

# THE ANTI-HIJACKING (AMENDMENT) ACT, 1994

No. 39 OF 1994

[29th June, 1994.]

## An Act further to amend the Anti-Hijacking Act, 1982.

Enacted by Parliament in the Forty-fifth Year of the Republic of India as follows:—

Short title and commencement.

1. (1) This Act may be called the Anti-Hijacking (Amendment) Act, 1994.

(2) It shall come into force on such <sup>or</sup> date as the Central Government may, by notification in the Official Gazette, appoint.

Insertion of new section 5A.

2. After section 5 of the Anti-Hijacking Act, 1982 (hereinafter referred to as the principal Act), the following section shall be inserted, namely:—

65 of 1982.

Conferment of powers of investigation, etc.

“5A. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, for the purposes of this Act, the Central Government may, by notification in the Official Gazette, confer on any officer of the Central Government, powers of arrest, investigation and prosecution exercisable by a police officer under the Code of Criminal Procedure, 1973.

2 of 1974.

(2) All officers of police and all officers of Government are hereby required and empowered to assist the officer of the Central Government referred to in sub-section (1), in the execution of the provisions of this Act.”

Insertion of new sections 6A, 6B and 6C.

3. After section 6 of the principal Act, the following sections shall be inserted, namely:—

Designated Courts.

“6A. (1) For the purpose of providing for speedy trial, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, specify a Court of Session to be a Designated Court for such area or areas as may be specified in the notification.

① 1-10-1996: Vide Notification No. S.O. 268 662(E), dt. 19-9-1996

not impose any sentence of imprisonment and may impose a fine which may extend to fifty thousand rupees."

24. In section 78 of the principal Act, in sub-section (2),—

(i) after clause (c), the following clauses shall be inserted, namely:—

"(ca) the conditions for submission of application under sub-section (2) of section 33;

(cb) the conditions subject to which a copyright society may be registered under sub-section (3) of section 33;

(cc) the inquiry for cancellation of registration under sub-section (4) of section 33;

(cd) the conditions subject to which the copyright society may accept authorisation under clause (a) of sub-section (1) of section 34 and the conditions subject to which owners or rights have right to withdraw such authorisation under clause (d) of that sub-section;

(ce) the conditions subject to which a copyright society may issue licences, collect fees and distribute such fees amongst owners of rights under sub-section (3) of section 34;

(cf) the manner in which the approval of the owners of rights regarding collection and distribution of fees, approval for utilisation of any amount collected as fees and to provide to such owners information concerning activities in relation to the administration of their rights under sub-section (1) of section 35;

(cg) the returns to be filed by copyright societies to the Registrar of Copyrights under sub-section (1) of section 36;";

(ii) after clause (d), the following clauses shall be inserted, namely:—

"(da) the manner of payment of royalty under clause (j) of sub-section (1) of section 52;

(db) the form and the manner in which the copyright society shall maintain accounts and other relevant records and prepare annual statements of accounts and the manner in which the quantum of remuneration is to be paid to individual owner of rights under sub-section (1) of section 52B."

Amend-  
ment of  
section  
78.

Provided further that in no case shall the share exceed ten per cent. of the resale price.

(3) If any dispute arises regarding the right conferred by this section, it shall be referred to the Copyright Board whose decision shall be final."

Amendment of section 57.

20. In section 57 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:—

"(1) Independently of the author's copyright and even after the assignment either wholly or partially of the said copyright, the author of a work shall have the right—

(a) to claim authorship of the work; and

(b) to restrain or claim damages in respect of any distortion, mutilation, modification or other act in relation to the said work which is done before the expiration of the term of copyright if such distortion, mutilation, modification or other act would be prejudicial to his honour or reputation:

Provided that the author shall not have any right to restrain or claim damages in respect of any adaptation of a computer programme to which clause (aa) of sub-section (1) of section 52 applies.

*Explanation.*—Failure to display a work or to display it to the satisfaction of the author shall not be deemed to be an infringement of the rights conferred by this section."

Amendment of section 63.

21. In section 63 of the principal Act,—

(1) in clause (b), the words, figures and letter "except the right conferred by section 53A" shall be inserted at the end;

(2) in the proviso, after the words "Provided that", the words "where the infringement has not been made for gain in the course of trade or business" shall be inserted.

Amendment of section 63A.

22. In the first proviso to section 63A of the principal Act, after the words "Provided that", the words "where the infringement has not been made for gain in the course of trade or business" shall be inserted.

Insertion of new section 63B.

23. After section 63A of the principal Act, the following section shall be inserted, namely:—

Knowing use of infringing copy of computer programme to be an offence.

"63B. Any person who knowingly makes use on a computer of an infringing copy of a computer programme shall be punishable with imprisonment for a term which shall not be less than seven days but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees:

Provided that where the computer programme has not been used for gain or in the course of trade or business, the court may, for adequate and special reasons to be mentioned in the judgment,

18. After section 52A of the principal Act, the following section shall be inserted, namely:—

“52B. (1) Every copyright society appointed under section 34A shall maintain proper accounts and other relevant records and prepare an annual statement of accounts, in such form and in such manner as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of each of the copyright societies in relation to the payments received from the Central Government shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the copyright society to the Comptroller and Auditor-General.

(3) The Comptroller and Auditor-General of India or any other person appointed by him in connection with the audit of the accounts of the copyright society referred to in sub-section (2) shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General has in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts and other documents and papers and to inspect any of the offices of the copyright society for the purpose only of such audit.

(4) The accounts of each of the copyright societies as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament.”

19. In Chapter XI, after section 53 of the principal Act, the following section shall be inserted, namely:—

“53A. (1) In the case of resale for a price exceeding ten thousand rupees, of the original copy of a painting, sculpture or drawing, or of the original manuscript of a literary or dramatic work or musical work, the author of such work if he was the first owner of rights under section 17 or his legal heirs shall, notwithstanding any assignment of copyright in such work, have a right to share in the resale price of such original copy or manuscript in accordance with the provisions of this section:

Provided that such right shall cease to exist on the expiration of the term of copyright in the work.

(2) The share referred to in sub-section (1) shall be such as the Copyright Board may fix and the decision of the Copyright Board in this behalf shall be final:

Provided that the Copyright Board may fix different shares for different clauses of work:

Insertion  
section  
52B.  
and  
audit.

new  
Accounts  
tion of

Insertion  
of new  
section  
53A.

Resale  
share  
right in  
original  
copies.

(iii) no such sound recording shall be made until the expiration of two calendar years after the end of the year in which the first sound recording of the work was made; and

(iv) the person making such sound recordings shall allow the owner of rights or his duly authorised agent or representative to inspect all records and books of account relating to such sound recording:

Provided further that if on a complaint brought before the Copyright Board to the effect that the owner of rights has not been paid in full for any sound recordings purporting to be made in pursuance of this clause, the Copyright Board is, *prima facie*, satisfied that the complaint is genuine, it may pass an order *ex parte* directing the person making the sound recording to cease from making further copies and, after holding such inquiry as it considers necessary, make such further order as it may deem fit, including an order for payment of royalty;

(k) the causing of a recording to be heard in public by utilising it,—

(i) in an enclosed room or hall meant for the common use of residents in any residential premises (not being a hotel or similar commercial establishment) as part of the amenities provided exclusively or mainly for residents therein; or

(ii) as part of the activities of a club or similar organisation which is not established or conducted for profit;”;

(5) for clause (s), the following clause shall be substituted, namely:—

“(s) the making or publishing of a painting, drawing, engraving or photograph of a work of architecture or the display of a work of architecture;”;

(6) clause (w) shall be omitted;

(7) after clause (y), the following clauses shall be inserted, namely:—

“(z) the making of an ephemeral recording, by a broadcasting organisation using its own facilities for its own broadcast by a broadcasting organisation of a work which it has the right to broadcast; and the retention of such recording for archival purposes on the ground of its exceptional documentary character;

(za) the performance of a literary, dramatic or musical work or the communication to the public of such work or of a sound recording in the course of any *bona fide* religious ceremony of an official ceremony held by the Central Government or the State Government or any local authority.

*Explanation.*—For the purpose of this clause, religious ceremony including a marriage procession and other social festivities associated with a marriage.”.

17. In section 52 of the principal Act, in sub-section (1),—

(1) in clause (a),—

(i) after the words “artistic work”, the words “, not being a computer programme,” shall be inserted;

(ii) for sub-clause (i), the following sub-clause shall be substituted, namely:—

“(i) private use, including research;”;

(2) after clause (a), the following clause shall be inserted, namely:—

“(aa) the making of copies or adaptation of a computer programme by the lawful possessor of a copy of such computer programme, from such copy—

(i) in order to utilise the computer programme for the purpose for which it was supplied; or

(ii) to make back-up copies purely as a temporary protection against loss, destruction or damage in order only to utilise the computer programme for the purpose for which it was supplied;”;

(3) in clause (i), the words “or the communication to such an audience of a cinematograph film or sound recording” shall be inserted at the end;

(4) for clauses (j) and (k), the following clauses shall be substituted, namely:—

“(j) the making of sound recordings in respect of any literary, dramatic or musical work, if—

(i) sound recordings of that work have been made by or with the licence or consent of the owner of the right in the work;

(ii) the person making the sound recordings has given a notice of his intention to make the sound recordings, has provided copies of all covers or labels with which the sound recordings are to be sold, and has paid in the prescribed manner to the owner of rights in the work royalties in respect of all such sound recordings to be made by him, at the rate fixed by the Copyright Board in this behalf;

Provided that—

(i) no alterations shall be made which have not been made previously by or with the consent of the owner of rights, or which are not reasonably necessary for the adaptation of the work for the purpose of making the sound recordings;

(ii) the sound recordings shall not be issued in any form of packaging or with any label which is likely to mislead or confuse the public as to their identity;

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, a Designated Court shall, as far as practicable, hold the trial on a day-to-day basis.

6B. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973,—

(a) all offences under this Act shall be triable only by the Designated Court specified under sub-section (1) of section 6A;

(b) where a person accused of or suspected of the commission of an offence under this Act is forwarded to a Magistrate under sub-section (2) or sub-section (2A) of section 167 of the Code of Criminal Procedure, 1973, such Magistrate may authorise the detention of such person in such custody as he thinks fit for a period not exceeding fifteen days in the whole where such Magistrate is a Judicial Magistrate and seven days in the whole where such Magistrate is an Executive Magistrate:

Provided that where such Magistrate considers,—

(i) when such person is forwarded to him as aforesaid; or

(ii) upon or at any time before the expiry of the period of detention authorised by him.

that the detention of such person is unnecessary, he shall order such person to be forwarded to the Designated Court having jurisdiction;

(c) the Designated Court may exercise, in relation to the person forwarded to it under clause (b), the same power which a Magistrate having jurisdiction to try a case may exercise under section 167 of the Code of Criminal Procedure, 1973 in relation to an accused person in such case who has been forwarded to him under that section;

(d) a Designated Court may, upon a perusal of a complaint made by an officer of the Central Government or the State Government, as the case may be, authorised in this behalf, take cognizance of that offence without the accused being committed to it for trial.

(2) When trying an offence under this Act, a Designated Court may also try an offence other than an offence under this Act, with which the accused may, under the Code of Criminal Procedure, 1973, be charged at the same trial.

6C. Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 shall apply to the proceedings before a Designated Court and the person conducting a prosecution before a Designated Court shall be deemed to be a Public Prosecutor.

Offences triable by Designated Court.

Application of Code to proceedings before a Designated Court.

Insertion  
of new  
section  
7A.

Provision  
as to  
bail.

4. After section 7 of the principal Act, the following section shall be inserted, namely:—

“7A. (1) Notwithstanding anything in the Code of Criminal Procedure, 1973 no person accused of an offence punishable under this Act shall, if in custody, be released on bail or on his own bond unless—

2 of 1974.

(a) the Public Prosecutor has been given an opportunity to oppose the application for such release; and

(b) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 or any other law for the time being in force on granting of bail.

2 of 1974.

(3) Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail under section 439 of the Code of Criminal Procedure, 1973.”

2 of 1974.

5. After section 10 of the principal Act, the following section shall be inserted, namely:—

Insertion  
of new  
section  
10A.

Presump-  
tions as  
to offen-  
ces under  
sections  
4 and 5.

“10A. In a prosecution for an offence under section 4 or section 5 if it is proved—

(a) that the arms, ammunition or explosives were recovered from the possession of the accused and there is reason to believe that such arms, ammunition or explosives of similar nature were used in the commission of such offence; or

(b) that there is evidence of use of force, threat of force or any other form of intimidation caused to the crew or passengers in connection with the commission of such offence,

the Designated Court shall presume, unless the contrary is proved, that the accused had committed such offence.”