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Inalienable or Waivable? Moral Rights of Music Composers Through the Lens of Waiver: A Comparative Study of India and France

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Although the moral rights of music composers in India are recognised as strong and surviving copyright assignment, they are normally deemed as non-waivable where they damage the honour or the reputation of the composer, but the courts have been inclined to balance the moral rights against the contract and commercial realities¹. According to French law, moral rights (droit moral) are, without exception, eternal, inalienable, and irrevocable, therefore making waiver impossible. This underlying difference is based on the common law and civil law philosophical basis of each, with the Berne Convention guiding the two, but leaving national jurisdictions to use it to establish the definite margins of waivability. The recent trend in Indian judicial analysis presented in this paper, especially in the industry of music, supports the importance of the aspect of attribution and integrity, whereas France is absolutistic in the issue of waiver².

Keywords: *inalienable, waivable, waiver, music.*

¹ Vaishvi Khare, 'The Applications Of Moral Rights In The Music Industry' (*Lawyered*, 01 August 2020) <<https://www.lawyered.in/legal-disrupt/articles/applications-moral-rights-music-industry-vaishvi-khare/>> accessed 21 February 2026

² Reine Cramer, 'Understanding Rights in the Music Industry' (*Bridge Audio*, 13 September 2024) <<https://www.bridge.audio/blog/understanding-rights-in-the-music-industry/-:~:text=There are two primary types,recorded performance of a song.>> accessed 21 February 2026

This implies that it may be complex to enforce, but the main principle of non-waivability in case of honour or reputation is in the vicinity. The modern Dagar Brothers (2025)⁹ and Ilaiyaraaja (2026)¹⁰ cases confirm the current judicial desire to safeguard the rights of the composer, especially the right to paternity and general control, which proves a consistent, but still changing, focus on the interests of the composers of the music industry.

The sense has been consistent in France since such landmark cases as Cinquin in 1902 and the Shostakovich case¹¹ in 1953 of inalienability, impossibility to take away the moral rights in the present day and their everlasting character. Alibi.com case (2024), with its added degree of nuance in terms of needing to prove that the integrity claims have been altered or disrespected in contextual use, does not undermine the central concept of inalienability. French courts have a very stringent level of upholding moral rights of the author, which they consider to be part of their personality that cannot be sold away on contract.

STATUTORY INTERPRETATION OF MORAL RIGHTS PROVISION

Section 57 of the Copyright Act, 1957 of India provides an author with a paternity and integrity special right. The key words to the enforceability and (impliedly) to the waivability of these rights are the crucial phrase that they were prejudicial to his honour or reputation. In Indian courts, this has been construed as meaning that an author can agree to a contract that would arise to mediate with his or her work, but he or she can never forego the right to object to an action that would have a detrimental effect on his/her honour or his/her good name. This carve-out implies that some relatively insignificant changes that do not reflect on honour or reputation may implicitly be authorised or even excused by contract. The emphasis of the statute is on the impact of the change on the author and offers a conditional and not an absolute waiver protection.

Article L.121-1 et seq. of the French Intellectual Property Code, on the other hand, offers an unqualified declaration: The author will have a moral right on his work... This right is immortal, inexcusable, and inescapable. The inalienability (with no transfer and no giving away) and the impossibility of being lost (with non-use or elapsing of time) explicitly forbid

⁹ *Ustad Faiyaz Wasifuddin Dagar v A R Rahman & Ors* (2025) DHC 2907

¹⁰ *Saregama India Ltd v Mr Ilaiyaraaja* CS (Comm) 143/2026

¹¹ *Societe Le Chant du Monde v Societe Fox Europe and Societe Fox Americaine Twentieth Century* (1953) (Court of Cassation (France))

all manner of waiver. The French interpretation of statutory interpretation establishes that moral rights are extra-patrimonial rights and essentially attached to the personality of the author, and therefore, are beyond contractual disposition. Any provision in a contract that tries to waive such rights would be against French law.

PHILOSOPHICAL UNDERPINNINGS OF MORAL RIGHTS IN COMMON LAW (INDIA) VS CIVIL LAW (FRANCE)

The philosophical foundations of the common law and civil law systems are fundamental to the differences in the waivability of moral rights.

France (Civil Law - Droit d'Auteur):¹² The French system is a classic example of droit d'auteur (author rights), which considers the work as a continuation of the personality of the author. Moral rights are regarded as natural, inherent and inalienable rights that are accorded to the creator as it is created. They are contrary to economic exploitation rights, which may be sold, yet the moral relationship between the writer and his or her work is inexhaustible. This school of thought places greater emphasis on the personal relationship that the author has with his creation rather than on the commercial aspect of it, hence the total ban on waiver.

India (Common Law - Copyright): Section 57¹³ of the Copyright law in India, though based on the common law tradition, has adopted the droit moral principles. But its roots in common law affect its interpretation in favour of contractual freedom and a balance of interests. Although Amar Nath Sehgal presented a powerful personality-based approach to moral rights, the common law tradition is commonly more property rights-oriented and economically exploitation-centred. That provision of Section 57, 'prejudice to honour or reputation', indicates a concept of applying civil law to a common law system, by providing a conditional and not absolute safeguard to the personality of the author. This conditional strategy implicitly permits some kind of waivability in which the prejudice threshold is not satisfied, which is a pragmatic compromise gesture between authorial integrity and commercial expediency.

¹² Code de la propriété intellectuelle, art L 121-1

¹³ Copyright Act 1957, s 57

COMPARATIVE ANALYSIS OF REMEDIES AVAILABLE FOR INFRINGEMENT OF MORAL RIGHTS IN INDIA AND FRANCE

India -

Section 57¹⁴ remedies for moral rights violations usually consist of:

Injunctions: As demonstrated in *Mannu Bhandari v Kala Vikas Pictures Pvt. Ltd.* (1987), courts may issue prohibitory injunctions to stop additional distortion, mutilation, or disparaging treatment of the work.

Damages: According to the ruling in *Amar Nath Sehgal v Union of India* (2005), monetary compensation is awarded for the harm done to the author's honour or reputation.

Public Credit/Attribution: As demonstrated by the Delhi High Court's ruling in *Dagar Brothers v A.R. Rahman and Others* (2025), courts have the authority to mandate public attribution in cases involving paternity rights violations.

Restoration/Rectification: In some situations, courts may mandate that the work be returned to its original condition or that any disparaging treatment be corrected, as was the case in *Amar Nath Sehgal*.

France -

French Law¹⁵ has particularly robust provisions to protect against infringement of moral rights. This is because they are absolutely protected under French law:

Injunctions: Injunctions are often granted to stop or prevent any infringement of paternity rights or integrity rights. This is often the main remedy.

Damages (Dommages et intérêts): This includes compensation for both material and moral prejudice (prejudice moral), which has been suffered by the author. This aspect can often be significant because it considers moral injury.

¹⁴ Copyright Act 1957, s 57.

¹⁵ Code de la propriété intellectuelle, art L 121-1

Publication of Judgment: The French court can order that the judgment be published in newspapers or in any other medium to restore the reputation of the author.

Seizure and Destruction: In cases involving integrity rights infringement, French law provides that, in extreme cases, the infringing copies or modified versions of a work can be destroyed.

Right of Withdrawal/Repentance: This is a unique remedy that French law provides to authors to withdraw a work that has been published in any medium.

CONCLUSION

In conclusion, India and France adopt significantly different approaches towards the waiver of the moral rights of music composers. French law treats moral rights as perpetual, inalienable, and completely non-waivable, thereby ensuring absolute protection of the composer's dignity and creative identity. Indian law, however, follows a comparatively flexible approach by permitting limited waivers, provided that the author's honour and reputation are not harmed. This conditional framework attempts to balance artistic protection with contractual and commercial realities within the music industry.

Nevertheless, the absence of clear statutory standards regarding waiver creates legal uncertainty and increases the possibility of exploitative agreements against composers. The difference between the two jurisdictions becomes more important in the context of globalisation and digital exploitation of musical works across borders. Inconsistent standards regarding waivers may weaken the protection available to composers internationally and create conflicts in cross-border copyright enforcement. Therefore, the French doctrine of strict non-waivability offers a stronger and more artist-centric model for safeguarding moral rights. It preserves the enduring relationship between composers and their creations, irrespective of commercial arrangements or technological developments. While India's evolving approach reflects practical industry concerns, excessive contractual flexibility risks undermining the true essence of moral rights. Hence, stronger safeguards and clearer legal standards are necessary to ensure effective protection of composers' dignity, reputation, and creative legacy.