

# Moral Rights and Indian Copyright Law

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**Abstract:** Generally, when you buy something, you can do what you want with it; like to use it, through out, destroy it or alter it. But when you buy artistic work your freedom to do what you want is restricted to some extent. Because artist have special rights called as moral rights. In this paper we will concentrating on the concept of 'Moral Rights' as associated with the copyright. Berne Convention is the first international convention which recognize moral rights. Indian Copyright Act is based on the Berne Convention especially Sec.57. Moral right under Sec.57 is independent & parallel to the copyright. Both this right is different from each other. Copyright is concerned with the economic interest of authors while moral rights deals with personality of author. Judiciary try to enlarge the scope of moral rights in number of cases come before it. Mannu Bhandari case is the land mark case in the area of Indian copyright law. This is the first case where judiciary clarified the scope & ambit of moral rights under Indian copyright law. Moral right is important aspect of copyright but no more attention was paid to the question of moral rights. Moral rights is always missing from international & national legislative development. No more academic literature available regarding to this topic. Due to this reason researcher in this paper try to focus light on nature & scope of moral rights under the Copyright Law.

**Keywords:** copyright, moral rights, literary work.

## 1. Introduction

"Everyone has the right to the protection of the moral & material interests resulting from any scientific, literary or artistic production of which he is the author". Moral Rights is important aspect of copyright which seek to protect non-economic, personal interest of author in his creative work. Moral right is natural, moral, human right. In India copyright law not expressly mentioned moral rights anywhere in the statute but which is come under the Sec.57 with the title of 'Special Rights of Author'. Two types of special rights i.e. moral rights are provided by this Sec. one is right to paternity & another one is right to integrity. This moral rights are independent & parallel to economic copyright. Its nature is nontransferable, perpetual & non-economic. In short moral rights is something more than to earn livelihood. So many time sec.57 was amended for to made more modified in nature but this modification is more complicated & restrictive nature. The 1994 Amendment & 2012 amendment is more important while dealing with the moral rights. Judiciary try to enlarge the scope of moral rights under Sec.57 in number of cases which come before it. Like Mannu Bhandari case is landmark case laws in the area of moral rights. There is need to reconsider Sec.57 for

to effectively protect moral rights & solve many issues arised in the area of moral rights. At the international perspective, the provisions of Sec.57 is based on Berne Convention. Moral rights is excluded from the ambit of GATT's & TRIPS's agreement. The consequences of this exclusion moral rights are deprived from the benefit of enforcement & dispute resolution. The remedies for infringement of copyright is available to infringement of moral rights. Copyright law provide restrictive remedy against infringement of moral rights but by giving liberal interpretation provide additional remedy to the author.

## 2. Indian copyright law

Copyright is the unique type of intellectual property whose importance for commercial benefit & cultural protection is increased day by day. Copyright protection is available only to the original work. The expression original work does not means original or novel but essential requirement is that work must not be copied from another source but must be originate from author. Copyright means special protection provided to author of creative work. It is the recognition or acknowledgement given to authors creative & intellectual labour of author. This recognition issued by the statute of the state. In consequences of recognition some rights are granted to the authors of creative work. The rights are conferred on authors of copyrighted work is classified into two categories;

1. Economic rights &
2. Moral rights

Economic rights are include right to assignment, right to sale, right to relinquishment, right to grant licence, right to broadcast and special rights of author. Author's special rights means moral rights. Economic rights deals with economic interest of authors while moral rights are concerning with personality of author. This two types of right are different from each other. Moral rights are independently and parallel exist to authors economic rights under copyright. Author in this paper given more focus on moral rights of author than economic rights.

The Berne Convention is first international convention who direct its member to protect moral rights of author which are right to paternity & right to integrity. Indian Copyright Act fulfill this obligation under sec.57. It means statutory recognition given to some of the moral rights under Indian Copyright law. This special rights under Sec.57 can be enforced even after economic copyright is transferred or expired. Originally Sec.57 applicable only to the literary work, the author of another work cannot claim protection under this Sec.

Literary work which includes novel, poem, articles, research work in addition to this in digital world it includes computer program. But judiciary widened the scope of the Sec.57 in the 1987 in Mannu Bhandari case. In this case court held that, Provisions under Sec.57 is not limited for only literary work but it covers visual & audio-manifestation. It means it is now applicable to literary, dramatic, musical, artistic & cinematography films. In USA moral right is recognized for only visual work & not for literary or musical work. Regarding terms of moral rights Sec.57 does not specify exact duration for moral rights protection. But Sec.57(1)(b) provides that any act infringing moral right of integrity must be done before expiration of the term of copyright. It means term of protection of moral right is equivalent to the copyright i.e. life time of author and sixty years after his death. According to Berne Convention Sec.57 was amended for many times for to face challenges arised in modern period. But this amendment is scale down nature because it provides restrictive scope for moral rights than old. Because amendment in Sec.57 change basic structure of Sec.57. And amended provisions of moral rights protection is available only when treatment to authors work causes prejudice to his honour or reputation. The change is probably a reflection of fears about economic consequences of right to integrity right or authors might abuse moral right of integrity for their economic advantage. For example, author claims that a film adaptation of his novel distorts his work might be entitling to damages awarded which greatly exceed the copyright fee paid to him by the producer. But Judiciary provide strong protection to the moral rights on different ground. So in short the guidelines issued by SC & legislative amendment in the copyright law shows that need of hour.

Kinds of Moral Rights –

The author has a right to preserve, protect and nurture his creation through his moral right. Author has right to fix & maintain quality of his creative work. Moral rights are the natural rights available to author for to protect, preserve & recreate his creation. Copyright Act does not expressly mention moral rights but provide under the heading of Special Rights of Author. Like copyright moral rights are not a single right but set of rights. Under this Act mainly two rights are protected which are discussed below.

Right to Paternity / right to Attribution / identification right-

According to, Sec.57(1)(a) of the Copyright Act author of work shall have right to claim authorship of the work. It means right of author to work. Under this right author has right to decide whether or not authors name affixed to the work like at the time of advertising or publicity. It prevents others from using his work by given name of another person as author. It means that under this protection author allows to prevent plagiarism of his work. Under this author prevent others from given wrongful credit to author for work which is not created by the author. Under right to paternity owner of copyright can claim a due credit for any of his artistic work. If movie made on novel of author but due credit was not given to author in movie,

he can sue against these makers for acknowledge his work. e.g. The movie '3 idiots' based on the novel 'Five Point Someone' is written by Chetan Bhagat. When film was released with Chetan Bhagat name but in closing credit rather than the opening credits & in smaller fonts than contracted. Chetan Bhagat asserted that his copyright was violated by director of the film. This right helps to avoid public deception. In digital world we receive every kind of information within second from every corner of the world. Under this right people knows that who is real author of work. This right helps to protect identity of author. In short it protects consumers from pirated product or plagiarized data.

Therefore, right to paternity means,

1. Right to claim authorship
2. Right to prevent others from using his work by given name of another person as author.
3. Right of author to author prevent others from given wrongful credit to author for work which is not created by the author.

A. *Right to integrity*

Sec.57(1)(b) provides that, right to restrain or claim damages in respect of distortion, mutilation, modification or other act in relation to said work which is done before expiration of the term of copyright if such distortion, mutilation modification or other act would be prejudicial to his honour or reputation. The object of this right to protect reputation of an artist. When copyright is transferred does not mean the new owner of copyright to deal with work in any manner as he like. This right does not apply to the computer programs, computer generated work or work made for purpose of reporting current events or to publication of work in a newspaper, magazine, periodical or other reference work where work has been made for such purpose or was used with author consent. By reading wording of Sec.57(1)(b) it is clear that for to claim protection it is essential that others act must be prejudice to reputation of authors. Now, moral rights apply to literary, artistic, musical, dramatic & cinematography films. It means that Sec.57 does not based on defense that changes to authors work are an improvement to original work. In short right to integrity means,

Right to integrity = right to object derogatory treatment to work

Challenges before moral rights-  
Unawareness about the infringement of moral rights.

- A great challenge before enforcement of moral rights in different countries due to lack of homogeneity in moral right protection.
- Conceptual challenge was raised regarding definition of paternity & integrity. There is no exact definition regarding this terms. So it will be cause to raise ambiguity regarding the meaning of paternity & integrity.
- Moral rights faced conceptual & practical challenges in the new digital environment. Due to loss of authors control over his creative work in digital technology,

borderless nature of internet, more possibilities for modification of authors work in digital era, practically impossible to obtaining permission for moral rights, changing nature of internet etc.

- No more rights recognized by the copyright statute, like right to retraction. The right to paternity & right to integrity is only recognized by the statute.
- Indian copyright legislation does not address the question of whether moral rights may be transferred or waived.
- Sec.57(2) of the copyright Act provides that authors legal representatives may assert his moral rights on his behalf, but they may not claim authorship of the work. The meaning of this provision is ambiguous & make difference between assert & claim.

Understanding Moral Rights under Indian Copyright Law through case studies:

Sec. 57 provide specific remedies to author against infringement of his moral right. Two types of remedies available 1) right to restrain 2) right to claim damages in respect of violation of his moral right. Indian courts have authority to provide corrective and compensatory remedy is depending on nature of damage is caused by violation of moral rights to author or authors work. A brief fact of some of important case laws are undertaken here as follows:

Mannu Bhandari vs. Kala Vikas Picture (AIR1987 Del13).

In this case Mannu Bhandari as an eminent writer sold her rights to Kala Vikaas Pictures to make film adaptation of “Aap Ka Banty”, one of her novels. Contract was signed between both the parties allowed director & screen writer to make changes considered necessary for successful production. Mannu Bhandari raised objection against the impugened adaptation of title of the film, the way character was portrayed,

script & climax. A complaint against Kala Vikas Picture was filed based on allegation that alteration amount to violation of Sec.57 of the Copyright Act. The basic question was arised before court how to balance authors freedom of expression with that of director in the field of art.

Court observation in this case,

- Moral rights are generally inalienable under the Copyright Act. Every contract of assignment subject to Sec.57 of the Act.
- Modification’ under Sec.57(a)(a) must be read ejusdem generis with the term ‘distortion’ and ‘mutilation’ appearing in the same provisions. H.C. of Delhi agreed with the trial court that some changes are inevitable when novel converted into film. But held that such changes or modification should not convert work into entirely new version of the original work. Modification should not distort or mutilate the original novel.
- The Sec.57 is not limited to the literary expression but also it includes visual & audio manifestation.
- The special protection & remedies available to the author s under Indian copyright law. Author can claim remedies even after assignment of copyright either wholly or partly. Therefore, court observation provides guiding light towards interpretation of Sec.57 of the Copyright Act,1957.

Amar Nath Sehgal vs. Union of India & Another Sehgal is the worldwide famous for his beautiful creation of sculpture. According to Govt. of India he created very big bronze mural. He required five years to complete this work. But dispute was arised when govt. pulled down the sculpture from wall & dumped in the storeroom. So he files petition in Delhi HC for recognition & enforcement of his rights on the mural. In this

Table 1  
Difference between copyright & moral rights

S. No.	Copyright	Moral Rights
1.	Copyright means to give proper monetary incentives to authors for their creative efforts <sup>1</sup>	Moral rights are the embodiment of the natural rights of an artist has over what he has created <sup>1</sup>
2	Copyright is independent right.	Moral right is the supplement to the economic right traditionally granted to the creator of the work.
3.	Copyright granted for specific duration, after that duration copyright automatically expired.	Perpetual duration specified for moral rights. Moral rights are continued even after copyright is transferred to the others either partly or entirely.
4.	Primarily it concerned with economic interest of author for his creative efforts.	It is not always concerned with economic interest but it deals with reputation, integrity of authors work. It is based on belief that it is something more than to earn livelihood.
5.	It is statutory right.	It is natural right. It is evolved & developed from judicial precedent.
6	It is alienable through licence, assignment, sale etc.	It is not transferred, assigned or sold. There is restriction on the transferability of moral rights. It exists even after transfer of copyright. The moral right of work remains exists even after death of creator. This right after death of creator is transfer to his heir.
7.	Author never wave his copyright over his creation.	It may or may not be wave. Generally, it is frequently waived by author. The Copyright Act does not address the question whether moral rights may be transferred or waived.
8.	It is express in nature.	It is implied in nature which developed by judicial precedent.
9	Copyright include moral rights. But there is difference between them.	It is independent from copyright.
10	Copyright Act,1957 provides copyright protection in India.	Sec.57 of the Copyright Act gives statutory recognition to the two basic moral rights ie. 1.right to paternity 2.right to integrity
11	Copyright protection cannot be claimed after transfer of copyright.	Special Protection claimed even after transfer of copyright.
12	Copyright cannot override contract of assignment.	It override contract of assignment of the copyright <sup>1</sup> .It means that terms of contract cannot overlooked special rights & remedies granted by Sec.57.

case he contended that mutilation of work was prejudicial to his reputation & right to integrity violated & his suit was not barred by limitation as his moral rights subsist throughout his life. He prayed for permanent injunction, compensation for hurt, injury & loss of reputation caused to him & directing govt. of India to return mural to him. On the other hand, UOI argued that it was owner of mural by given good consideration to Sehgal. So he had no right over mural & suit barred by limitation because filed after 13 years from the date when cause of action arose.

### B. Held

Court held that suit not barred by limitation after due considering national & international framework for protection of the mural rights of author. Recognising the moral rights of the Sehgal over mural J. Pradeep Nandrajog ruled, "mural whatever be its form today is too precious to be reduced to scrap & languish in the warehouse of UOI. It is only Mr. Sehgal who has right to recreate his work & therefore has right receive the broken down mural. He has right to compensated for loss of reputation, honour & mental injury due to offending acts of UOI". Court passed declaration transferring all the rights over mural from UOI to Mr. Sehgal & absolute right to recreate mural & sell the same. From this case it is clear that court give wide scope to moral rights of author under copyright law. Under the statute only limited remedy provided like grant injunction & damages. But court expand the moral rights interpretation by awarding right to author to receive copyrighted work for purpose of restoration & sell it.

### 3. Conclusion

Moral rights mean something more than to earn livelihood. It reflects personality of author, so it is always deals with reputation & integrity of authors work. It means that it create particular relationship between creator & result of his creative or intellectual labour. This rights protected by Indian Copyright Law under Sec.57 which is purely based on Berne Convention. Moral rights based on philosophy that author is the ultimate judge to fix & maintain quality of his creative work. Protection of moral rights in Sec.57 has undergone number of modification

with object to to solve problem arised in changing digital environment. Amendemnet made is restrictive nature which provide limited remedy to author of work. Moral right is important aspect of copyright in everywhere but it is remain in the shadows due to its unique nature. In 21st century moral rights given statutory recognition which shows that moral right is the undeniable place of copyright. Like India many other country gives statutory recognition to moral rights like Canada, US, Newzeland & Australia but their enforcement system is different from country to country. The moral rights always overlooked in national & international legislation. Only few of international convention deals with this topic seriously. The natural right character of author's rights finds recognition in two major international human rights instrument i.e. UDHR, ICESCR. It means indirect recognition given to moral rights under UDHR, ICESCR. There is need of hour to more focus should be given on the moral rights due to its unique nature & its protection necessary for in preachment of cultural heritage which is the rea property of us today.

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