

Judiciary's Approach to Moral Rights under Copyright Law

These days, one faces a plethora of copyright issues pertaining to moral rights of authors, a historic and significant aspect of copyright law in almost every part of the world. The fundamentals of copyright law are at cross-roads with the concept of moral rights.

Moral rights specifically are the personal rights of an author in context of the integrity of their works in order to prevent revision or alteration regardless of the ownership. They offer an interesting counterpoint to the powerful economic considerations that dominate modern copyright discourse – and, perhaps, the prospect of new approaches to the resolution of copyright conflicts. The evolution of a moral rights regime under the Indian Copyright Act, 1957 has been gradual, interactive and author-friendly. The British colonial government in India introduced the Indian Copyright Act, 1847 which offered protection to author's works by providing exclusive rights to their creative works, hitherto unknown in India.¹

However, the act had no mention of moral rights. It was finally in 1957 that the concept of moral rights was introduced in the copyright law by the Indian Copyright Act, 1957.² The earliest case around the issue of moral rights can be traced back to 1987 in the case of *Mannu Bhandari v. Kala Vikas Pictures Pvt. Ltd. and Ors.*³ This case held that Section 57 is not limited to literary works, but extends to visual and audio manifestations.⁴

¹ Act No XX of 1847, Calcutta 1848; Printed at the Military Orphan Press, W Ridsdale Encouragement of Learning in Territories Subject to the Government of East India Company Providing for the Enforcement of the Right Called Copyright Therein'.

² Section 57, Indian Copyright Act 1957.

³ AIR 1987 Delhi 13.

⁴ Id.



Sana Singh

Associate

E: sana@singhania.in

Originally, moral rights were provided with a perpetual term of protection in the Act, whereas economic rights had a limited duration of protection. The Copyright (Amendment) Act 1994 introduced the model of protection of moral rights, consolidated under the Final Paris Act, 1971 of the Berne Convention, which specified that the moral rights should be protected independently of the author's economic rights.

Another significant change which took place in India was implemented by the Copyright (Amendment) Act 2012.⁵ The concept of perpetual moral rights was reintroduced in 2012 by this act, bringing back a dualistic model of separate regimes for economic rights and moral rights. Additionally, this 2012 Amendment introduced moral rights for performers, in compliance with the WIPO Performers and Phonograms Treaty, 1996 ("WPPT") and the Beijing Treaty on Audio-Visual Performances, 2012.⁶

The case of *Amar Nath Sehgal v. Union of India*⁷ is considered to be the landmark case for moral rights. The plaintiff created a bronze sculpture which was displayed in the International Convention hall in Delhi, for two decades, but then was pulled down and dumped in a storeroom. The plaintiff bought an action against the Government of India under Section 57 of the Copyright Act, 1957. The court ruled that Section 57 should be interpreted in its widest sense to include destruction of a work of art, being the extreme form of mutilation. Destruction of work reduces the volume of the author's creative corpus, thereby affecting his reputation prejudicially. Mutilation is nothing but destruction to render the work imperfect. The Court elucidated the scope of moral rights under Section 57 by categorizing it into four types: Paternity right, Dissemination right, Moral Right of Integrity and Right to Retraction. Paternity right is referred to as the right to be associated with the work, Dissemination right is referred to as the economic right to sell the work for valuable consideration, Moral right of Integrity incorporates the right to maintain purity in the work and the Right to Retraction bestows power on the creative artists' to withdraw their work from publication.⁸

However, judiciary's approach has not been consistent with regard to moral rights. This can be

⁵ The Copyright Amendment Act 2012 (Act of 27 of 2012), came into effect on 21 June 2012.

⁶ The Copyright (Amendment) Act 2012, s 38B; WIPO Performances and Phonograms Treaty (WPPT), art 5; The Beijing Treaty on Audio-visual Performances, 2012, art 5.

⁷ 2005 (30) PTC 253 (Del).

⁸ Id.

illustrated by the conflicting dictum passed in the recent 2018 case of *Raj Rewal v. Union of India*,⁹ in which, the court gave diametrically opposite views from the case of *Amarnath Sehgal*.¹⁰

In *Raj Rewal* case, moral rights of the author of Hall of Nations (a building in Pragati Maidan, Delhi) were at stake. The plaintiff was called upon by the ITPO, (the defendant) in 1979 to build the Hall of Nations to mark cultural progression on 25th Independence Day of India. The Hall of Nations was built using the space frame structure, not only for the roof but also for adjacent anchoring walls, using concrete, it was also recognized as a site for cultural heritage. However, in 2017, the Hall of Nations was demolished in order to build another complex. The plaintiff made various representations to the Government and had filed various petitions but all in vain. The plaintiff had then approached the Delhi High Court to claim damages from the defendants as demolishing his work caused harm to his reputation.

The issue at hand was, whether any moral rights subsisted with the plaintiff as ITPO was the actual owner of the Hall of Nations and whether moral rights are a hindrance to right to property, which is a constitutional right enshrined in Art. 300A of the Constitution of India and if yes, which shall prevail.

The court ruled that the Hall of Nations was a property owned by ITPO and the moral rights of the plaintiff are in direct conflict with the defendant's right to property, which is a constitutional right. Moral rights did subsist in the plaintiff as these are the rights granted by virtue of being the author of a work. However, the Copyright Act or any legislation can never be supreme to the Constitution of India as it is the source of every law in this country. Hence, moral rights cannot hinder the right to property of the defendant, which is constitutional right.

Both these judgements show a stark contrast as the interpretation of the word 'mutilation' was literal in *Rawal's* judgement and quite liberal in *Sehgal's* case. Both these judgements had different approaches to moral rights based on the facts and rights affected of the parties. The approach to moral rights had differed significantly as in *Sehgal's* case, the question of right to property was never scrutinized nor even considered, however *Rawal's* judgement clearly points out that right to property, being a constitutional rights stands on a higher pedestal than rights granted by the Copyright Act, 1957. In the latter case, the court had clearly mentioned that *Sehgal's* case would be

⁹ (CS (COMM) No.3/2018.)

¹⁰ Supra note 9

inappropriate to cite given that a mural is very different from an architectural design like a building, even if they do come under the same category of copyright protection, namely 'Artistic Work'.

The necessity of moral right has also been a topic of debate all over the world. However, in India, there is no concrete jurisprudence available regarding waiving of copyright law, but in the case of *Sartaj Singh Pannuv Gurbani Media Pvt. Ltd. & Anr*¹¹, it was given that a voluntary waiver is not against public policy and voluntariness has to be ascertained based on the evidence available on record. Some scholars¹² suggests that if moral rights are in contradiction to the public policy, Indian law may permit the waiver. The counter argument is that moral rights are so conceptually inherent to the author, they cannot be waived and can be seen analogous to fundamental rights vested in the Constitution of India.

These two varying views present an example of the subjective difficulty relate to the moral rights. With the advent of digital era moral rights seem to have fallen behind in contradiction to the enhancement of copyright law in technology. The author of the software program might be unaware of the modifications which is directly hampering the integrity of his moral rights. India has to take steps in order to preserve moral rights with the concept of harmonious interpretation so as to reconcile with varying perceptions of the same.

¹¹ 220 (2015) DLT 527.

¹² Sonia Baldia, Intellectual Property in Global Sourcing: The Art of Transfer, 38 GEO. J. INT'L. L. 499 (2007); Mira T Sundara Rajan, Moral Rights in the Public Domain: Copyright Matters in the Works of Indian National Poet C Subramania Bharati, SING. J.L.S.161, 175 (2001)