

THE PLAGUE OF PIRACY IN THE INDIAN FILM INDUSTRY AND ITS LEGAL CONSEQUENCES

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ABSTRACT

In the year 2019, India almost produced 2500 films and earned a box-office revenue of 19000 CR (INR) and topped the charts in terms of producing movies. People were insinuated to the theatres to enjoy the bangers in the theatre back-to-back, on the other side piracy of movies was contemporarily raising and drastically there was a downfall to the industry. Covid -19 had a huge impact on our lifestyle and it also includes witnessing movies in theatres, there was a gradual increase (in piracy), India recorded 6.5 billion visits to piracy websites, the third highest after the US (13.5) and Russia (7.2). Before a decade, the compact disc was a familiar source for piracy and such circulation was prohibited by the government and discs became outdated. Internet piracy became a monopoly in piracy during the pandemic, a major player in town now BitTorrent and telegram in terms of internet piracy.

The significant effects of movie piracy: Catastrophic effect on the revenue and acts as a barrier to the creative work involved. The offence of piracy violates many laws in India such as the copyright Act, 1957, cinematograph Act, of 1957. This paper highlights the Anti-piracy laws in India and punishments under the Indian laws for the act of piracy and explores the evolution of piracy and provides preventive measures.

KEYWORDS: Box-office, Covid-19, Compact Disc, Anti-piracy

INTRODUCTION

India is a country where people consider movies as part of their life and celebrate them as one of their festivals. their contribution to the industry helped India to achieve a greater position in the entertainment industry. considering this situation, the pirates in India used this craze for monetary terms. every individual would choose a cost-free product over a paid product. likewise, people preferred pirated content instead of going to theatres. most common websites in India are Tamil Blasters, todayPK and Telegram is used for circulating pirated content.

Cheap access was the only reason for the growth of pirated websites. According to the 2021 report pirated websites and apps featuring movies and tv shows made about 1.3 billion\$ per year.

OBJECTIVES OF THE STUDY

- To create an awareness about the existing laws in India for movie-piracy
- To study the major forms of piracy
- To highlight the legal consequences of the act of piracy
- Lastly, to suggest some preventive measures to the government

PIRACY IN INDIA

In the 1990s theatres were the only option to see movies and the availability of the internet was unreachable. The existence of video cassettes didn't affect much. But, The advancement in technology has increased the usage of mobile phones and given us an ultimatum which is high-speed internet connectivity at an affordable price. On the contrary, it paved a way for the piracy of films or any other copyrighted content. The offence of piracy takes place through different mediums. Now most common among them is P2P file and camcorder piracy. Digital piracy has a huge impact on the Indian film industry. Movies are leaked even before their release and causes a huge impact on the verdict of the movie.

Digital piracy reached its full potential during the pandemic period. The rate of piracy in India has risen to 62 %. The impact didn't stop with a Loss of production value, it became a major factor in unemployment. According to the research of the us-India Business Council, 11 % employment loss was faced by the Indian media industry and the loss of revenue was 2.8 billion US dollars to piracy. Demands were made to the Indian government for the enforcement of laws regulating movie piracy. Later, considering the stakes in the industry, the cinematograph bill was passed in the year 2019 by the Indian government.

MAJOR FORMS OF PIRACY

CAMCORDER PIRACY

Camcorder piracy is the act of recording movies in theatres using any recording device intentionally. It can be any part of the movie (audio or video). It is an illegal act and it occurs only inside the theatres, such videos or audio are uploaded to the internet within an hour of the release. These movies are generally addressed as "cam movies". These videos are cost-free and easily accessible.

Despite the low quality, poor audio, and distorted visuals they are viewed in large quantities. The reason for the demand is their uploading time. For certain movies, preview shows will be screened 2 or 3 days before the actual release date. So, the cam movies will be uploaded even before the release date. Downloads for the movie will be more abnormal than usual situation.

WEB-DL PIRACY

It deals with online piracy of movies or tv-shows. The general source to download these versions is torrent. This type of piracy is considered to be an offence, due to the unauthorised upload of copyrighted content. Web-dl file is always snatched from online platforms like Netflix, amazon Prime. It can't outsmart the original quality of the movie, it will available in 720P or 1080P.

EFFECT OF PIRACY ON THE MOVIE INDUSTRY

Piracy has its pros and cons. Even though its an unlawful act it also has its benefits. Some of them are listed below.

The losses incurred by the production studios due to the pirated content are not small. Losses are measured in millions. The act of piracy enables the paid content to the audience for free of cost. The Expendables 3 as an example, it was estimated that the film lost about \$250 million in revenue due to pirated leaks of the film before its release and viewing during the film's release¹.

¹ <https://variety.com/2015/digital/news/expendables-3-piracy-sylvester-stallone-praises-cops-for-arresting-british-thief>.

Piracy could also help the movie to reach wider. people who downloaded using a torrent or telegrams may spread the good word about the movie, for example, "Everything Everywhere All at Once" didn't get much hype at the time of release. Later, people made memes, criticism or appreciation about the film and it win best picture At Oscars 2023. this can attract more collection than the expected revenue.

On the other side, piracy could give away the spoilers packed in the film and shatter the interests of the audience. for example, Spiderman no way home (2021) got so many speculations about the appearance of 3 Spiderman in the film and the movie had the such appearance and it was spoiled by the pirated versions of the film.

LAWS GOVERNING PIRACY IN INDIA

CINEMATOGRAPH ACT 1957

The act of movie piracy takes place in different forms and the most popular among them is recording the movie inside the theatres and distributing such copies in the economy using storage devices or through the internet. To cope with the loss of revenue to the filmmakers, the government of India proposed an amendment in January 2019 to tackle the peril of piracy. The objective of this amendment is to punish the perpetrators.

AMENDED PROVISIONS

SECTION - 6 AA: This provision prohibits unauthorized recording or transmission of a film or any part using a recording device and also covers abetment provided in carrying such act²

SECTION – 7 (1)(A): This section lays down the penalties for the contravention of Section 6AA. Imprisonment for a period of three years or with a fine which may extend to 10 lacks INR or both.

INFORMATION TECHNOLOGY ACT 2000 AND COPYRIGHT ACT 1957

There is no absolute provision for the crime of piracy in these acts. Generally, the act of piracy is not limited to the film industry. It has evolved into different forms throughout the years.

IT ACT 2000 – SECTION 65: If any person commits any act specified in section 43 of the information technology act 2000, such person is liable for imprisonment for a period of three years, or with a fine which may extend to 3 lakh INR or with both.³

COPYRIGHT ACT 1957

SECTION 51: any person without authorization from the owner or registrar of copyright reproduces any literary, dramatic, artistic or musical work it is an infringement of copyright. The following acts are said to be an infringement of the copyright:

- Sells or hires any copyrighted work
- Distributes the copyrighted work for trade
- Exhibits in public by trade
- Imports into India

² <https://www.ijlt.in/post/the-cinematograph-amendment-bill-2021-an-analysis>

³ Refer information technology act of 2000

SECTION 63: This section lays down the punishment for the act of infringement. imprisonment which may extend to 3 years or the fine may extend to 2 lakhs INR

SECTION 63 A: In case of a habitual offender, imprisonment which may extend to 3 years and with a fine which may extend to 2 Lakh INR

INDIAN PENAL CODE 1860

SECTION 28: Counterfeit is the act of creating an impostor to replace the original item by using the practice of deception.⁴

ESSENTIALS OF SECTION 28

- Resemblance to the original product
- Intention to exercise deception
- Knowingly exercising the practice of deception

SECTION 415: The act of piracy or counterfeiting falls under the ambit of cheating (since piracy is a fraudulent act committed without the consent of the proprietor). SECTION 420⁵ of IPC and lays the punishment for the crime of cheating. Imprisonment which may extend to a period of 1 year or a fine or both.

TRADEMARK ACT 1999

The trademark act of 1999 acts as an anti-counterfeit measure and it deals with the issue under sections 102 and 103.

SECTION 102: This section interprets the act of counterfeiting by defining the terms "Falsification" and "false application".

SECTION 103: It deals with the penalties for the crime of counterfeiting, imprisonment which may extend to 3 years and a fine which may extend to 2 lakhs INR

CASELAWS

RAHUL MEHTA VS THE STATE OF MADHYA PRADESH (2015)⁶

The accused was arrested for distributing the pirated version of Bahubali with nine other co-accused. It was also alleged that they are running a pirated website and earning money illegally from the pirated website. The offenders were charged with sections 51,52,63,64,65,68 of the Copyright Act. Due to the immaterial evidence. The court granted bail to the accused with certain conditions.

KNIT PRO INTERNATIONAL VS STATE OF DELHI (2022)⁷

The issue, in this case, was, whether section 63 of the Copyright Act 1957 is cognizable or non-cognizable. The supreme court analyzed the scope of section 63. As per the copyright act 1957, Section 63 lays down punishment which may extend to 3 years and with a fine. The supreme court referred the part II of the first schedule of the Criminal procedure code 1973, it stated that if an offence is punishable with three or more years but does not exceed 7 years, then the said offence is cognizable and non-bailable.

⁴ Refer Indian penal code, 1860

⁵ Section 420 deals with cheating and dishonestly inducing delivery of property

⁶ Miscellaneous Criminal Case No.15542/2015

⁷ criminal appeal no. 807 of 2022

The supreme court held that the offence under the Copyright Act, 1957 is cognizable and non-bailable after considering the schedule of the criminal procedure code, 1973

R.G. ANAND VS M/S. DELUXE FILMS & ORS ⁸

The plaintiff was a prominent playwright and a producer of stage plays, a popular play among them was "Hum Hindustani". The defendant was attracted to the play after such popularity and the defendant made a film called "New Delhi" entirely based on the play. The plaintiff watched the film and filed a suit alleging that the defendant committed an act of piracy by violating the provisions of the copyright act 1911.

This judgement is considered to be a landmark decision in the aspect of copyright law. The court clearly stated that the principal, theme, and ancient facts cannot be a subject matter of copyright. Both the film and the play were based in the same area, so similarities are bound to occur.

To constitute an offence of piracy, the copy must be a substantial or material one, but These works had their differences and some additions were made to the film while screening in the theatres. Thus, there was no infringement of copyright and the court clarified that the copyright protection does not extend to the ideas.

JOHN DOE ORDER

It is a restraint order issued by the court to protect the intellectual property rights of the author. It is commonly used to identify the anonymous infringer or to identify the person involved in illegal activities. John doe order is also known as the Anton pillar order or Ashok Kumar's Order. It allows the author to take action against the unknown party. The remedy is granted in form of an injunction against the anonymous defendants.

The first ever john doe order was passed in Taj television ltd and Ors vs Rajan Mandal and Ors⁹. The issue here was a local cable network unauthorisedly telecasted the FIFA world cup 2002 by illegally transmitting the plaintiffs' channel, injunction was granted against the cable network. John Doe order was passed in several cases, most recent incident was Bhanushali Studios Ltd and others vs Telegram messenger (2022) the makers of the film "JANHIT MEIN JAARI" initiated a john doe suit against the unknown users of Telegram. The essentials to pass this order was laid in the Singham case¹⁰, such are

- I. Prima facie
- II. Imminent danger and
- III. Balance of inconvenience

SUGGESTIVE MEASURES FOR PREVENTION OF PIRACY

Even though the government have laid down certain amendments to prevent the offence of piracy. It couldn't perform the designated function effectively. The day-to-day development of technology acts as a hindrance to enforcement.

⁸ 1978 air 1613

⁹ [IA NO. 5628/2002 in CS (OS) 1072/2002]

¹⁰ CS OS no. 1724/2011, decided on August 2011

FEW SUGGESTIONS TO REDUCE PIRACY:

CREATING AN AWARENESS ABOUT THE EXISTING PIRACY LAWS IN INDIA

The common public isn't aware of any piracy laws in India and some wouldn't even know that piracy is an offence. An initiative should be taken by the government and filmmakers by creating awareness among the common people that the spreading, and distributing of pirated content is equal to the one who's using it. For example: instead of playing advertisements during the interval, an awareness video can be screened.

PROVIDING TICKETS AT A REASONABLE COST

One of the main reasons for movie piracy is higher ticket fares in theatres. On normal days. A single ticket cost 220 INR but in the case of a festival release, the demand for the tickets increases, and on the other side an unreasonable hike in the price of tickets. the cost fixed by the theatres won't exceed more than 300 INR on the first day of release.

The interference of the fans club of the so-called stars is the main factor for the unavailability of tickets. They directly purchase the tickets from the theatres and make a huge profit by distributing them at a higher cost. Unavailability and higher price create demand, so people prefer pirated websites. Government should insert some provisions regarding the ticket price.

RIGID PUNISHMENT

In order to regulate movie piracy, the punishment for piracy must be extended. Cinematography act 1957 and copyright act 1957, lays down imprisonment for 3 years it shall be increased to 5 years and in the case of habitual offenders, the imprisonment shall be 7 years.

PIRACY WEBSITES AND USAGE OF VPN SHALL BE PROHIBITED

Common websites used in India are Tamil blasters, Tamil yogi for regional movies and YIFY for Hollywood movies. These domains are the major players in the town. To prohibit the usage of pirated websites telecommunications have blocked all the URLs. Yet the VPN grants access to all the websites. VPN is an application which replaces the Ip address and presents a pseudo location rather than the original one. This application shall be removed from the play store or app store to reduce the issue of online piracy.

AFFORDABLE SUBSCRIPTION FOR OTTS

Due to the pandemic situation, Filmmakers couldn't release their movies in theatres as a replacement they started to release directly in OTTs. Such a trend is followed even after the pandemic period. makers to avoid failures, they handover their films directly to the ott online piracy didn't stop with the theatres, it also affects the online streaming platforms and here it didn't stop with films it extended to tv series available on the platforms, their viewership reduces and one easy way to avoid this issue is by providing an affordable subscription. Though directly they can't reduce their subscriptions, they may start by providing seasonal offers.

CONCLUSION

Even after the inclusion of so many anti-piracy laws. The offence of piracy is still running through DVD and online piracy. This causes a loss in revenue for both the filmmakers and distributors. Due to the technical advancements the enacted laws weren't effective and Aforesaid suggestions didn't work, what can be the remedy to solve this issue?

In my opinion, the Taste and preferences of the audience have evolved. People are attracted to watching films on bigger screens rather than on mobile or television. One of the major factors is covid-19, the imposition of the lockdown restricted audience from visiting theatres and people for entertainment they started watching regional movies of any language. Through pirated websites as well as OTTs. Like bong Joon ho said people have overcome the barrier of subtitles and started appreciating the world cinema. Back a decade, adults of the family would choose a movie to watch in the theatres, but now the kids in the family replaced them in choosing the movies. For example, avatar 2 made 370 Crores INR (approx.) in India alone and John Wick 4 made good numbers in India and this wouldn't be possible in 5 years. This isn't to imply that piracy is inevitable, but years later it will gradually reduce. The loss to the filmmakers wouldn't be aggregated.

Common people may or may not use the pirated website, but for absolute restriction, the government of India shall introduce a bot on the internet, for example: if a person is sending a text message to another person on Instagram, which might not be offensive, but the BOT in the Instagram enlightens such message as offensive and restricts such action for 3 days. I believe that the evolution of the economy will pave the way to create content and India will implement better ways to curb piracy in the upcoming years.

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