

MORAL RIGHTS: COMPARATIVE ANALYSIS IN THE US, UK, FRANCE AND INDIA

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Abstract

Copyright is nothing but the right that is available to the creator of a work. The right of the author of a work can be both moral and economic. Moral rights are nothing but personal rights that guards those elements of an intellectual creation that are associated with the personhood of the author and therefore secure the bond between an author and his work. In India, the Indian Copyright Act, 1957, which govern and protect copyright recognizes the “right of paternity” and the “right of integrity”, whereas in countries like France, Germany, and Italy their respective copyright statutes recognizes the “right of disclosure”, the “rights of attribution”, the “right of integrity”, and the “right of withdrawal”. This paper will analyse the perceptions of moral rights in USA, France, UK and India while tracing down the evolution of moral rights and the international framework. The paper will look into the reason as to why India has only adopted the “right of paternity” and the “right of integrity” and what are the obstacles faced in adopting other moral rights.

Keywords: Moral rights, Copyright Protection, Right of paternity, Right of integrity

1. Introduction

The moment a work qualifies for the protection of copyright, there arise two types of rights: the first will be the economic rights that will be conferred upon the first owner of that work and the next will be the moral rights which will be granted to the author of certain works.¹ The protection afforded by moral rights extends to the author’s interests, which are not limited to monetary concerns; rather, they encompass non-financial and non-economic concerns as well.² The term “author’s special rights” can also be used to refer to moral rights.³

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¹ L. Bently and B. Sherman, *Intellectual Property Law 272* (Oxford University Press, United Kingdom, 4th edn., 2014).

² J. C Ginsburg, “Moral Rights in a Common Law System”, 1 *Entertainment Law Review* 121(1990).

³ N. Luhar, “Moral Rights: Origin, Development, Importance and Challenges”, 4 *International Journal of Legal Research and Studies* 13 (2019).

When compared to “common law countries”, where the justification underpinning copyright is typically more utilitarian and economic, civil law countries place a greater emphasis on moral rights because of the lesser reliance on economic rights.⁴ Protection of creative work is not perceived from a uniform approach as civil law nations usually apply a dualistic approach, whereas common law nations normally employ a monist approach.⁵ Apart from these widely accepted approaches Rigomonti has mentioned about a third approach called the patchwork theory.⁶ The extent of the protection available for moral rights therefore differs with legal regimes.⁷ In this background, the paper analyses moral rights from the evolutionary perspective and the international framework. The paper explores the approaches adopted by France, the USA, UK and India for safeguarding the moral rights and discusses why there is a need for adopting a uniform approach.

A brief overview of moral rights and its evolution followed by the international framework to deal with it will be dealt in Part II. Part III of this paper will look at the scope of moral rights and its protection in the jurisdictions of US, UK, France, and India. Subsequently, Part IV will conclude the paper while incorporating the suggestions put forth by the author.

2. Moral Rights - Overview

2.1 Introduction

Moral rights have a long history dating back to ancient Greece⁸ and Rome⁹, at a time when they subsisted devoid of a completely developed concept of proprietary rights to artistic works.¹⁰ However, one may trace modern conceptions of moral rights all the

⁴ I. Harding and E. Sweetland, “Moral Rights in the Modern World”, 7 *Journal of Intellectual Property Law & Practice* 569 (2012).

⁵ R. C. Bird and L. M. Ponte, “Protecting Moral Rights in The United States and The United Kingdom: Challenges and Opportunities Under the U.K.’S New Performances Regulations”, 24 *Boston University International Law Journal* 217 (2006).

⁶ C. P. Rigamonti, “The Conceptual Transformation of Moral Rights”, 55 *American Journal of Comparative Law* 73 (2007).”

⁷ G. Dworkin, “The Moral Right of the Author: Moral Rights and the Common Law Countries” 19 *Columbia-VLA Journal of Law & the Arts* 231 (1995).

⁸ M. W. Carroll, “Whose Ownership Is It Anyway?: How We Came to View Musical Expression as a Form of Property”, 72 *University of Cincinnati Law Review* 1430 (2004).

⁹ C. Swack, “Safeguarding Artistic Creation and the Cultural Heritage: A Comparison of Droit Moral Between France and the United States”, 22 *Columbia-VLA Journal of Law & the Arts* 366 (1998).

¹⁰ *Id.* at 366.

way back to France.¹¹ The rationale following the moral rights doctrine is the conception that the author's creative soul exists behind any artistic work beyond the monetary and property rights.¹² The three approaches in recognising moral rights are the monist, dualist and patchwork theory.¹³ The monistic theory considers that moral and economic rights are not separate unit in copyright, whereas dualistic theory asserts that moral and economic rights exist independently.¹⁴ Patchwork theory as explained by Rigamonti allocates the different moral rights as part of other legal doctrines like defamation, contract law, trademark law, right to privacy, passing off and others.¹⁵

The moral rights doctrine embraces four basic rights, which are:

- i. The "right of disclosure" or the "right of divulgation" is the freedom to decide whether, when, and how an author wants to make their work available to the public;¹⁶
- ii. The "right of retraction" or the "right of withdrawal" which provides the author legal right to withdraw their work from sale or public exhibition and to forego creating any more works of their own accord;¹⁷
- iii. The "right of paternity" or the "right of attribution" which provides the author to be recognized as the creator of the work; and¹⁸
- iv. The "right of integrity" protects an author's honour and reputation by forbidding alterations that would harm them.¹⁹

In addition to these fundamental protections provided to creator's, the law further protects the rights of creators against erroneous attribution, extreme criticism of their work or other unjustified attacks on their persona, the right to further remuneration for the resale of their creative works, and so on.²⁰

¹¹ E. Schere, "Where Is the Morality? Moral Rights in International Intellectual Property and Trade Law", 41 *Fordham International Law Journal* 775 (2018).

¹² *Supra* note 5 at 217.

¹³ *Supra* note 6 at 75.

¹⁴ J. B. Pedersen, "The Inadequacy of UK Moral Rights Protection: A Comparative Study on the Waivability of Rights and Recontextualisation of Works in Copyright and Droit D'auteurs Systems", 3 *LSE Law Review* 118, (2018).

¹⁵ *Supra* note 6 at 75.

¹⁶ R. Dreyfuss and J. Pila (eds.), *The Oxford Handbook of Intellectual Property Law* 500 (Oxford University Press, United Kingdom, 2018).

¹⁷ *Supra* note 5 at 220.

¹⁸ *Ibid.*

¹⁹ *Supra* note 16.

²⁰ *Supra* note 5 at 221.

2.2. International Framework

It was only after the inclusion of Art. 6bis to the Berne Convention that international recognition was conferred to moral rights.²¹ While four of the above-mentioned moral rights were proposed to be included in Art .6bis, owing to the dissatisfaction of the common law countries, only the rights of “attribution” and “integrity” were included against the other two rights.²² This was a compromise between substantial moral rights protection like that of France and the absence of any such codification as in UK.²³ Art. 6bis talks about the rights of paternity and integrity ensuring they exist separately of the economic rights, which will be available despite transferring it. In respect to the duration as well as a consequence of infringement it provides same protection that is available for economic rights. Because the Berne Convention adheres to the “principle of national treatment”, signatory countries are obligated to follow these minimal criteria even in the context of resident citizens who originate from other signatory countries.²⁴ Art. 6bis fails to establish that moral rights are inalienable and is silent on the aspect of moral rights waivers.²⁵ Moral rights received symbolic recognition²⁶ with its inclusion in the UDHR²⁷ via Art. 27 and also in the ICESCR²⁸ via Art. 15.²⁹

The UCC³⁰ does not have any kind of moral rights provision,³¹ and both the TRIPS³² and the NAFTA³³ specifically excludes moral rights.³⁴ Despite the fact that TRIPS require compliance with the Berne Convention, compliance with Art. 6bis was expressly excluded at the request of the US delegation.³⁵ However, the signatories of

²¹ The Berne Convention for the Protection of Literary and Artistic Works, 1971, art. 6bis.

²² A. Dietz, “The Moral Right of the Author: Moral Rights and the Civil Law Countries”, 19 *Columbia-VLA Journal of Law & the Arts* 203(1994).

²³ *Supra* note 4 at 567.

²⁴ *Ibid.*

²⁵ *Supra* note 16.

²⁶ C. P. Rigamonti, “Deconstructing Moral Rights”, 47 *Harvard International Law Journal* 357 (2006).

²⁷ The Universal Declaration of Human Rights, 1948, art. 27.

²⁸ The International Covenant on Economic, Social and Cultural Rights, 1966, art.15.

²⁹ A. Ashok, “Moral Rights - TRIPS and Beyond: The Indian Slant”, 59 *Journal of the Copyright Society of the U.S.A* 702 (2013).

³⁰ The Universal Copyright Convention, 1952.

³¹ J. S. Dubin, “The Universal Copyright Convention”, 42 *California Law Review* 118 (1954).

³² The General Agreement on Trade-Related Aspects of Intellectual Property, 1994.

³³ The North American Free Trade Agreement, U.S.-Can.-Mex., 1992.

³⁴ *Supra* note 26.

³⁵ J. M. Dine, “Author’s Moral Rights in Non-European Nations: International Agreements, Economics, Mannu Bhandari, and the Dead Sea Scrolls”, 16 *Michigan Journal of International Law* 557 (1995).

Berne Convention have to comply with Art. 6bis, and foreign authors can use it by applying the national treatment principle.³⁶ Moral rights are not covered by the WTO's dispute resolution process.³⁷

3. Analysis of Moral Rights Under Selected Jurisdictions

3.1. USA

In the United States, copyright law reflects a utilitarian tradition.³⁸ In *Vargas* case³⁹ the Court has opined that moral rights are laws of foreign countries.⁴⁰ The *Shostakovich* case⁴¹ followed this line of reasoning, in which the court's attempts to discover a basis for moral rights protection in US common law were ultimately fruitless owing to the practical challenges of requiring appropriate proof for a moral rights claim.⁴² Starting in the late 1970s, a growing number of states enacted their own moral rights acts, each with its own unique protections and spheres of application.⁴³

Historically, the US has been hesitant to recognize moral rights; as a result, Art. 6bis of the Berne Convention presented a barrier to membership for the US; the country did not formally become part of the convention until 1988, after almost a centenary of debate.⁴⁴ While the US is a party to the Berne Convention, it has consistently opposed efforts to incorporate any additional recognition of a "moral right" in the Berne Convention Implementation Act.⁴⁵ The US Congress explained their move to disregard moral rights provision by stating that US provide adequate protection to the equivalent of moral rights via prevailing laws like the unfair competition, copyright, contract, defamation, and privacy.⁴⁶ It was by the enactment of the VARA⁴⁷ a subsequent shift recognizing limited moral rights happened. Its purpose was to provide a select group of

³⁶ *Id.* at 547.

³⁷ *Supra* note 33, at 702.

³⁸ N. C. Suhl, "Moral Rights Protection in the United States Under the Berne Convention: A Fictional Work?", 12 *Fordham Intellectual Property, Media & Entertainment Law Journal* 1213(2002).

³⁹ *Vargas v. Esquire, Inc.*, 64 F.2d 522 (7th Cir. 1947).

⁴⁰ I. Lee, "Toward an American Moral Rights in Copyright", 8 *Washington and Lee Law Review* 806 (2001).

⁴¹ *Shostakovich v. Twentieth Century-Fox Film Corp.*, 80 N.Y.S.2d 575 (1948).

⁴² M. T. Sundara Rajan, "Moral Rights: Principles, Practice and New Technology" 118, 251 (Oxford Printing Press, United Kingdom, 2011).

⁴³ B. T. McCartney, "Creepings" and "Glimmers" of the Moral Rights of Artists in American Copyright Law", 6 *UCLA Entertainment Law Review* 55 (1998).

⁴⁴ *Id.* at 40.

⁴⁵ The Berne Convention Implementation Act, 1988.

⁴⁶ *Supra* note 48 at 41.

⁴⁷ The Visual Artists Rights Act, 1990.

visual artists with integrity and paternity protections for the extent of the life of the author.⁴⁸ Under VARA, neither the right to disclose nor the right to retract is recognized. The “right to integrity” and the ability to assume or disclaim authorship of an author are both explicitly guaranteed by VARA.⁴⁹ Waivers are permissible under the terms of this Agreement, but they must be in writing, signed by the author, must specify which works and rights are being waived and blanket waivers are not enforceable.⁵⁰

In *Seshadri v. Kasraian*⁵¹ and *Ty Inc. v. GMA Accessories Inc.*⁵², even though the existence of moral rights in the contemporary US copyright regime was mentioned, the decisions followed the American tradition of talking about moral rights but rejecting to officially acknowledge them.⁵³ After VARA was enacted with an objective to include moral rights, the Court started using it to constrain moral rights as can be evidently inferred from cases like *Lee v. A.R.T. Co.*⁵⁴ and *English v. BFC & R East 11th Street LLC*⁵⁵. After signing on to the Berne Convention, the US curtailed its protection of moral rights in the courts. In its landmark decision in *Dastar*⁵⁶, the US Apex Court substantially destroyed the most powerful doctrinal underpinning for the right of attribution⁵⁷ in US law. Consequently, the lower courts started applying the rationale in *Dastar* case to limit moral rights.⁵⁸ *Botello v. Shell Oil Co.*⁵⁹, *Gegenhuber v. Hystopolis Production, Inc.*⁶⁰, and *Wojnarowitz v. American Family Association*⁶¹ are few cases where the Court has recognized the moral rights of creative artists.⁶²

Simply put, what VARA did was to incorporate a truncated form of the notion of the “moral rights of the artist” from civil law into US IP law. While the US has conveyed interest in joining the set of countries that recognize moral rights as a viable

⁴⁸ *Supra* note 26 at 405.

⁴⁹ *Id.* at 406.

⁵⁰ *Ibid.*

⁵¹ *Seshadri v. Kasraian*, 130 F.3d 798, (7th Cir. 1997).

⁵² *Ty Inc. v. GMA Accessories Inc.*, 132 F.3d 1167 (7th Cir. 1997).

⁵³ *Supra* note 48 at 44.

⁵⁴ *Lee v. A.R.T. Co.*, 125 F.3d 580 (7th Cir. 1997).

⁵⁵ *English v. BFC & R East 11th Street LLC* WL 746444 (S.D.N.Y. 1997).

⁵⁶ *Dastar Corp. v. Twentieth Century Fox Film Corp.*, (2003) 593 U.S. 23.

⁵⁷ P. Goldstein and B. Hugenholtz, *International Copyright* 359 (Oxford University Press, United Kingdom 2013).

⁵⁸ *Supra* note 26 at 410.

⁵⁹ *Botello v. Shell Oil Co.*, 80 Cal. Rptr. 535 (1991).

⁶⁰ *Gegenhuber v. Hystopolis Production, Inc.*, 992 WL 168836 (N.D. Ill. July 13, 1992).

⁶¹ *Wojnarowitz v. American Family Association*, 45 F. Supp. 130 (S.D.N.Y. 1990).

⁶² *Supra* note 48 at 72.

element in copyright law, VARA is essentially insufficient⁶³ and has multiple problems. It is even criticized by few owing to the reason that the obligation put forth in the Berne Convention is not complied in the true sense as only a limited moral right is recognized.⁶⁴ The application of these rights is further complicated by the absence of a definitional guidance for crucial terminology like prejudice or honour.⁶⁵ Another reason VARA isn't taken seriously in the creative community is that courts have a tendency to adopt a restrictive interpretation of the law.⁶⁶

3.2. UK

Copyright in Europe is founded on the notion of natural rights.⁶⁷ The Statute of Anne, 1710 is the earliest law to provide a limited interest to author by way of an exclusive renewable for future print works.⁶⁸ The earlier approach of the Court was not in favour of moral rights as in cases like *Burnett v. Chetwood*⁶⁹ and *Gyles v. Wilcox*⁷⁰ the authors were denied any say regarding the control of adaptation when they were not publishers.⁷¹ The courts ignored the author's right against misattribution in *Gilbert v. Boosey and Co.*,⁷² and the *Eothen Films*⁷³ case as it was only in 1956, by virtue of the Copyright Act 1956, misattribution was prohibited.⁷⁴ The court has analysed criticisms of moral rights like: the difficulty to accept moral rights which has civil law origin in to a common law country⁷⁵; moral rights pose as hindrance to the owner of the copyright to do as he wishes⁷⁶; the use of prevention of parody by the author will cause conflict with the free speech and wider public interests.⁷⁷

Even though, Art.6 bis of the Berne Convention, which provided moral rights protection was introduced in 1928, it was only in 1988, UK took a step of bringing in a

⁶³ R. C. Bird, "Moral Rights: Diagnosis and Rehabilitation" 46 *American Business Law Journal* 452 (2009).

⁶⁴ L. Zemer, "Moral Rights: Limited Edition" 91 *Boston Law Review* 1527 (2011).

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

⁶⁷ *Supra* note 14 at 122.

⁶⁸ *Supra* note 5 at 234.

⁶⁹ *Burnett v. Chetwood*, (1720) 35 Eng. Rep. 1008 (Ch.).

⁷⁰ *Gyles v. Wilcox*, (1740) 26 Eng. Rep. 489 (Ch.).

⁷¹ *Supra* note 5 at 235.

⁷² *Gilbert v. Boosey and Co.*, 87 L.T. 355 (1889).

⁷³ *Eothen Films Ltd. v. Industrial and Commercial Education Macmillan Ltd.*, [1966] F.S.R. 356 (A.C.).

⁷⁴ The Copyright Act, 1957 (Act 14 of 1957), s. 43.

⁷⁵ *Gambart v. Ball*, [1863] 14 CB (NS) 306.

⁷⁶ *Pretson v. Raphael Tuck*, [1926] Ch 667, 674.

⁷⁷ *Confetti Records v. Warner Music UK Ltd.*, [2003] EMLR (35) 790.

national law to explicitly deal with moral rights.⁷⁸ Taking cue from the Whitford Committee Report, since UK did not properly satisfied the Berne Convention conditions concerning moral rights, finally in 1988 the CDPA⁷⁹ was enacted which recognised moral rights independently.⁸⁰ However, this embracing of moral rights did not exclude the previous common law approach as the CDPA merely placed another layer of moral rights defence in supplement to it.⁸¹

Separate rights of integrity, paternity, and protection against false attribution are guaranteed by the CDPA by virtue of sections 77-89, 94-95 and 103 respectively. When someone's moral rights have been violated, it is considered an infringement of legal duty by virtue of section 103 and reparations can be sought. Both integrity and attribution rights are in effect for the same length of time as copyright protection. The duration of rights of integrity and attribution exist for a term equivalent to that of term of availability of copyright. In addition to this, privacy in photographs is also considered a moral right under section 85. Subsequent to the author's death, their heirs generally exercise moral rights as per section 95 (1). Instead of replicating Article *6bis* exactly, in UK, they introduced many detailed statutory provisions, everyone having a plethora of conditions, limits and exemptions.⁸²

While the language of S. 77 of the CDPA appears to provide enough protection, a UK author cannot depend on the "right of attribution" under the CDPA unless the author has asserted the claim.⁸³ Even after a right has been asserted, it does not bind anyone unless they have actual or constructive notice of the assertion.⁸⁴ CDPA also subjects the moral right to waiver and consent by virtue of S. 87. This provision even though does not contravene the Berne Convention per se, it however enables a chance to do so as the protection provided to moral rights are not strong enough.⁸⁵ S. 80 that provides the right of integrity has a narrow scope for the definition of treatment compared to its scope in

⁷⁸ *Supra* note 5 at 235.

⁷⁹ The Copyright, Designs and Patents Act, 1988.

⁸⁰ *Supra* note 5 at 238.

⁸¹ *Supra* note 26 at 400.

⁸² *Supra* note 1.

⁸³ *Supra* note 4 at 567.

⁸⁴ *Ibid.*

⁸⁵ *Supra* note 14 at 122.

6bis.⁸⁶ Right to prevent destruction can be inferred in 6bis whereas in CDPA S. 80, this is not provided.⁸⁷

3.3. France

France is one of the countries that provide the most advanced protection of moral right across the globe, and⁸⁸ can be considered as an undisputed champion of moral rights.⁸⁹ Before the French Revolution, French authors recognition of authorship was granted by the King and therefore the privilege of authors were limited.⁹⁰ After the French Revolution, there has been wide discussion as to what approach to be taken towards authorship and the judiciary was compelled to approach moral justice as an important view for providing authors right owing to the increasing admiration of artistic talent.⁹¹ While considering IP disputes the Courts started applying moral right protections starting from the early 19th century, even though they were not named specifically.⁹²

Despite the fact that it was initially developed by judicial decisions, the intellectual property code of France expressly codifies moral rights⁹³. The French law recognises the basic four moral rights.⁹⁴ It also recognises resale royalty as well as safeguards against mis-attribution, undue criticism, and intrusion on the author's persona and these can be traced back to the approach taken in earlier cases.⁹⁵ Even though France signed the Berne Convention in 1887, it was only in 1957 moral rights law was adopted⁹⁶ and only after the 1992 codification, the term of *droit moral* was included in French Copyright Act, 1957.⁹⁷

Nevertheless, in France, moral rights are offered to an extensive array of creative efforts, known as works of the mind, and they comprise of “musical compositions”

⁸⁶ *Ibid.*

⁸⁷ *Supra* note 4 at 571.

⁸⁸ *Supra* note 5 at 229.

⁸⁹ *Supra* note 45 at 803.

⁹⁰ C. D. Peele, “From The Providence of Kings to Copyrighted Things (And French Moral Rights)”, 9 *Indiana International & Comparative Law Review* 428 (1999).

⁹¹ *Id* at 432.

⁹² S. P. Lieme, “On The Origins of Le Droit Moral: How Non-Economic Rights Came to be Protected in French IP Law” 19 *Journal of Intellectual Property Law* 115 (2011).

⁹³ The French Intellectual Property Code, 1992.

⁹⁴ *Id.*, art. L 121-1 to 121-4

⁹⁵ *Supra* note 5 at 227.

⁹⁶ *Id.* at 228.

⁹⁷ *Supra* note 101 at 426.

besides “dramatic musical works”.⁹⁸ Moral rights in France are inalienable⁹⁹, imprescriptible and perpetual.¹⁰⁰ Although moral rights cannot be sold or transferred, the courts have upheld some waivers of these rights in contracts when the parties involved can demonstrate that the waivers are fair and do not result in any material changes or distortions to the original creative work.¹⁰¹ However, blanket waivers are unenforceable.¹⁰² Inalienability extends not only to authors residing there, but also to exploitations in France of works of foreign authors and recognised the rights of the heir of the foreign Director and held that the waiver was not enforceable under French law.¹⁰³ Moral rights are granted to works including painting, music, book, plays and films.¹⁰⁴ In *Soc. Le Chant du Monde v. Soc. Fox Europe*¹⁰⁵, the Court allowed the seizure of the film stating that the composers suffered moral damage while the US failed to recognise this.

3.4. India

In India, the Indian Copyright Act, 1957 govern and protect copyright.¹⁰⁶ S. 57 of the same provides acknowledgment of moral rights in way of special rights of an author, independently of copyright i.e. the “right of paternity” and the “right of integrity”.¹⁰⁷ It is based on the Art. 6bis of Berne Convention.¹⁰⁸ The Copyright Act, 1957 has gone through two important amendments one in 1994¹⁰⁹ and other in 2012¹¹⁰. The former limited the range of moral rights by providing the mandate of specific term of claiming the special rights and limiting the author’s claim when prejudicial to his reputation and honour whereas the later amendment made moral rights perpetual as well as recognised the moral rights of performers by adding S. 38B.

⁹⁸ *Supra* note 5 at 228.

⁹⁹ *Supra* note 104, art. L 121-1

¹⁰⁰ *Supra* note 45 at 804.

¹⁰¹ *Supra* note 5 at 227.

¹⁰² *Id.*

¹⁰³ *Huston v. Turner Ent*, (1991) 149 RIDA 197.

¹⁰⁴ *Supra* note 5 at 229.

¹⁰⁵ *Soc. Le Chant du Monde v. Soc. Fox Europe, Cours d’appel, Paris, Dallez, Jurisprudence*, [D. Jur.] 16 (1953).

¹⁰⁶ The Copyright Act, 1957 (Act 14 of 1957).

¹⁰⁷ *Id.*, s. 57.

¹⁰⁸ *Supra* note 47 at 175.

¹⁰⁹ The Copyright (Amendment) Act, 1994 (Act 39 of 1994) s.57.

¹¹⁰ The Copyright (Amendment) Act, 2012 (Act 27 of 2012) s.57.

The special rights as conferred by the Act remain with the author for his lifetime and cannot be assigned, although the legal representatives of the author can also utilise the right of integrity and the explanation clarifies that the inability to show a work or to show it as per the general inclination of the creator will not be considered to be an encroachment of the privilege given by the part.¹¹¹ S. 57 also provides special rights for the author of a computer programme. The courts in India have taken a proactive approach to protecting author's moral rights and have awarded punitive damages in cases¹¹² involving violation of these rights. Under Section 57(1) (b) "the right to object to derogatory treatment" is provided, but there are no reported cases of this being extended to the Internet.¹¹³ However, S. 57(1) (a) of the Act makes it a case that the author of the work enjoys the "right of attribution" and this includes the right to guard against false attribution and impersonation on the Internet.¹¹⁴

In the Mannu Bhandari case¹¹⁵ the Court took a line in support of the moral rights of the author where the producer was not given the right to make alteration unless the author permits it. S. 57, the court said, is the statutory acknowledgement of an author's intellectual property and thus requires extra care to be preserved. Therefore, a modification is deemed to be in violation of S. 57 if the modification changes the look of the work significantly; or is a perversion of the original.

In the Sundhram case,¹¹⁶ the Court provided the moral right of the author even when he had assigned his economic rights. This was affirmed in the Amarnath Seghal case¹¹⁷. In the Amarnath Seghal case, the court recognised a special bond between a creative author and their work and emphasised the importance of safeguarding the creator's paternity and integrity. It observed that no assignment agreement clauses could eliminate or waive these protections. Even more so, the court considered the statue to be an Indian national treasure and hence applied S. 57 of the Act on the basis of the broad construal of the integrity right as including the Protection of India's Cultural Heritage.

¹¹¹ B. Allgrove, *International Copyright Law: A Practical Global Guide* 276 (Globe Business Publishing Ltd, London, 2013).

¹¹² *Amar Nath Seghal v. Union of India*, (2005) 30 PTC 253 (Del).

¹¹³ N. Cordell, *Intellectual Property and the Internet: A Global Guide to Protecting Intellectual Property Online* 202 (Globe Business Publishing Ltd, London, 2014).

¹¹⁴ *Ibid.*

¹¹⁵ *Mannu Bhandari v. Kala Vikas Pictures (P) Ltd.*, AIR 1987 Del 13.

¹¹⁶ *K.P.M. Sundhram v. Rattan Prakashan Mandir* AIR 1983 Del 461.

¹¹⁷ *Amar Nath Seghal v. Union of India*, (2005) 30 PTC 253 (Del).

However, the judiciary's treatment of moral rights has been inconsistent. This is evidenced by the fact that the court reached contrary conclusions in the cases of Amarnath Sehgal and *Raj Rewal v. Union of India*¹¹⁸. The question at hand was whether the plaintiff had any moral rights to the Hall of Nations, given that ITPO was the legal owner, and if such rights would conflict with ITPO's claim to property provided in Art. 300A of the Indian Constitution. The court concluded that the Hall of Nations was ITPO's property, and that the plaintiff's moral rights conflicted with ITPO's constitutional right to property. As moral rights are acquired by being the work's author, the plaintiff did in fact possess such rights. However, the Constitution of India is the highest law of India, and the Copyright Act, or any other legislation, can never be more important than the Constitution. Thus, the right to property of the defendant cannot be violated on the basis of moral grounds. Therefore, the broader view of moral rights taken in the Amarnath Sehgal case was not taken in the Raj Rewal case.

The court made the observation that, at first glance, S. 57 is only relevant in situations in which the buildings in question have been designated as heritage buildings. S. 57(1)(b) of the Copyright Act defines distortion, mutilation, and modification as causing the work to appear to be something other than what the author had created and in which creation the author's honour and reputation vests. The rule states that the architect's integrity and standing must be protected at all costs, so that the work cannot be compromised. Refusing to exhibit a work is argued not to be an infringement of rights under S. 57 because "something that cannot be seen, heard, or felt cannot be faulty and cannot degrade the author's honour or reputation". The Court further reasoned that if S. 57(1)(b) of the Act were interpreted to prohibit destruction, then S. 52(1)(x) of the Act would be meaningless. Reconstructing a building or structure using the same blueprints or plans that were used in the original construction is not considered an infringement under Section 52(1)(x). When it comes to city planning, practical considerations always take precedence over moral right.

¹¹⁸ CS (COMM) No.3/2018.

In *Manisha Koirala v. Shashilal Nair*,¹¹⁹ Court failed to identify moral right of the actress. In *Indian Performing Rights Society* case¹²⁰, it was observed that it would be the artists who will enjoy protection in the music work whereas it will be the producer who has the protection for the entire work. In *Neha Bhasin's* case¹²¹, the Delhi High Court stated that all performances must be done in front of a live audience or in a studio for the first time relying on the word “live”, which was added in the definition of “performance” by virtue of the 1994 amendment. The Court added that once the instance of the performance occurs, a certain amount of skill and labour is inputted, which needs innovation and judgement, and therefore must be safeguarded, to ensure incentives and thus recognised the performer’s right and her right to be attributed as singer. Relying on the *Neha Bhasin* case, the Delhi High Court, in the *Chappak* case¹²², acknowledged and reaffirmed the right of paternity as an essential component of the moral rights of those who make any contribution.

4. Conclusions and Suggestions

From the comparative analysis of moral right recognition in the USA, UK, France and India, it can be observed that they all have a different degree of moral right protection. France being a champion in recognizing moral rights where the moral rights of authors are wider, perpetual, non-transferable, and cannot be waived, the author-centric approach has potentially significant implications for assignors and licensors of works. The USA that concentrates more on the economic philosophy, has Visual Artists Rights Act, 1990, the only federal legislation that expressly deal with moral rights, but it is limited in its applicability, State legislations which are varied in scope and the judiciary which employs the common law theories and restricts the scope of moral rights. In the UK, the safeguard of moral rights is unsatisfactory, mainly owing to waiver rights as well as the limited scope the Copyright, Designs and Patents Act, 1988 provides. India, being a developing country having common law heritage, has been through major reforms in recognising the scope of moral rights. Initially providing extensive protection of moral rights, the 1994 amendment that restricted the scope of moral rights, was a controversial

¹¹⁹ *Manisha Koirala v. Shashilal Nair*, (2002) SCC OnLine 827 (Bom).

¹²⁰ *Indian Performing Rights Society Limited v. Eastern India Motion Pictures Associations*, AIR 1977 SC 1443.

¹²¹ *Neha Bhasin v. Anand. Raj Anand & Anr* (2006) 32 PTC 779 (Del).

¹²² *Fox Star Studios v. Aparna Bhat and Ors*, (2020) SCC OnLine 36 (Del).

move. However, it again expanded the scope by way of the 2012 amendment. The reason as to why India adopted only the “right of paternity” and “right of integrity” alone can be contributed to the factor that India is a developing country and therefore, providing right of withdrawal and disclosure like France was not a viable option for India. Also, the main reason behind inclusion of moral rights was to have consistency with the Berne Convention and for that purpose providing right of integrity and paternity alone was enough.

There is need for harmonization of moral laws as due to the different approaches by countries there is varied degree of moral right protection. The lack of uniformity will result in insufficient protection of artists. Even though it is practically problematic to provide for uniform protection all of a sudden, in the modern era where national boundaries are not a limitation anymore, there is a need to have a uniform standard for protecting the rights of the author. If there is no change in the present position, then either moral rights laws satisfactory to authors will not be introduced, like the scenario in the USA as it has more economic focus or like the UK where, there is acceptance of moral rights with wider exceptions and qualifications as well as total waiver that results in undermining the essence of the right itself. If it’s an author centric approach like that of France, then the chance of it being detrimental to public interest can arise. The most significant stumbling block to any declaration of works into the public domain is moral rights. Therefore, there is need to balance between these extreme approaches to find a uniform moral rights recognition as to fit in countries having different ideologies and practices due to their origin and especially emerging nations like India.

The purpose of moral rights is to reassure authors to make new works while also allowing for the safeguard of legitimate copyright interests in those prior works of the author. Given the pervasiveness of internet usage of works today, the application of moral rights in this area is noteworthy. As the copyrighted works can be altered and used under fair use or fair dealing exception, having moral rights will allow the authors to exert the same in instances where copyright infringement cannot be claimed.