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## Moral Rights in India: A Means of Security beyond Economic Interest

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*Over the many decades, Droit d' auteur (rights of the author) has been a well-debated affair and has steadily gained awareness worldwide. It is well known that an author of a work is entitled to her copyright of the work. Copyrights are economic rights through which the author can earn profit and royalties. Apart from these commercial rights, there exist certain rights that an author is inherently vested with. These rights are known as moral rights and are non-economic in nature. Considered inalienable and non-waivable rights in nature, moral rights are a category of special rights that protect the very soul and essence of the author's work. In this paper, we shall understand the concept of moral rights, the international framework provided for them, the two primary approaches prevalent with regard to the acceptance of these rights, and how the Indian laws and Judiciary interpret and understand these special rights.*

**Keywords:** *moral rights, special rights, Droit d' auteur.*

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### INTRODUCTION

The right of the author under copyright law has always been a contentious subject since the very beginning or perhaps even prior to the existence of Intellectual Property rights as we know them today. Under copyright jurisprudence, an author is afforded certain rights that are

attached to her work. These rights can be broadly classified into two types of rights, *firstly*, the economic rights of an author, which include the rights whose use grants an economic benefit to the holder of the copyright. Economic rights can be assigned or licensed by the author, and the copyright holder earns royalties on the same. The exploitation of these rights includes the right to adapt the work or translate the work, the right to reproduce or make cinematographic films, and such similar rights. *Secondly*, there exist a set of rights that are inherently granted to the author the instant she creates her work. These rights are inalienable and special in nature and commonly known as the moral rights of the author.

## **DROIT MORAL**

Derived from the French term '*Droit moral*,' these special rights are considered to be inalienable by the author. The formal genesis of these rights is considered to be under French jurisprudence in the nineteenth century when the author's rights had been vulnerable due to personalist doctrines.<sup>1</sup>This inalienable nature arises from the close bond between the author and her work, and moral rights are universally understood as the extension of the personhood of the author. These rights run parallel to the economic rights of the author and grant certain rights to the author that are intimately connected with her work, and the primary idea behind them is to ensure the protection of an author's artistic and non-economic interests. The four prime rights that are essential to these rights are:

- The Right to Publish: As per this right, the author gets to decide the procedure of publishing her. This right covers by whom, the what, the when, the how, and whether they would be published at all to the public, at the author's discretion.
- The Right to Retract: This right grants the author, the right to prevent the public distribution of the work, either before or after its publication of the author's work.
- The Right of Attribution or the Right to Paternity of work: Under this right, the author is always credited as the creator of the work, and this credit can be granted to the author in whatever manner she wishes it to.

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<sup>1</sup> Graham Dutfield & Uma Suthersanen, *Global Intellectual Property Law* (1<sup>st</sup> ed., Edward Elgar Publishing Ltd., 2008) 75

- The Right of Integrity of the work: This right allows the author to prevent or receive compensation for any actions that injure, mutilate, distort, or might essentially alter the essence of the author's work or that would cause damage to the honor and reputation of the author.

These rights together combine and constitute moral rights and protect the non-economic aspects that are otherwise left unprotected under copyright. Although the concept of moral rights is accepted and exists globally, there are two distinct approaches that have been adopted by countries with regard to these rights. This international acceptance of moral rights can be understood through two jurisdictions, the Civil Law and the Common Law approach.

### *International Framework for the protection of moral rights*

International conventions and treaties have played a significant role in amplifying awareness and protection of moral rights.

### *Universal Declaration of Human Rights*

Article 27<sup>2</sup> of the UDHR notes that everyone has the right to protect their moral and material interest that may arise from any production of the work, whether it be scientific, literary, or artistic, provided that person is the author of that work.

### *Berne Convention*

In 1928, Article 6b<sup>3</sup> was introduced, which provided a framework for the protection of moral rights. Subsection (1) of Article 6bis defines the parameters of moral rights, wherein it holds:

*“Independently of the author's economic rights, and even after the transfer of said rights, the author shall have the right to claim authorship of the work, and to object to any distortion, mutilation, or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honor or reputation.”*

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<sup>2</sup> Universal Declaration of Human Rights, 1948, art. 27

<sup>3</sup> Berne Convention, 1887, art. 6B (1)

The aforementioned definition clearly references the right to paternity and the right to integrity.

Subsection (2)<sup>4</sup> of Article 6bis states the duration for which the moral rights subsist. It notes that moral rights must exist for at least as long as economic rights. This section also provides that countries that do not have domestic legislation that pertains to the protection of moral rights are not required to continue these rights post the death of the author. Additionally, subsection (3)<sup>5</sup> of the aforementioned article assures that any infringement of the moral rights of the authors is treated with the same equal importance as the infringement of an economic right of the author.

### *TRIPS Agreement*

Article 9(1)<sup>6</sup> of the TRIPS Agreement holds that all state parties must comply with Article 1-21 of the Berne Convention 1971. However, they do not have rights or obligations with respect to Article 6bis of the Berne Convention. It is clear from the above that the international structure of moral rights itself seems to fluctuate in deciding to what extent moral rights stand accepted worldwide. While both the UDHR and the Berne Convention work towards safeguarding the moral rights of the authors, the TRIPS Agreement seems to contradict the significance of the former in one single sweep. Similarly, moral rights protection has different takes depending on the legal system. When it comes to Civil Law or 'Romano-Germanic' systems, 'Droit d'auteur'(right of the author) holds immense weight and is viewed in the traditional approach which treats them as non-waivable, inalienable, and even perpetual in certain countries, such as France and Italy. However, under Common Law or 'Anglo-American' Legal systems moral rights have generated hesitation in their implementation. In the United Kingdom, moral rights expire upon the passing of the author. Additionally, despite being a signatory to the 1886 Berne Convention, the UK only afforded domestic protection to moral rights with the induction of their copyright, Designs and Patents Act,1988'.The USA, on the other hand, did not even provide for moral rights in their domestic laws, and in 1990 they introduced the

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<sup>4</sup> Berne Convention, 1887, art. 6B (2)

<sup>5</sup> Berne Convention, 1887, art. 6B (3)

<sup>6</sup> TRIPS Agreement, 1995, art. 9(1)

VARA, Visual Artists Rights Act, which finally incorporated these rights along with a conditional clause that provides for the expiration of these rights upon the death of the author. However, these rights only exist in the dimension of visual arts. India happens to be one such exception amongst the common law countries that provided for moral rights in its own legislation for the longest time.

## **MORAL RIGHTS UNDER INDIAN LAWS**

Under Indian jurisprudence, moral rights have been enshrined under section 57<sup>7</sup> of the Copyright Act, 1957, and are known as the author's special rights. As per this provision, the rights exist independent of copyrights and also exist despite the assignment of the copyright, wholly or in part. Drawing inspiration from the Berne Convention, section 57 secures the Right to Paternity as well as the Right of Integrity. Over the years, there have been a few key judgments with regard to moral rights in India.

### ***Mannu Bhandari v Kala Vikas Pictures Pvt. Ltd.***<sup>8</sup>

This case exists as one of the very first cases of moral rights in India that brought significant interpretation of section 57. Prior to this case, moral rights protection generally applied to literary works; this left authors and creators of other works in uncertain limbo with regards to their special rights. However, in the judgment of the Mannu Bhandari case, the scope of section 57 was widened and extended to works other than only literary in nature. The Appellant, Mannu Bhandari, contended that the movie 'Samay ki Dhara' was to be produced under the assignment of the filming rights of her Hindi novel 'Aap ka Bunty' was produced in a manner that destroyed and mutilation of her work and its meaning. She stated that if this film adaptation of her novel was to be communicated to the public, then it would injure her reputation in front of all the research scholars in the literary department as well as all the students. The appellant being the author of the book, was not in favor of changes that were introduced in the characters and the theme of the film version. In view of the facts and circumstances of the case, the court decreed that the movie could only be screened if the

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

<sup>8</sup> *Mannu Bhandari v Kala Vikas Pictures Pvt. Ltd.* AIR 1987, Delhi13

changes that were made to the adaptation would not distort the storyline. Ultimately, the matter was decided by means of a settlement application, wherein the respondent apologized for the changes introduced by them and stated that they would remove the author's name and her novel from the credits of the movie. Additionally, they further submitted that the author and her novel's name would be mentioned in any form of publicity that would be done for the movie 'Samay ki Dhara'. In the end, the appellant relinquished any claims in the film adaptation, and the copyright of the novel, 'Aap ka Bunty,' stayed with the author herself.

### *Amar Nath Sehgal v Union of India*<sup>9</sup>

Amar Nath stands as the landmark judgment in the matter of moral rights. In this case, it was noted that complete destruction of the author's work also falls within the purview of moral right infringement. This case further expanded the interpretation of section 57 by noting that an author's reputation is intrinsically connected with his work and its display, and therefore, the demolition of his work's display is well within the ambit of moral rights infringement. The case revolved around a bronze statue spanning 140ft by 40 ft in the lobby of VigyanBhawan that had been created by the appellant as part of a commissioned work for the respondent. In 1979, the sculpture was "pulled down and consigned to the storeroom of the Union of India."<sup>10</sup> This destructive act took place without taking prior permission, authorization, or consent from the plaintiff. In view of this violative action, the plaintiff filed a suit under section 57 of the Copyright Act, 1957. The court pronounced that the plaintiff had grounds to maintain an action under section 57. The court further held that along with violating the moral right of integrity of the author, the defendants had also dishonored the integrity of the work with regard to the cultural heritage of India.

### *Raj Rewal v Union of India*<sup>11</sup>

Unlike the earlier two cases where the court passed progressive judgments in order to preserve moral rights, Rewal stands as a direct contravention of this approach. The case

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<sup>9</sup> *Amar Nath Sehgal v Union of India* (2005) 117 DLT 717

<sup>10</sup> *Ibid*

<sup>11</sup> *Raj Rewal v Union of India* (2019) CS (Comm) 3/2018

revolved around the moral rights of the creator of the Hall of Nations in Delhi. In 1979, the plaintiff was commissioned by the defendant, ITPO, to build the Hall, which was then recognized as a cultural heritage site. Unfortunately, in 2017, the Hall was demolished in order to create another complex in place of it. To safeguard his moral rights, the plaintiff appeared before the Delhi High Court. In its judgment, the court noted that the Hall of Nations property was owned by the ITPO and that here there was a conflict between the moral rights of the plaintiff and the right to property of the defendant. It was held that since the right to property is a Constitutional Right, then it must be the defendant whose right prevails as the Constitution cannot be overruled by the Copyright legislation, and in the event of such conflict, it is the constitutional right that must be protected. Gradually the awareness of moral rights trickled from the literary and cinematographic sector to other works else. There have been a few instances of moral rights infringement with respect to musical works in the music industry, and the same was settled outside court amongst the parties amicably. A few of the most notable cases have been:

### ***Rangabati- Folk v MTV Coke Studio***

In 2015, MTV Coke studio released a remixed version of a famous Sambalpuri folk song called 'Rangabati.' This version is composed by blending an English Tamil rap along with the state anthem of Orissa, *Bande Utkal Janani*. The grave objection came from the original song's lyricist Mitrabhanu Gauntia and the music director of the original work, Prabhudatta Pradhan, who initiated proceedings with regards to copyright infringement and sent a notice regarding the same to the parties involved, including composer Ram Sampath, singers Sona Mohapatra and Rituraj Mohanty. The claims for copyright infringement included serious violation of the right to the integrity of the work. Gauntia and Pradhan claimed that the remix version had distorted the song in multiple ways. Firstly, it was noted that the original song had been categorized as a Sambalpuri number, and MTV's branding of the remix as an Odia one was hurtful to the sentiments of the Sambalpuri community and the makers of the song since there has been a large push for a long time to recognize the Sambalpuri-Kosali language under schedule 8 of the Indian Constitution. Secondly, the incorrect use of the word changed the

meaning of the original song and, as such, caused injury to cultural sentiments. Ranga was claimed to be used inappropriately by MTV as the words 'Rangabati,' and 'Ranga' have distinct meanings and scrambled the meaning the original creators had intended to communicate to the public.

### *Javed Akhtar v Armaan & Amaal Malik*

In this case, famous lyricist Javed Akhtar issued a legal notice for moral right infringement against Armaan and Amaal Malik and Super Cassettes Industries Pvt. Ltd. The infringement took place through the recreation of Javed Akhtar's song 'Ghar Se Nikalte hi.' He claimed that the 'much' of the original by being used repeatedly in the new version. He noted that although it had been used in new combinations and ways, the essence of his original work was mutilated. As such, his right to paternity had been grossly and blatantly violated due to the fact that Kunal Verma had been credited as the one and only author of the song. It is well known in the art of Hindustani music that the mukhda is the soul and identity of any composition, and the refusal to grant Javed Akhtar his due right of paternity and authorship was a blatant dishonor of his inherent rights.

### CONCLUSION

The work of any creator, author, and artist is her very identity. She pours her essence into her work, and the depiction or display of this work to the public is like her bearing her soul for all the world to appreciate. In the light of the above, it is very clear that moral rights aim to protect the very being of an author. It has always been easy to exploit the author or artist with the use of economic or commercial copyrights. Moral rights provide an extra layer of security to the author by reassuring them of certain rights and that all rights belong to them and should never be snatched from them in any situation. The case of Amar Nath studied above showed us another facet of moral rights that had perhaps never been explored before. In today's time and age, reclaiming a nation's cultural heritage has become one of the most important affairs. However, the fight for any such cause often begins at home. Amar Nath showed us how moral rights could be used as a medium to protect the cultural heritage of a nation. This opens up an



array of ways in which moral rights can be made flexible. India has evidently made progress in understanding the significance of moral rights. As of the 2012 amendment, India has been granted perpetual moral rights. Unfortunately, the Indian Judiciary seems to be at a crossroads when it comes to dealing with moral rights. On the one hand, they managed to save moral rights as well as cultural heritage, and on the other, they stuttered all this progress in the Raj Rewal case by acting direct opposite the same. The question that ultimately begs is that if moral rights are inherent and vested inalienably in the author, then constitutional rights should have the power to strip this right away. Should India follow the European Continental approach that in no case allows for these rights to be waived or stripped away, or will India choose to move ahead by applying conditional protection to moral rights in cases of constitutional rights conflicts? Despite the step backward in the Rewal case, India has taken the immense initiative to protect these rights and, as such, is at a stage that requires rigorous interpretation of how to balance constitutional interest with the inherent interest of all persons.