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# *“An Artist never dies”*

## Demystifying Moral Rights in India

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NANDINI RAO BUDHAGAVI<sup>1</sup> AND VAHINI PARAMESWARAN<sup>2</sup>

### ABSTRACT

*The article seeks to explore the transformative journey of the growth of moral rights in India. Moral rights elevate the artist above the proprietary, thereby protecting against alteration, misattribution and mutilation. The amendment to the Copyrights Act, 1957 has sparked an intense deliberation among the academic community as it was found to be inadequate with regards to the recognition of moral rights in India. This research is delineated with the intention of identifying the Indian legal system's moral rights regime. The paper rolls out by outlining a number of situations and events that historically mark the emergence of this concept both globally and within India. In spite of the formal rhetoric of legal systems all over the world, this research reveals that moral rights have been handled incorrectly, insufficiently, and in contrast to their economic counterparts within the copyright bundle, which have been given much more careful consideration. This article emphasizes on the restoration of morality from political biases, redundant policies, contradiction in terms of judgements by throwing light on difference of perspective by common law countries and civil law countries. Moral right's journey through illustrative case laws, historical significance, its stance under international conventions, its position under foreign laws and lastly its take in Indian jurisprudence is being put forth. Because as per Henry Wadsworth Longfellow, “Dead he is not, but departed, for the artist never dies.”*

### I. INTRODUCTION

Henry Wadsworth Longfellow once said, “Dead he is not, but departed, for the artist never dies”, is the spirit with which the jurisprudence of the intellectual property rights had begun. The importance of giving credit where it is due and recognizing the artist's work is potent to drive creativity and innovation in a county. An environment where creativity is encouraged and a cushion of protection is provided fosters innovations for public welfare.

India being the epitome of diverse creativity that it holds and the ever-evolving landscape of innovation and creativity, the concept of Intellectual Property Rights (IPR) stands sentinel, safeguarding the fruits of human ingenuity.

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<sup>1</sup> Author is a Student at SASTRA Deemed University, India.

<sup>2</sup> Author is a Student at SASTRA Deemed University, India.

**Back in the time**

Intellectual property has its origins in ancient civilizations, where innovators and craftspeople sought acknowledgment and protection for their works. Patents, for example, can be traced back to the 15th century in Venice, when the Venetian Patent Statute of 1474 allowed innovators exclusive rights for a short time. As societies advanced throughout the centuries, so did the necessity for legal systems to protect intellectual inventions.

The Industrial Revolution was a watershed point in intellectual property history, with a boom in technological developments forcing nations to formalize legal protections. The Statute of Anne in 1710, widely regarded as the first copyright law, provided the framework for author rights recognition. Following international treaties and conventions, such as the Paris Convention (1883) and the Berne Convention (1886), helped to build a global framework for intellectual property protection.

**Contemporary Relevance**

Globalization has scaled-up the outlook of people and economy has become a demand-driven with need for more innovations which percolates to daily lives. Rampant technological advancements, digitalization and globalization has transformed and widen the scope of Intellectual Property Rights. For example, in the realm of Fashion Industry, intellectual right protection is available for design, photographs, content, fabric pattern, which can be categorized into patent, copyrights and trademark, disparate aspects of intellectual property rights such as patents, copyrights and trademarks serves different roles when it comes to the protection, such as patent protects innovations, copyright protects creative and artistic works and trademark protects the identity of the brand<sup>3</sup>.

The intellectual property landscape in India has undergone a fundamental transition, aligning with the country's objectives for economic growth and technological supremacy. The creation of the Controller General of Patents, Designs, and Trade Marks (CGPDTM) and the Copyright Office, as well as the passage of the Trade Marks Act (1999), the Patents Act (1970), and the Copyright Act (1957), demonstrates India's dedication to encouraging innovation and creativity.

**II. THE INDIAN PERSPECTIVE**

India, rooted with its rich cultural heritage and saturating entrepreneurial spirit, has been proactive to address domestic issues with regards to the intellectual property rights. The rolling out of National IPR Policy in 2016 marked a watershed moment wherein it outlined a

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<sup>3</sup> Pg.61, Fashion Law Journal's "A Guide to Fashion Law", Anuj Kumar, Cindy. K. Sotomayor

comprehensive strategy to nurture innovation, balance public welfare and property holder's right. It has struck the chord with fostering innovation and creation along with equitable access of knowledge to the general public.

### **III. LITERATURE REVIEW**

It has been noted that India's current stance on terms of the concept of moral rights under Intellectual property rights meets the minimum standards set out in the Berne Convention but they present a narrower version of the provisions prior to the amendment to the Indian Copyrights Act, 1957. The original provision was more elaborate and had broader scope as compared with current provisions. When an analysis is done with respect to the original and the new legislation it can be said that the earlier provisions emphasized more on the cultural which were analogous with the principles of Continental European Law (Sundara Rajan, 2003)

Copyright protection is thus a requirement for the protection of the author's or copyright owner's economic rights. At the same time, it is necessary to grant the public certain rights in the author's copyrighted work. This is also known as copyright limitations, which are necessary to maintain a balance between two competing interests: the interest of the copyright owner by paying him and the public interest. As a result, it is not only the legislature's obligation to provide the rights in black and white, but it is also the responsibility of both the author/owner and the general public to ensure that they respect each other's rights as far as possible without intruding into one another's domain. (Arindam Ghosh)

The preceding examples, in which courts relied solely on the legislature's wording of Section 57(1)(b) to broaden the scope of moral rights (rights to survive assignment: Mannu Bhandari's case) and, in the process, indicated the legislature's liberal intentions on the one hand and the legislature's inferable intent to narrow the scope of moral rights on the other (Amendment of 1994 which terminated the right along with copyrights), are cause for concern, both in terms of practicality and theoretical incomprehensiveness. (Manu Chaturvedi).

### **IV. CONCEPT OF MORAL RIGHTS**

The primary purpose of granting copyright is to foster creativity and also acts as an economic incentive whereby the general public is benefitted with the work of the author or an artist. Copyright grants authors the exclusive rights over their works, which stimulated artistic creativity, thereby increasing the number of artistic works available to the public. Copyright also limits an author's control over a work, however, because the author's creativity must ultimately serve the public interest in having broad availability of literature, music, and other

forms of art.<sup>4</sup>

Moral rights, an important aspect of intellectual property (IP) law, go beyond economic reasons to protect artists' personal and reputational interests. These rights acknowledge the inherent relationship between the work and its creator, emphasizing the significance of attribution and protecting the integrity of the creative expression.

Moral rights, which are often related with copyright, normally include two basic components: the right of credit and the right of integrity. The right of attribution, sometimes known as the right of paternity, empowers the creator to claim ownership over their work. This ensures that the general audience is aware of the genuine genesis of the creative endeavor, strengthening the relationship between the artist and their creation.

The right to integrity, on the other hand, permits the creative to safeguard the originality and integrity of their work. It gives protection against derogatory treatment, distortion, or modification that could harm the creator's reputation. This aspect of moral rights supports the autonomy of the artist and protects the purity of their artistic expression.

Even when the economic rights associated with work are transferred to others, moral rights remain. Unlike economic rights, which may be limited and eventually expire, moral rights frequently last for the duration of the creator's life and, in some jurisdictions, beyond their death.

Moral rights are critical in recognizing creators' non-economic interests, ensuring that their artistic contributions are valued not only for their commercial worth but also for the personal and cultural significance they hold. This balance of economic and moral concerns enriches the intellectual property landscape by recognizing the holistic nature of creativity and its profound impact on the human experience.

### **International Scenario**

The Berne Convention for the Protection of Literary and Artistic Works is an international agreement that deals with the protection of works and the rights of their authors. It provides for moral rights, which are the right to claim authorship of the work and the right to object to any mutilation, deformation or other modification of, or other derogatory action in relation to, the work that would be prejudicial to the author's honor or reputation<sup>5</sup>.

On the other hand, the TRIPS Agreement is an international agreement administered by the World Trade Organization (WTO) that sets down minimum standards for many forms of

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<sup>4</sup> Morality of Copyright-A Critique in view of the '3 Idiots' Controversy, *Journal of Intellectual Property Rights*, Arunabha Banerjee, Aniket Deepak Agrawal, 2011

<sup>5</sup> WTO | intellectual property - overview of TRIPS Agreement

intellectual property (IP) regulation as applied to nationals of other WTO Members. However, Members do not have rights or obligations under the TRIPS Agreement in respect of the rights conferred under Article 6 bis of the Berne Convention, i.e., the moral rights (the right to claim authorship and to object to any derogatory action in relation to a work, which would be prejudicial to the author's honor or reputation), or of the rights derived therefrom<sup>6</sup>.

### **Moral Rights legislation in India**

In India, along with the protection afforded to economic rights, the Copyright Act, 1957 also extends to granting protection and recognition to moral rights. Section 57 of the Copyright Act, 1957 governs the moral rights of the author. This section is taken to be in consonance to Article 6 of the Berne Convention. Section 57<sup>7</sup> states:

1. Independently of the author's copyright and even after the assignment wholly or partially of the said copyright, the author of the work shall have the right to:

- (a) claim authorship of the work; and

- (b) restrain the 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 the right to restrain the claim damages in respect of any indication of a computer program to which clause (aa) of sub-section (1) of Section 52 applies.

2. The right conferred upon an author of the work by sub-section (1), other than the right to claim authorship of the work, may be exercised by the legal representatives of the author.

According to Manu Continental European laws such as in France, right of first publication (*droit de divulgation*) wherein the author's right to first release his/her work in the public is protected, similarly, right of withdrawal (*droit de retrait ou de repentir*) wherein the author possesses the right to retract his work from the public forum or withdraw the work from circulation if the work no longer suffices the need with which it was created. In India, the legislation lays emphasis more on public access to knowledge due to which authors don't possess right to withdraw from publication or circulation.

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<sup>6</sup> WTO | intellectual property - overview of TRIPS Agreement

<sup>7</sup> Section 57, Copyright Act, 1957

Section 57 provides for two rights, right to integrity and right to paternity. In Berne convention, right to integrity is narrowly formulated where infringement of the integrity right would be considered if only if it has damaged author's 'reputation or honour', on the other hand, 'mistreatment of work' is not taken to be a violation of this right. In Indian law, this right is treated in such a way that the integrity of an artistic work should be determined by 'objective' criteria - essentially, the judge's determination of the effects of the alteration on the author's reputation – or 'subjectively,' based on the author's own perception of the alteration and its impact on his reputation. To date, moral rights jurisprudence suggests that Indian judges are inclined to interpret the provision as a subjective test, whereas legislators prefer an objective one.

### **Moral Rights in International Legislations**

In the United States, moral rights are not recognized to the same extent as they are in other countries. The United States has not ratified the Berne Convention, and instead, it has its own system of copyright law. Under U.S. copyright law, moral rights are limited to the right of attribution and the right of integrity. The right of attribution allows an author to claim authorship of a work, while the right of integrity protects the work from being distorted, mutilated, or otherwise modified in a way that would be prejudicial to the author's honour or reputation.

In contrast, in France, moral rights are recognized to a much greater extent than they are in the United States. French law recognizes the right of paternity, which is similar to the right of attribution, as well as the right of integrity, which is similar to the right of integrity under U.S. law. In addition, French law recognizes the right of withdrawal, which allows an author to withdraw a work from circulation if it is deemed to be prejudicial to the author's honour or reputation. One other right which is not codified in the Berne Convention but is extended in French Jurisdiction is Right of Divulgence, which represents that French Legislation has recognised dual rights which possess the incorporeal right in the work that included attributes 'of an intellectual and moral nature as well as attributes of an economic nature'.<sup>8</sup>

In Germany, moral rights are also recognized to a greater extent than they are in the United States. German law recognizes the right of paternity, the right of integrity, and the right of publication. The right of publication allows an author to control the first publication of a work, and it is intended to protect the author's reputation by ensuring that the work is published in a manner that is consistent with the author's wishes.

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<sup>8</sup> Morality of Copyright-A Critique in view of the '3 Idiots' Controversy, *Journal of Intellectual Property Rights*, Arunabha Banerjee, Aniket Deepak Agrawal, 2011

**Amar Nath Sehgal case v Raj Rewal case**

In the case of Amar Nath Sehgal v. Union of India & Anr<sup>9</sup>., the plaintiff, Amar Nath Sehgal, was a sculptor of international repute and fame. In 1957, he was approached by the Government of India to design murals to be installed on the walls of Vigyan Bhavan. The mural was a symbol of India's cultural heritage and was themed on 'science of rural and modern India'. It was installed in the entrance lobby of Vigyan Bhavan in 1962 and stayed installed till 1979 when it was pulled down and kept in a government store room. The plaintiff filed a suit against the government for infringement of his moral rights after being distressed by the destruction of his artistic work and after lobbying the authorities for years without receiving a response<sup>10</sup>.

The Hon'ble Delhi High Court in this case upheld the moral right of an author under the Indian Copyright Act and awarded damages. The government was also asked to return his mural<sup>11</sup>. The case is significant in the development of moral rights jurisprudence in India. The judgment broadened the ambit of moral rights existing under Section 57 of the Indian Copyright Act 1957, thereby setting a landmark precedent<sup>12</sup>.

Post the amendment made to Section 57 in 1995, the proof of prejudice to the author's honour or reputation has been made the sine qua non for claiming damages. The Plaintiff pleaded that the mural was the result of Plaintiff's creative effort. Therefore, the destruction of his work reduced the volume of his creative corpus and this reduction in itself caused prejudice to his reputation<sup>13</sup>.

The Plaintiff asserted that the pulling down and improper handling of the mural caused immense damage to the mural, which resulted in disappearance of the parts of the mural including the name of its creator. As per the Plaintiff, such damage was prejudicial to his reputation and hence, he prayed for a declaration of his special rights under Section 57 of the Copyright Act, 1957, a permanent injunction to restrain the Defendants from further distorting, mutilating or damaging the mural, damages towards compensation for humiliation, injury, insult and loss of Plaintiff's reputation, and decree to direct the Defendants to return the mural to the Plaintiff for restoration at the cost of Defendants<sup>14</sup>

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<sup>9</sup> 2005 (30) PTC 253 (Del)

<sup>10</sup> 2005 (30) PTC 253 (DEL)

<sup>11</sup> India, legal S. (no date) *Evolution of Moral Rights in India: Revisiting Amarnath Sehgal v. Union of India*, *LegalServicesIndia*. Available at: <https://www.legalservicesindia.com/article/2539/Evolution-of-Moral-Rights-in-India:-Revisiting-Amarnath-Sehgal-v.-Union-of-India.html> (Accessed: 07 December 2023).

<sup>12</sup> *Id.*

<sup>13</sup> 2005 (30) PTC 253 (DEL)

<sup>14</sup> 2005 (30) PTC 253 (DEL)

In the case of *Raj Rewal v. Union of India & Ors.*, the plaintiff<sup>15</sup>, Raj Rewal, filed a suit against the Indian Trade Promotion Council (ITPO) for demolishing the Hall of Nations and Hall of Industries, which were designed by him. The plaintiff claimed that the demolition had derogated his 'special rights' under Section 57 of the Copyright Act, and prayed for a mandatory injunction and to reinstate the building.

The Hon'ble Delhi High Court in this judgment narrowed down the interpretation of Section 57 of The Copyright Act, 1957 and in a way made the concept of moral rights, more confusing in Indian regime<sup>16</sup>. The conflict is between two separate rights – the author/architect's rights under Section 57, and the property or landowner's rights to their property. The Plaintiff's right was purely a statutory right embodied under Copyright Act while right to land/property is a Constitutional Right under Article 300A, which must prevail over statutory rights<sup>17</sup>.

Even though in both the cases, the subject matter in question come under the same category as 'Artistic Work', but the judiciary took different stance in both the cases. The judgements showed a stark contrast in terms of leniency. The term 'mutilation' was interpreted quite liberally in *Amar Nath Sehgal's* case, whereas, in *Rewal's* case it was interpreted in a much stricter sense because of which the rights and outcomes of the judgements had far reaching contrasting ramifications for the parties in cases which fell under the same provisions of Copyright Act, 1957.

In *Amar Nath Sehgal's* case, the question of right to property was not scrutinized nor was it even considered. But in *Rewal's* case, the court held constitutional right to property supersedes rights granted under Copyright Act, 1957. Court elucidated that citing *Sehgal's* case would be inappropriate as a mural is different structurally than a building, both of which come under the same category of copyright protection, as mentioned earlier, 'Artistic Work'.

This brings out subjective difficulty, and a conundrum in the interpretation of the courts and the legislation laid down by the parliament. The diametrically opposite view presented by the court states that Indian judiciary is not reinforcing moral rights on a stricter basis. The economic rights are given more emphasis and potency as against moral rights. It is not suggested that both be treated equally, but due recognition and importance has to be given for the rights which have its own consequences. Ultimately, when such conflicting dictum is passed which is devoid of any precedential value, affects the rights of the public. After *Raj Rewal's* case, the architects

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<sup>15</sup> CS(COMM) 3/2018, with IA Nos. 90 and 92 of 2018

<sup>16</sup> *Moral rights of owner in copyright law of India – a paradigm shift* (2023) S.S. Rana & Co. Available at: <https://ssrana.in/articles/moral-rights-of-owner-in-copyright-law-of-india-a-paradigm-shift/> (Accessed: 07 December 2023).

<sup>17</sup> *Id.*

must now be aware about the constitutional right to property and the limitations of moral rights under the Copyright Act.

## V. CONCLUSION

The 1994 amendment to the Copyright Act, 1957, which was an attempt to bring the legislation in line with the Berne Convention as an aftermath of international implementation of TRIPS Agreement, reduced the scope of protection previously enjoyed by the way of 'moral rights. The amended section 57 limits moral rights claims based on the distortion, mutilation, or modification of works to cases where the author's honour or reputation are deemed to be prejudiced in line with Berne Convention. The change is probably a reflection of fears about the commercial consequences of a broad integrity right, or even a concern that authors might abuse the moral right of integrity for their economic advantage.<sup>18</sup>

Artists and society have traditional mutual dependency in the development process. Works of artists, authors contribute in sculpting social values in a society and raise awareness to certain concepts which makes society more acceptable. At the same time, society can also act as a critique to artists' work which is a fine balance to maintain social order in a country. It becomes inevitable that law has a mediating role between artist and society as it has to adjudge between the concepts of authorship and public access to knowledge. Law has to reflect an individual authors stature in society and monetary returns for his work by regulating information or knowledge that is disseminated in the public forum. Therefore, with such pivotal role being granted, the legislature and judiciary should exercise the adjudication in such a manner that it upholds the ideals of the rights being granted. and therefore, any inconsistency shown by judiciary is detrimental to the interests of the public. And legislature, in order to come in line with international conventions should not overlook the cultural heritage of India and the works and conditions of artists. Selective application of provisions which are in line with the protection of social and cultural tapestry of the country is the need of the hour.

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<sup>18</sup> Morality of Copyright-A Critique in view of the '3 Idiots' Controversy, Journal of Intellectual Property Rights, Arunabha Banerjee, Aniket Deepak Agrawal, 2011