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Silenced by Copyright?: Re-examining Limits on Freedom of Expression

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ABSTRACT

The freedom of expression is a fundamental human right recognised both in international conventions and in the Constitution of India. Although the right is not absolute and is subject to limitations, it at times finds itself at a crossroads with expression as protected by copyright law. A recent controversy in New York exemplified the contention between the right of a creator to display his work and the use of that work by another to express an opinion on an issue of societal relevance. This paper illustrates this contention, arguing that a limitation must be imposed on the exercise of both rights for their harmonious coexistence. This paper also refers to the Indian provisions to consider how the controversy would have been resolved had the dispute over the Charging Bull and the Fearless Girl arisen in India.

Keywords: *Freedom of Expression; Copyright Law; Moral Rights; Right to Integrity; Artistic Work.*

I. INTRODUCTION

The recent proliferation of creative works, especially with the advent of digitisation, has raised certain fundamental questions regarding the freedom of expression and its relation with copyright law. Even though the two have their own specific realms of application, there nonetheless appears to be an inevitable intersection between them. Digitisation has ensured that any form of expression can be published at the mere click of a button, transcending all barriers of space and time. A flipside of this ease in publishing one's expression, however, is that it may at times conflict with the protection granted to an expression under copyright law. The contention is further aggravated by the fact that the freedom of expression is recognised as an inherent human right, guaranteed also as a fundamental right under the Constitution of India.

Copyright law does not protect every form of expression, but only those expressions that fall under the category of a "work" as defined under section 2(y) of the Copyright Act, 1957.¹ The extent of protection granted by copyright law is therefore limited to certain kinds of expression

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¹ The Copyright Act, 1957, § 2(y), No. 14, Acts of Parliament, 1957 (India). A "work" means a literary, dramatic, musical or artistic work, a cinematograph film, or a sound recording.

and does not extend to all forms of expression *per se*. There is also a distinction in the reason why the two rights are granted. While the freedom to express, as a fundamental right, ensures that individuals are able to communicate their ideas and opinions freely and without restriction, the protection granted to expressions under copyright law serves two distinct purposes: first, it promotes creativity; and second, it rewards the creator's hard work and skill by providing monetary compensation for the same.

Even though the two might seem to function within their respective areas, the relationship between the freedom to express and copyright law remains ambiguous. The ambiguity arises from the fact that copyright law often restricts the form that an expression might take by forbidding the free use of copyrighted works.² In other words, if the freedom of expression exercised by an individual results in the appropriation of the copyrighted work of another, an infringement suit can be filed to prevent such expression. Since the existence of both rights is integral to a progressive society, it is important to harmonise them in a manner that allows their conjoint application and implementation. This paper, while traversing the nature of the two rights, attempts to explain the conflict with the help of a controversy that took place in New York, USA.

II. RIGHT TO FREEDOM OF EXPRESSION AND EXPRESSION PROTECTED UNDER COPYRIGHT LAW

The Constitution of India, 1950, under Part III, which deals with fundamental rights, recognises and grants to its citizens the freedom of speech and expression as one of the most basic rights.³ The freedom of speech and expression is regarded as the first condition of liberty and is best known as the mother of all liberties.⁴ At the international level as well, the freedom of expression is recognised by both the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR).⁵ In the most basic terms, this right entails the freedom to express one's ideas and opinions in any form, whether oral, written, electronic or any other form of modern communication, in an open forum or otherwise.

As opposed to the explicit right of freedom of expression, an expression as protected under copyright law is restricted to certain categories of works, such as literary, dramatic, artistic and

² Alexandra Couto, *Copyright and Freedom of Expression: A Philosophical Map*, in INTELLECTUAL PROPERTY AND THEORIES OF JUSTICE 160 (Axel Gosseries et al. eds., 2008).

³ INDIA CONST. art. 19(1)(a) (guaranteeing to all citizens the right to freedom of speech and expression).

⁴ M.P. JAIN, INDIAN CONSTITUTIONAL LAW 1078 (LexisNexis Butterworths Wadhwa 2012).

⁵ Universal Declaration of Human Rights, G.A. Res. 217A (III), art. 19, U.N. Doc. A/810 (Dec. 10, 1948); International Covenant on Civil and Political Rights, art. 19, Dec. 16, 1966, 999 U.N.T.S. 171.

musical works, that have a fixed form. The term is used in contradistinction to a mere idea, which is outside the purview of all copyright legislation. A fundamental axiom of copyright law is that copyright protection does not extend to any idea, procedure, process or system, but extends only to the expression of such an idea. This limitation exists regardless of the form in which the idea, procedure or process is described, explained, illustrated or embodied in the work.⁶ The entire copyright law revolves around granting protection to an expression emanating from an author, provided the other requirements of the Copyright Act, 1957, are fulfilled. The term “expression” has not been defined in the Act, but it means to give a concrete and fixed form to a work. A work has been defined under section 2(y)⁷ of the Copyright Act, 1957, and is also referred to as the subject-matter of copyright law. It is to be noted that the term “expression” has been used under copyright law to differentiate it from an idea.

Freedom of expression is a positive right, which fosters the freedom to express oneself, while the protection granted to an expression under copyright law is more of a negative one, preventing others from using a protected expression in an unauthorised manner.

Moreover, the reason behind the grant of the two rights also varies. While the fundamental right to speech and expression ensures the most basic right to express one’s ideas and opinions, copyright serves the dual purpose of promoting creativity, by providing the creator of a work with exclusive rights, and balancing this with the public’s access to creative works after the term of copyright expires or for a fair use of such works.

III. CONFLICT BETWEEN COPYRIGHT AND FREEDOM OF EXPRESSION

Considering the basic nature of the right to expression and of expression as protected under copyright law, the question that arises is whether the fundamental human right of expression stands in conflict with the statutorily granted right of copyright. An instance of such conflict may be illustrated by an episode in which the freedom to express was contested because its exercise violated the rights accorded to an expression under the copyright regime.

A. The Charging Bull and Fearless Girl Controversy

The conflict between copyright law and freedom of expression can best be explained with the help of the controversy involving the *Charging Bull*, a bronze sculpture made by the sculptor Arturo Di Modica with his own money. The sculpture was gifted to New York City at Christmas

⁶ 17 U.S.C. § 102(b) (2018) (excluding from copyright protection any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work).

⁷ See *supra* note 1 (defining “work” under § 2(y) of the Copyright Act, 1957).

in 1989 and was originally placed in front of the New York Stock Exchange. However, traffic disruptions caused by its admirers led to the artwork being shifted to a new location called Bowling Green, a small park located a few steps away from the New York Stock Exchange. Over time, the bronze sculpture became a centre of attraction in the city, symbolising strength and power to the American people.

In March 2017, another bronze sculpture, the *Fearless Girl*, made by Kristen Visbal and commissioned by State Street Global Advisors, was installed right in front of the *Charging Bull*. The girl, with her head held high and her hands on her waist, was installed on the occasion of International Women's Day as a symbol of women's empowerment. Overnight, this placement evoked an array of arguments regarding women and finance, men and women, and the gender division existing in American society. Consequently, the *Fearless Girl* was relocated to face the New York Stock Exchange (the earlier location of the *Charging Bull*). While the public clamour changed the location of the *Fearless Girl*, the attorneys of Di Modica (the artist of the *Charging Bull*) raised certain fundamental legal questions.⁸ Of the issues raised, the one elaborated upon here is the contention that his moral right was violated: in the opinion of Di Modica, the positioning of the *Fearless Girl* in front of the *Charging Bull* modified the meaning of his artwork. He protested that the meaning of his work had been relegated from that of "strength" to "male chauvinism", and that his moral right to integrity had thereby been infringed. Although there was no physical damage to the sculpture of the *Charging Bull* and the damage was an intangible one, it was argued that the right of integrity of the artist was affected.

It was pointed out in the letter to the Mayor that the *Fearless Girl* is fearless only in the context of the *Charging Bull*, and that its proximity to the latter expands its visual frame and the manner in which the public perceives it.⁹ Consequently, viewers read the two works together, in dialogue with each other, as a composite work. The reason Di Modica stressed the removal of the *Fearless Girl* was not that he considered the latter work of art to be bad or inauthentic, but that it inclined viewers to see his work in a manner of which he did not approve.

B. Can an Artist Dictate How a Work Should Be Perceived?

It has been considered doubtful by some whether Di Modica may be allowed to enforce his vision of the work and prevent others from co-opting his artistic production to serve their own

⁸ Letter from Norman Siegel et al., Att'ys for Arturo Di Modica, to Hon. Bill de Blasio, Mayor, City of N.Y. (Apr. 11, 2017), <https://www.scribd.com/document/344998311/Letter-to-Mayor-DeBlasio-on-Charging-Bull-vs-Fearless-Girl> (last visited Apr. 7, 2026).

⁹ Siegel Letter, *supra* note 8.

purposes, political and aesthetic.¹⁰ Such a view, on his part, also reveals a commitment to a monologic vision of his work that shuns all interpretations except his own. It is argued that, even without the statue of the *Fearless Girl*, Di Modica cannot control how others perceive and interpret his work, since he appears to bind his work to his own understanding of it alone.¹¹ This question might be answered in the affirmative had the case arisen in a continental country, where moral rights are considered to be the natural rights of an author. Moral rights under the copyright regime protect more than the commercial interest of an author; they emphasise that a creation is an extension of the author's soul, and so the author has the right to preserve, protect and nurture his creations. However, since the controversy took place in the USA, most authors responded to the question in the negative. In the USA, although copyright's exclusive rights are personal to authors, they are not granted to them as an extension of their personality, as recognised in the continental countries. In this case, although a formal suit was not filed in a court of law, a definite conflict with the freedom of expression of another person, together with the general stance of US courts in remaining hostile to the extension of an author's moral rights, would have prevented the court from enforcing Di Modica's moral rights.

Further, it is also claimed that Di Modica presents a slippery-slope defence: if artists were forbidden from displaying their art in a manner that alters the meaning of nearby works, where would such claims stop? It is common practice for art museums and galleries to place artworks in dialogue and contrast with one another. Likewise, architects and city planners often alter the surroundings of public artworks.¹² It is therefore important to draw a definite line between the rights of an author and those of others.

For a claim of violation of moral rights, the distortion or mutilation of the artwork must be such as would prejudice the reputation of the artist. In other words, Di Modica would have to prove that the placement of the *Fearless Girl* so substantially recasts the *Charging Bull* that it prejudices his reputation, or that it prejudices his artistic intention.¹³

¹⁰ Isaac Kaplan, *Fearless Girl Face-Off Poses a New Question: Does the Law Protect an Artist's Message?*, ARTSY (Apr. 13, 2017), <https://www.artsy.net/article/artsy-editorial-fearless-girl-face-off-poses-new-question-law-protect-artists-message> (last visited Apr. 8, 2026).

¹¹ Annemarie Bridy, *Fearless Girl Meets Charging Bull: Copyright and the Regulation of Intertextuality*, 9 U.C. IRVINE L. REV. 293, 300 (2019).

¹² Shannon Price, *Charging Bull and Fearless Girl: Conflict Between Artists' Rights and First Amendment Freedoms*, YALE L. SCH. MEDIA FREEDOM & INFO. ACCESS CLINIC (June 18, 2018), <https://law.yale.edu/mfia/case-disclosed/charging-bull-and-fearless-girl-conflict-between-artists-rights-and-first-amendment-freedoms> (last visited Apr. 10, 2026).

¹³ Richard Chused, *Charging Bull, Fearless Girl, Artistic Composition and Copyright*, 10 N.Y.U. J. INTELL. PROP. & ENT. L. 43, 73 (2020).

IV. THE CHARGING BULL AND FEARLESS GIRL CONTROVERSY IN THE INDIAN CONTEXT

Although a similar situation has not been witnessed in India so far, a clear line of demarcation is important. The Copyright Act, 1957, explicitly lists an author's economic and moral rights under sections 14 and 57 respectively. These are specific rights, as compared with the general right of expression. The enforcement of copyright in an absolute and extensive manner is detrimental to the freedom accorded under the Constitution of India. In a similar vein, a total disregard of copyright would run contrary to the creation of new works and to the interests of the public at large, who are the ultimate recipients of such works. As has been observed by the Court in *Sony Corp. v. Universal City Studios, Inc.*,¹⁴ that the ultimate intended beneficiary of copyright is the public, which enjoys unrestricted access to creative works after the copyright in them has expired. Rewarding authors for their creative labour with a limited right to control the disposition of their works is thus a means to an end and not an end itself.

It is therefore important to harmonise the freedom of expression and copyright, as both ultimately serve the good of the general public. In India, section 57 of the Copyright Act, 1957, grants an author the moral rights of attribution and integrity. In the present case, Di Modica contested the violation of his right to integrity, which prevents any mutilation or distortion of a work that may prejudice the reputation of its author. Although the provision for moral rights has always been part of the Copyright Act, 1957 (unlike in the USA, where the Visual Artists Rights Act (VARA) was introduced only in 1990), there are only two cases that have been decided by the Indian courts on the point.¹⁵ Neither of the two cases expounded upon the degree or extent of mutilation that would prejudice the reputation of an author. Moreover, in those cases the distortion was caused by the subsequent use of the work itself, rather than by the placement of another work alongside it. Yet the explanation to section 57, it is submitted, would have helped to assess the legal perspective of the case. The explanation states that "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." Applied to the present case, the explanation would preclude any claim of space-specificity, or of how a work should be displayed, by the author of a work. Moreover, although the author of a work cannot be allowed to assert his moral rights endlessly, particularly where this hinders the exercise of another's freedom of expression, it can equally be said that the ideation of the *Fearless Girl* could have been attained by other means as well.

¹⁴ *Sony Corp. of Am. v. Universal City Studios, Inc.*, 464 U.S. 417 (1984).

¹⁵ *Amar Nath Sehgal v. Union of India*, 2005 (30) PTC 253 (Del); *Mannu Bhandari v. Kala Vikas Pictures Ltd.*, AIR 1987 Del 13.

An artist cannot assert his freedom of expression in a manner that violates the artistic expression of another artist. In this case, it was by no means necessary to place the two works in dialogue to bring forth the concept of gender equality or women's empowerment in finance, especially when this was done without any consent or information given to the owner of the former artwork. Although moral rights are not absolute in nature, they preserve an important aspect of a creation, namely its integrity. This integrity is necessary to communicate the right meaning of a work, even where the work can no longer fetch commercial gains owing to the expiration of the term of copyright.

V. CONCLUSION

Expression being of the essence to both the fundamental right guaranteed under Article 19 of the Constitution and to copyright law, a conflict is bound to exist. While citizens may assert their freedom of expression with conviction, authors will always seek to protect their creative expressions from unauthorised use and misappropriation. Considering the eminence of each, it is important to harmonise the two in a manner consonant with the requirements of public interest and the propagation of creativity. In other words, the process of knowledge creation and its dissemination must go hand in hand. A civilised society mandates that each person respects the rights of others, and that a claim for a right is equally met with the obligatory performance of a duty. Freedom of expression must therefore be refrained from being exercised in a manner that prejudices the copyright of another. In the event of a conflict, an effort must be made to harmonise the two by adopting an interpretation that reconciles both rights.

VI. BIBLIOGRAPHY

Cases

- Amar Nath Sehgal v. Union of India, 2005 (30) PTC 253 (Del).
- Mannu Bhandari v. Kala Vikas Pictures Ltd., AIR 1987 Del 13.
- Sony Corp. of Am. v. Universal City Studios, Inc., 464 U.S. 417 (1984).

Statutes and Instruments

- INDIA CONST. art. 19.
- The Copyright Act, 1957, No. 14, Acts of Parliament, 1957 (India).
- Copyright Act, 17 U.S.C. § 102(b) (2018).
- Visual Artists Rights Act of 1990, 17 U.S.C. § 106A (2018).
- Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810 (Dec. 10, 1948).
- International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171.

Books

- M.P. JAIN, INDIAN CONSTITUTIONAL LAW (LexisNexis Butterworths Wadhwa 2012).
- Alexandra Couto, *Copyright and Freedom of Expression: A Philosophical Map*, in INTELLECTUAL PROPERTY AND THEORIES OF JUSTICE (Axel Gosseries et al. eds., 2008).

Articles and Online Sources

- Annemarie Bridy, *Fearless Girl Meets Charging Bull: Copyright and the Regulation of Intertextuality*, 9 U.C. IRVINE L. REV. 293 (2019).
- Richard Chused, *Charging Bull, Fearless Girl, Artistic Composition and Copyright*, 10 N.Y.U. J. INTELL. PROP. & ENT. L. 43 (2020).
- Isaac Kaplan, *Fearless Girl Face-Off Poses a New Question: Does the Law Protect an Artist's Message?*, ARTSY (Apr. 13, 2017).
- Shannon Price, *Charging Bull and Fearless Girl: Conflict Between Artists' Rights and First Amendment Freedoms*, YALE L. SCH. MEDIA FREEDOM & INFO. ACCESS CLINIC (June 18, 2018).

Other Sources

- Letter from Norman Siegel et al., Att'ys for Arturo Di Modica, to Hon. Bill de Blasio, Mayor, City of N.Y. (Apr. 11, 2017).
