigenous community want that their traditional culture in form of folklore for example, should not tampered with in such a way that moral right of the author of the folklore should not be affected, like this preservation of the cultural heritage in form of folklore of indigenous community can be protected. This can be one of the issues relating to protection of folklore that is preserving the moral rights of the author which the author believes in Badshah song 'Genda Phool' is to some extent is violated. Intellectual Property Protection is the way to preserve TCEs and hence the importance of interface of IPR and TCEs cannot be neglected.

The music video of Badshah's version of the Bengali folk song, jeopardises the context in which the original folk song was sung as his version where he incorporated the Bengali folk song, sexually fetishes a women, which was not the spirit of the original Bengali folk song, and could tarnish reputation of the performer of the original folk song. [42] Further The platforms on which *Genda Phool* can be seen and heard give credit in the name "traditional Bengali folk" – but not the man behind the song.[43] Though finally Badshah has given the folk artist 5 lakhs.[44]

Another issue is whether intellectual property protection should be available for TCEs that are now in the "public domain"?[45]

To answer the above question, one point of view can be that modern adaptation of the TCEs can't be done freely if private rights are applied over them and thus taking forward of cultural heritage might get affected. On the other hand, we can say that intellectual property systems does not take into account private domains restricted to people of Indigenous communities. The

[40] *Supra* note 29.
[41] Ibid.
[42] *SENJUTI CHAKRABARTI,* **"GENDA PHOOL': WHAT PUNJABI RAPPER BADSHAH GOT WRONG WHEN HE BORROWED A BENGALI FOLK SONG", *SCROLL.IN,* (APR 02, 2020) <GENDA PHOOL UPROAR: BADSHAH SONG STILL VIOLATES COPYRIGHT (HIS CLARIFICATION NOTWITHSTANDING) (SCROLL.IN)**
[43] *IBID.*
[44] Press Trust of India, 'Genda Phool row: Badshah pays Rs 5 lakh to Ratan Kahar, folk singer happy to be credited for song' India Today, (Kolkata April 8, 2020) available at: Genda Phool row: Badshah pays Rs 5 lakh to Ratan Kahar, folk singer happy to be credited for song - Lifestyle News (indiatoday.in)
[45] Supra note 29.

 [ISSN 2581-5369]

author believes that for maintaining the cultural heritage of the indigenous community, the other view that the community has private rights over such TCEs like folklore should be accepted and by taking permission for adaptation, modification or derivation of the work which is a Traditional Cultural Expression from the community or the single author from that community, would be a good solution and better approach.

Another issue with protection of TCEs is whether the right over such IPs should vest with a particular member of community who created it or the whole indegenious community? The solution to this problem could be that the right over TCEs should vest with the author belonging to the community only as it was the author who through his creativity made the work, like the folklore, but if it is something which has passed from generations in the community with no clear identifiable author, then it should belong to the community as whole.

VII. SUGGESTIONS

Contract law can be utilized for managing the production contracts between performer and producer. For example, it is one of the principles that a contract would not be complete if consideration is not provided, so by applying this principle the producers can be compelled that a production contract can be legally enforceable only when the performers are getting adequate consideration or compensation for their work which can be fulfilled by giving single equitable remuneration to performers.

Performers can like a trade Union can also do collective bargaining with producers which would also include providing for single equitable remuneration.

Under the Copyright Act provision can be made that a minimum percentage from the profits earned by exploitation of performers' work, should be provided to the performer, this minimum percentage should be fixed by the legislature so that there is no scope for exploitation of performer work.

One of the most important disadvantages faced by Indian performers would be regarding the right to equitable remuneration in foreign jurisdictions since as discussed in this paper because of reciprocity, some countries might not extend the right of equitable remuneration to Indian performers in their jurisdictions as India does not provide such right. The solution for this can be that the Indian performers can contend that they should receive a royalty in foreign jurisdictions in place of single equitable remuneration, since under section 38A of the Indian Copyright Act, 1957 the performers are entitled to royalties for commercial use of their performance. So by applying reciprocity, royalties can be provided to Indian performers in foreign jurisdictions.

 [ISSN 2581-5369]

In case of traditional and cultural expressions including folklore expressions, sometimes authorship over the work cannot be attributed to a single member, that is a single member cannot claim ownership over a community asset. Now it is unclear that whether Copyright law protect community protection. As under the Indian Copyright Act, 1957 under the definition of author there is no mention of authorship of a community. So this is one issue which can looked into keeping in mind protection of TCEs and a framework can be made under Copyright Act to protect community rights with respect to TCEs. One solution for this can be that a group can be made, such as a traditional community, which by forming an association together hold copyright.

The author believes that present laws for intellectual property protection are sufficient for protecting TCEs, which was also said in the the Australian case Milpurrurru v Indofurn Pty Ltd[46]. For example under Copyright law 'borrowing from' and inspiration are permitted, adaptation and copying are not. Distinguishing between them is not always easy. The legislature can clearly delineate the line between these concepts, which would help in finding out whether a song which includes some lines of a folklore would be permissible or it would be infringement under copyright law. Further the term performers of expressions of folklore have not been used in the Copyright act,1957. So in the Act itself if the meaning of traditional cultural expressions is made clear, the rights of performers of TCEs is explained clearly, then a sui generis legislation would not be needed for TCEs as they can be adequately protected under existing IPR regime like Copyright law.

There can also be an issue when a TCE is not from one place only but can come from different places or places having geographical proximity .[47] This can lead to trans-boundary issues. This is a conflict, for which the solution for which can be that a composite protection is given to indigenous community from both countries who equally claim rights over the TCEs. And if any dispute arises regarding this, the dispute can be settled by WIPO dispute resolution mechanism.

Also TCEs can be linked to geographical origin for their protection under Intellectual Property Laws, that is if a particular folklore comes from Bengal it can be protected under Geographical indication by indicating a connection between the origin of the folklore in Bengal only. For this the definition of a Geographical indication needs to amended and with goods, TCEs can also be included in the definition of G.I under the domestic law and also under TRIPS.

[46] [1994] FCA 975.
[47] Rajnish Kumar Singh, ''Protection Of Traditional Cultural Expressions/ Folklore: International And National Perspectives'', Vol 8, Dehradun Law Review, 19 (2016).

 [ISSN 2581-5369]

VIII. CONCLUSION

To conclude we can say that the implication on performers' rights after India's declaration regarding single equitable remuneration while adopting WPPT, 1996, is affected by the principle of reciprocity. We found that India has not ratified Rome Convention, 1961 which talks about single equitable remuneration, so there is a possibility, because of this reason, India chose to deny it even under WPPT. The European Union's position is that grant of single equitable remuneration to performers in the jurisdiction of the member state is that member states discretion, so in EU performers would get single equitable remuneration, which Indian performers would not get if the EU member state chooses to apply the principle of reciprocity. That's why the EU was chosen as a jurisdiction to compare with India on this point. India already provides the right to royalty to performers, which could be a reason that it would have been thought that single equitable remuneration is not required in India.

Further, another reason for taking reservation against single equitable remuneration by India could be that by mandatorily making payment of single equitable remuneration, undue pressure over producers might have created, which India did not want. But there is also the problem of unequal bargaining position between producer and performer, which is a drawback when single equitable remuneration is not mandatory. But then the problem with single equitable remuneration is that if the sale of the work is less, then there is a loss to the producer as he would have already paid a lump-sum amount to the performer, so this could also be a reason why India opted for payment of royalty in place of single equitable remuneration since royalty is based on post-release of work.

India should not have adopted the reservation against single equitable remuneration while adopting WPPT as even though royalty is given to performers this remuneration can be influenced by the whim and fancies of the producer as royalty is based on the post-release of work. It is better when the remuneration is pre-decided which the performer will get for his work, as that would amount to adequate consideration when it is not affected by the producer wish and the performer would also get the satisfaction before creating the work, that a particular amount which he knows what would be, will be paid for his work and this would act as an incentive for the performer to give his best. Further, the Indian performers would not be at a disadvantage in foreign jurisdictions which provide single equitable remuneration like the EU by the application of the principle of reciprocity.

In context of protection of Traditional Cultural expressions with respect to performers rights, some issues were identified and solution provided for them. First issue was usage of TCEs by

 [ISSN 2581-5369]

modern artist for which Badshaah 'Genda Phool' song controversy was focussed on, for which the author feels that present copyright law is enough to protect such TCEs where specific laws focussing on TCEs can be added. Next issue was of TCEs in public domain. Solution for which can be treating TCEs as private rights of the indigenous community.

Then the issue identified was that over TCEs whole community or single member would have right? Solution for which can be that if work coming under TCEs are made by author, he would get the right over such TCE and if passed through generation with no identifiable author, whole community would get right over such TCE. Lastly the issue of Trans-boundary TCEs was found. The solution for which can be composite protection to community from both countries.

*****

 [ISSN 2581-5369]