

MORAL RIGHTS OF AN AUTHOR UNDER COPYRIGHT LAWS¹**INTRODUCTION**

Copyright, under the Copyright Act, 1957, is a right granted to creators of literary, dramatic, musical, computer and artistic works, and producers of cinematography films and sound recordings. Copyright includes rights of Reproduction, communication to the public, adaptation and translation of the work. Copyright ensures certain minimum safeguards of the authors' rights over their creations as defined in sec 14 of the Act, thereby protecting and rewarding creativity. The protection that copyright provides to the efforts of writers, artists, designers, dramatists, musicians, architects and producers of sound recordings, cinematography films and computer software, creates an atmosphere conducive to creativity². Copyright grants to creators a bundle of exclusive rights over their creative works, which generally include the right to reproduce, distribute, display, make adaptations, perform, sell and so on. When copyright expires, the work enters the Public domain, and the right holder can no longer stop others from engaging in those activities under copyright, with the exception of moral rights reserved to creators in some jurisdictions.

Justice Pradeep Nandrajog in a case³ said that:

“In the material world, laws are geared to protect the right to equitable remuneration. But life is beyond the material. It is temporal as well. Many of us believe in the soul. Moral Rights of the author are the soul of his works. The author has a right to preserve, protect and nurture his creations through his moral rights”

¹ Nidhi Jiaswal, III Year B.A LL.B (Hons) National law University, Odisha.

² Narayanan P Intellectual Property Law ,(3rd edition 2007, pg 307)

³ Amar Nath Singh v. Union of India (2005)

Section 57 of the Copyright Act, 1957 deals with author's special rights, the origin of this act is France and hence the French expression 'droit moral' is a misnomer in the sense that moral rights are neither the opposite of immoral rights nor of legal right.

The Berne Convention (Article 6 bis) recognises some of these rights and requires member States to provide the author with the right to claim authorship and to object the alteration. These rights remain with author even after the transfer of copyright. And the protection lasts during the whole of the copyright term.

The aim of this paper is to study the dominant mode of conceptualizing Moral rights as inalienable rights of authors in their works, along with study of Orthodox theory of moral rights by drawing upon the statutory moral rights regimes. My purpose is to use comparative law to enhance the understanding of this particular concept of moral rights, and what is the significance of recognition of specific moral rights as part of copyright law.

In this paper the author will try to analyse, whether purpose of giving copyright protection ceases to exist even after the time period for copyright protection gets over and what is the role of Moral rights. And also the requirement of balancing the need for providing incentive for further creation and cry for public interest.

1: Meaning of the term Moral Rights and the significance of “author’s special right”

1.1 Meaning of the term Moral rights.

The Berne Convention embodies a concept of “moral right” which consist, rights of an author that is, independent of copyright, to claim authorship and to object for any distortion.⁴ Under the aegis of copyright, Moral rights is one among “bundle of rights”, which is recognised by all civilised countries⁵.

It has been said that;

“Moral rights flow from the fact that a literary or artistic work reflects the personality of the creators, just as much as the economic rights reflects the author’s need to keep body and soul together”⁶

It is exceptions to the general rule, that is when author assigned his work to publisher or any other person then only they are entitled to *sue* in case of any infringement, the author has right to claim moral rights on his work even after the assignment of copyright.⁷

1.2 Various types of Moral Rights:

A) Right of Paternity (*Droit de paternite*):

It means that an author has a right to claim authorship for his artistic and literary work and can also prevent others from claiming ownership on his work. It is divided into two parts:

- At first place author has full right to demand that his name should be there on all copies of the works even the author has parted with his copyright in the work.⁸
- The second thing which is known as “negative right of attribution” says, the author can also restrict others from using his name in their works, which he has in fact not produced.⁹

⁴ Michael A. Epstein, Intellectual Property, (5th Edtn 2008, p. 4-59)

⁵ Akhil Prasad & Aditi Agarwala, Copyright Law, (2009, p. 168).

⁶ Stephen M Stewart, International Copyright and neighboring Rights, (1983, p. 59).

⁷ V K Ahuja, Law Relating to IP Rights, (1st ed., 2011).

⁸ Ibid.

⁹ Henry Hansmann and Marina Santilli, Authors’ and Artists’ Moral Rights: A Comparative Legal and Economic Analysis, available at,

<http://www.jstor.org/stable/pdfplus/10.1086/467990.pdf?acceptTC=true> > (Lat visited 17 oct, 2012)

These rights not only extend in case of failure to give the name of author but also if there is plagiarism of work under the name of author.¹⁰ The right of paternity helps in two aspects¹¹:

- In protecting the theft of the reputation of author's work,
- Protecting the public at large from being misled with fake names.

B) Right of Integrity (*Droit de respect de l'oeuvre*):

Under this right the author can claim damages for the infringement, in case if any act leads to distortion, mutilation, modification.¹² This right is important particularly where a licence or assignment has been granted to adapt. However to distinguish between adaptation and distortion is a matter of facts, and it is upon court to distinguish between the two.¹³

Right of integrity is a broader right in comparison to all other rights available to the author and it allows them to object, wide range of odd practice like, constituting editing, performance, publication etc., only if the said practice is having no compatibility with the intentions of the author.¹⁴

There are two other types of moral rights which are generally recognised in France:

C) Right of publication/disclosure (*Droit de divulgation*) :

By virtue of this right;

- The author being creator of the work is entitled to decide whether to publish his/her work or not.
- The author is also entitled to withdraw the work after publication whenever he decides to do so.¹⁵

D) Retraction right (*Droit de retrait*):

¹⁰ W. Cornish, D. LLEWELYN and T. APLIN, Intellectual property: Patents, Copyright, Trade Marks and Allied Right (7th ed. 2010, Sweet & Maxwell South Asian Edition).

¹¹ Ibid.

¹² Ibid.

¹³ Dr V K Ahuja, Law of Copyright and Neighbouring Right: National and International Perspective, (2007, p. 103)

¹⁴ Moral Rights in the Public Domain: Copyright Matters in the Works of Indian National Poet C Subramania Bharati, Sing. J. Legal Stud. 161 2001(Last visited Oct, 17, 2012)

¹⁵ Supra note 5, at p. 170.

This rights flows from the right of publication which includes freedom not to express; right to withdraw or prevent communication of the authors work to public at large by the mode of communication or reproduction, even if it had left his hands. However the author has to reimburse the losses incurred to the publication as well as of the distributors.¹⁶

1.3 Difference between Moral rights that is a non- economic right from other rights such as Economic rights:

Copyrights Law recognises two main kinds of interest;

- Economic interests, and
- Non-economic interest

This non-economic interest is better termed as moral right, which under right to integrity, protects “personality” interests. Also Berne Convention provision speaks of moral rights as being independent of the author’s “economic rights”.¹⁷

Moral right is the only right which accrues to the creators of work, rather than being accrued to corporation, who may own the exclusive economic right in the work. He may sell his work, thereby parting with all his right but moral right always retain with his work, as it is independent of any other rights¹⁸. It remarks that moral facets of copyrights cannot be attributed to others and except to the creators himself.¹⁹

1.4 Balancing the Interest of Economic Right and Moral Right

Some countries extend the principal of moral right to great extent while some tries to narrow it down; there are some overlaps, especially when it comes to interest

The country like France and Egypt were moral right is given more weight age. It not gives right to author to deal with economic rights such that they can refuse the contract, even after consent for the same had been given but they are also protected without any limitation of

¹⁶ *Ibid.*, at p.171.

¹⁷ *Supra* note 8,

¹⁸ Mira T. Sundran Ranjan, *Moral Rights*, (1st ed. Oxford University Press, New Delhi, 2011, p. 15)

¹⁹ *Supra* at note 5.

time.²⁰ This restricts economic rights of an author as he has to reimburse for the breach of contract.

On the other hand country like US which give more weight age to protect economic right of copyright holder, curtailing the dissemination of ideas and works.

The effort of article 6bis of Berne Convention had controlled this gap and had tried to make balance between public interest of author and copyright owner. Since it provide provision to protect the work of author from being distorted, which motivate them to create and distribute their work more. On the other hand article does not limit the economic rights of owner unless there is misattribution or distortion of the work.²¹

However to protect economic rights is essential because for an author, to establishes himself in the field, has to struggle a lot. It gives chance to the authors work to enjoy market potential in case if the work had become unpopular for any reason.²²

2. Moral rights in India and Judicial approach on moral right

2.1 Law in India: Statutory recognition under sec 57 of the Copyright Act, 1957 as amended in 1994

Section 57 of the Copyright Act 1957 recognises moral rights of the author, whose provision is based on article 6bis of Berne Convention.

It protects authors interest in case of any infringement resulting from distortion; modification etc. and the word “other modification” are to be read as *ejusdem generis* to the word “distortion and mutilation”. It should look quite different from the original work and in case, it is in the sense of perversion of the original work then it will amount to distortion and mutilation.²³ However the proviso says that any adaptation made under computer program through lawful processor than the author will not be entitled to claim damages.

This section is exception to the contention that once the author is parted with his rights in the favour of publishers, then his right to sue for infringement resides with publication or other person, as Moral rights are independent of the authors copyright and remedies for any

²⁰ Supra note 18.

²¹ Robert Platt, A Comparative Survey of Moral Rights, (57 J. Copyright Society USA. 951 2009-2010), (last visited wed, Oct 17, 2012).

²² Supra note 5.

²³ Supra note 12.

infringement can be claimed by author under section 55.²⁴ Amendments of copyright in 1994 had brought modification in original language of section 57. It touched upon the differences between modification of work and author's reputation and that of duration of Moral right protection.²⁵

a) Author's Reputation

In reality, when it comes to author reputation resulting from any modification, then it becomes additional evidentiary burden upon the Indian author. For example in case of modification of his novel in film, can lead to situation where author can gain more money as remedy resulting from infringement than of the money given as for copyright, causing a label of giving his moral right of or cause of economic right, or in some case it may lead to more publicity to his novel. Whatever be the situation, it seems that author becomes victim of misrepresentation.²⁶

b) Duration of Moral right:

Section 57(1) (b) says that right of integrity has to be protected up to a term of copyright, which is extended to sixty year beyond the lifetime of the author, starting from next year of the date of author's death. The section excludes perpetual protection for right of integrity, and also didn't define the duration of attribution right.²⁷

2.2. Judicial approach on Moral right in India

Role of judiciary had played important part in upholding the moral protection in Indian in term of individual's efforts and non-commercial artistic value in Indian context. By giving major judgments, the prime focus of judiciary is to give weight-age to moral right in India.

In case *KPM Sobharam v/s Ms. Rattan Prakashan Mandir*²⁸, court held that the;

“Publisher left with no any right to publish or to sell the work of the author in case of revocation from the agreement by the author. In this case interim injunction was granted,

²⁴ The Copyright Act 1957.

²⁵ Supra note 12.

²⁶ Mannu Bhandari v Kala Vikas Pictures, (1987 AIR, Delhi 13).

²⁷ Supra note 12.

²⁸ AIR 1983 Del. 461 (468,469).

saying that the moral rights remain with the author and are enforceable even if all the economic right have been licensed or assigned”.

In *Manu Bhandari* case²⁹, court observed that section 57 of The Copyright Act, values the author’s status above the material gains of copyright and gives it a special status. The words of section is not restricted to “literary” work only but extend to “visual” and “audio” work are also covered. So author has full right to object any distortion or modification, in case if such distortion or modification is harm to his reputation. An author’s right to restrain distortion etc. of his work is not limited to a case of literary reproduction of his work. Hence injunction can also be passed under section 57 in case where a film is based on author’s novel, the Court in order to give due recognition to the author’s reputation, directed certain modifications and deletions to the film before screening it.

In *Amar Nath Sehgal* case³⁰, court observed the various right of an author based upon his work such as

- “Paternity right”, that right to have his name, also known as “identification right or attribution right”
- Secondly it talked about dissemination or divulgation right to have economic right over his creation,
- Thirdly which is linked to paternity, is integrity right which is right to maintain purity. Such that if any work which is derogatory to author’s reputation can be objected.
- Lastly, the court also observed the right to withdraw from publication of one’s work, in case if author feels that because of paucity of time, if is better to change his opinion then it is advisable to withdraw the work. This would be the authors right to "retraction".

2.3 The Jurisdiction of Moral rights – A comparative Perspective

In country like France moral right exists in perpetuity, on the other hand country like Germany moral right expires with the term of copyright.³¹

²⁹ 1987 AIR (Delhi 13).

³⁰ *Amar Nath Singh v. Union of India* [2005 (30) PTC 253].

³¹ *Supra* note 5.

The country like America who traditionally emphasised on economic right, adopted Moral right but it became explicitly mention in statute only after the conforming of International Treaty such as Berne Convention.³²

As per the law concerned in India, moral rights are inalienable and are independent of author's copyright and remain in existence even after the assignment of the copyright.³³ However it is worthy to say that moral right of author has no remote connection to the satisfaction of their work, such that the work must be displayed in particular manner, this satisfaction is objective and not subjective, and hence it does not constitute as part of Moral right.³⁴

3: Waiver of Moral Rights, a comparison between India, UK and US

3.1 The consequences of waiving the Moral rights and view of certain International Convention in the same.

The general implication of moral right doctrine is that, the relationship of authors and his own work is unbreakable, as long as the work of author continues to exist. This makes moral right inalienable. Nevertheless, it allows waiver of moral right in limited situation.³⁵

It is true that moral right cannot be assigned but at the same time it can be waived by the mean of contractual agreements. But it creates great inequality, as the bargaining power of parties to the contract is rarely equal and in case of publication, waiver creates both practical and conceptual problem.³⁶

In reality the publisher or any person connected commercially with the author wants blanket waiver of moral right of an author, as it decreases the potential difficulty arising that of from law. Court always tries to control such kind of waiver which is done under any obligation such as economic crises, or less bargaining power. But in today's prevailing situation Moral Rights protection is subject to the economic necessities and negotiating position of the parties concerned.³⁷

³² *Ibid.*

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ *Supra* note 18, at p. 17

³⁶ *Ibid.*, at p. 15.

³⁷ Gerald Dworkin, The Moral Right of the Author: Moral Rights and the Common Law Countries, 19 Colum.-VLA J.L. & Arts 229 1994-1995 (Last visited, Wed Oct 17 12:11:53 2012)

3.2 Moral rights legislation in the US, UK and India

The development of standard-form of contracts in UK requires complete waivers of moral rights before undertaking of any publication activity. This leads to the situation of great bargaining inequality for the author, as if he has to surrender all his rights to realize the publication of his work. These standard-form contracts do nothing other than nullifying all moral rights and creating a mockery of statutory protection for authors.³⁸

However in US, provision of right to waive is stricter compared to country like UK, as it prohibit blanket waivers of moral right, also considerable specificity is required in case of waiving. But it only applies in case of visual rights. Section 106A of 17 U.S.C, also known as the Visual Artists Rights Act of 1990 (VARA), applies exclusively to visual art.³⁹

In country like India, it has been judicially determined that moral rights are not waivable, at least insofar as any modifications causes harm to reputation or go beyond the authorised use of the copyright work.⁴⁰ However it would probably permit waiver of moral rights, only if it is in writing and meets the threshold standard of being “reasonableness”. It means there can’t be any blanket waiver, especially at the time when author is granted with power of waiver and subsequently he had no bargaining power.⁴¹

4: Statutory Limitation on the Scope of Moral Rights

4.1 Creation of WTO and adoption of TRIPS has virtually excluded the concept of Moral rights from International system.

a) WTO members are obliged to comply with art 1-21 and the appendix of the Berne Convention. TRIP’s agreement however, unlike section 6bis of Berne Convention, does not

³⁸Supra note 18, at p. 15

³⁹ Betsy Rosenblatt, Moral Rights Basics, available at <http://cyber.law.harvard.edu/property/library/moralprimer.html> (last visited Oct, 11 pm)

⁴⁰ Pravin Anand, The Concept of Moral Rights under Indian Copyright Law, COPYRIGHT WORLD, Feb. 1993, at 35-37, also refer Mannu Bhandari v. Kala Vikas Pictures, Ltd. 13 A.I.R. (1987) (Delhi).

⁴¹ Sonia Baldia, Intellectual Property in Global Sourcing: The Art of Transfer” 38 Georgetown Journal of International Law 499, spring 2007.

make a clear obligation on the members to protect the moral right. It has been completely excluded.⁴²

b) On the other hand WIPO Copyright Treaty (WCT), 1996 are obliged to comply with art 1-21 and the appendix of the Berne Convention, and the appendix of Berne Convention. Unlike TRIP's WCT provides mandatory provision for the contracting parties to protect moral rights of the author but only up to their territory.⁴³

4.2 TRIPS derecognise the – International copyright law in a parlour State.

With creation of WTO and the adoption of TRIP's, moral right has been virtually excluded from the International system.⁴⁴ This lead to vital concern and debate, as such rights of creators are so intrinsically associated with the work that they are considered 'imprescriptible' and 'non-transferable'.⁴⁵ The words of TRIP's agreement has expressly excluded Moral rights by giving effect to all provision of Berne Convention *vide* Article 9.1.⁴⁶

The fact that two part of Atlantic differs in different context such as different philosophy, different school of thought but there should be a harmonious interpretation of laws at verge of international level and commitment. Completely ignoring the Moral Right, which is considered as fundamental tenets of the sacrosanct, just at the mercy of few nations who are designing multilateral protection, is not consider a good indication. There ought to be at least some cap such that the authors can enjoy at least some benefits all over the globe.⁴⁷

It is a strange fact that the work of author is protected in his own country, but not in foreign country, which may not recognise moral rights of the author at all. It seems clear that TRIP's agreement only endorse proprietary rights; thereby excluding moral rights completely, it has sent a message that "intellectual property" is tangible proprietary right regardless of author's

⁴² Supra note 12.

⁴³ Ibid.

⁴⁴ Supra note 18.

⁴⁵ Supra note 5.

⁴⁶ Article 9.1 of TRIP's agreement says: Members shall comply with Articles 1 through 21 of the Berne Convention (1971) and the Appendix thereto. However, Members shall not have rights or obligations under this Agreement in respect of the rights conferred under Article 6*bis* of that Convention or of the rights derived there from, WTO (1994) Agreement on Trade-Related Aspects of Intellectual Property Rights, available at http://www.wto.org/english/res_e/booksp_e/analytic_index_e/trips_01_e.htm#article9

⁴⁷ Supra note 5.

right which is independent of other rights available to authors.⁴⁸ On the other hand it may be presumed that exclusion of moral right may be an advantage for national policy maker who want to use moral rights as instrument for cultural policy.⁴⁹

CONCLUSION

Copyright endures long period and covers long range of exploitation which differs in nature, so need of protecting the moral right of author becomes important, in the term of guaranteed rights, which may be beyond the potential of contractual agreement. Despite the fact that protection of moral right necessarily hampers someone freedom of business, there should be harmony between the need of moral right and want of economic right.

It has been said that “what is worth copying is worth protecting”⁵⁰. Section 57 of the Copyright Act 1967 provides all such measure to protect moral right of an author. In developing country like India, role of judiciary had also played a very important role in uplifting and establishing the important principal of “duty of care” by the government for the various artworks in their possession. By adopting advance method of legal reasoning Indian court has showed remarkable growth in case of copyright. Yet there is need for more reforms to meet the balance of interest.

⁴⁸ Ibid.

⁴⁹ Supra note 18.

⁵⁰ University of London press v University tutorial Press, (1916) 2 Ch 601

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