



MORAL RIGHTS: ORIGIN, DEVELOPMENT, IMPORTANCE AND CHALLENGES

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Abstract-- A work created by an intellectual closely connected to the identity and persona of the creator and any departure from it is never intended by any creator. Copyrightable subject matter covers a wide variety of works, the objective of which is not necessarily economic gains, but is to come out with a creation which is adorable and appreciated by others. Nevertheless, Copyright laws grant two-fold protection to the creators. Firstly, via protection of his economic rights and secondly and more importantly by protecting his identity associated with the work via Moral Rights. This protection of Moral Rights provides the creator the freedom to express his thoughts and individuality in a better manner.

Moral rights being of a special nature having a lot of importance must be accorded special treatment to protect the creator. However, the protection accorded to Moral Rights is not consistent throughout the world. The present Article addresses the jurisprudence of one of the most important right that a creator owns over his creation. The Article also provides an account of Indian Law on Moral Rights and the challenges confronted in the protection of such rights. This most important Right of a Creator under the Copyright Law is 'Moral Right' also referred as 'Author's Special Rights'.

Key Words: *Berne Convention, Copyright, Moral Rights, Right to Integrity, Right to paternity*

INTRODUCTION

Creativity and intelligence are traits present in every human. Some fine tune these traits to create works which keep such individuals' immortal through their creations. It is this achievement of immortality via one's creations which makes a human strive to improve and keep fine tuning these skills and also pass them on to their next generations. This is how any and every Intellectual Property develops. It is pertinent to note that at the core of this development lies the motivation of keeping ones' name alive even after death. It is this motivation which needs to be nurtured and protected. Intellectual property in its various forms has led to the development of society and has also contributed to the growth of nations. Of all the intellectual properties, copyright protection is granted to literary and aesthetic works. Copyright bestows upon a right-holder, a bundle of rights which he can exercise for a specified period of time as per the law of the land. A creator of a work generates a special bond for his creation. The feeling of ownership over one's creation and being attached to his work is an inalienable right of a creator. Ownership in the use and exploitation of Copyright and ownership in the creation of a work, are indeed two different concepts which can never overlap. The first one being pecuniary in nature and second being non-pecuniary. Perhaps the Copyright Laws do not adequately address towards protection of non-pecuniary rights of creators. These non-pecuniary rights termed as moral rights, are the rights which grant immortality to the name of the creator. Hence the protection of these rights must assume a lot of importance. Also, creators are confronted with Moral Rights issue even when their works are adapted or translated.¹

The term 'Moral' can be differentiated with 'Economic' as they aim towards separate rights. Economic rights can be alienated! Further Moral Rights ensure respect of author's work. Certain legal systems provide moral rights protection to authors similar in strength to the set of economic rights like France. In contrast, American copyright law rewards economic incentives almost exclusively and lacks adequate moral rights protections.²

MORAL RIGHTS: MEANING AND TYPES

The term 'Moral' includes within itself a wide variety of conduct which is righteous, virtuous, honourable and anything which can be included within the framework of right behaviour depicting the principles of right and

¹ Mira T SundaraRajan, "Moral Rights in Developing Countries: The example of India Part I" Volume 8, JIPR, 357-374 (2003)

² Roberta Rosenthal Kwall, *The Soul of Creativity: Forging a Moral Rights Law for the United States*, (Stanford Law Books, California, 2010). This is the first book on Moral Rights in America's Copyright Law. The Author throughout argues the adequacy of Moral Rights protection in USA.



wrong. They are also referred to as Author's Special Rights. There has been no legal definition of Moral as it can never be kept in a water-tight compartment. An act whether it is moral or not also is dependent on variables like culture, custom and the ever-changing conduct of the society. It changes with time too! The term Moral Rights mean certain rights which the Author or Creator has been bestowed with within the legal structure of Copyright scheme. They are defined as a bundle of personal rights given to creators or subjects of certain types of work, namely literary, dramatic, musical, film or artistic works. However, the difficulty is that it can never be legally defined. The Civil Law jurisdictions, the pioneer for the conceptualisation of Moral Rights,³ as under:

1. **Right to Attribution:** It is also known as Right to Authorship or Right to Paternity. It allows the Author or Creator to be credited to his work and identifies the Author. It includes the right to keep one's work as anonymous or pseudonymous. It was for the first that Michelangelo secretly carved his name in his statue so that his boss doesn't claim the work, the right was exercised. Right to attribution also includes Right against false attribution, although the same has not been specified in certain jurisdictions like India. However, remedies are available on infringement of the said right.
2. **Right to integrity:** This right is basically used to control the form of the work. It helps the author to control destruction, manipulation, modification or any type of derogatory treatment to the work. Any act which harms the reputation or honour of an Author can be controlled with the help of right to integrity which is usually called as derogatory treatment. It is known as Right to object Derogatory Treatment to the work.
3. **Right to Disclosure or Divulagation:** It literally means right to publication. A creator has the right to decide as to when his work should get public or communicated or reviewed by people.⁴ He can decide when his work will get completed. This right is important to assert that the creator is the only person who can decide completion of his work. French Law goes a step further by recognising the right to include how the work be disclosed to public.
4. **Right of withdrawal:** On the lines of Right to Divulagation lies the right to withdrawal. This right allows the Author or creator to withdraw his work from public or from being sold or from creation of additional copies. This right can be exercised when the creator feels that his work has lost its importance or due to change in circumstances, it is relevant to withdraw the work. French Law permits reconsideration of the work by the creator which includes modification as well.
5. **The right to privacy of certain photographs and films:** This right is legislated only in the UK. This right enables someone who has commissioned a photograph or film for private and domestic purposes to prevent it from being made available or exhibited to the public. For example, this would allow you to prevent a photographer from putting your wedding photographs on their website without your permission.⁵ This right to privacy is enforceable by the commissioner of the work and not the subjects of it

MORAL RIGHTS: ORIGIN AND DEVELOPMENT

As opposed to Utilitarianism, which signifies maximum benefits to the creator on one hand and society on the other, the philosophical basis of Moral Rights is found within the Personality Theory. The development of Personality theory is loosely found in the writings of Immanuel Kant and Georg Wilhelm Friedrich Hegel. The Hegelian theory of intellectual property is also referred to as the Personality Theory. According to him, "an idea belongs to its creator because the idea is the manifestation of the creator's personality or self". Further, Kant believes that property supports a maximal "range of freedom". Freedom is enabled by property because it

³ Also see Robert C. Bird and Lucille M. Ponte, "Protecting Moral Rights in The United States and The United Kingdom: Challenges and Opportunities Under The U.K.'S New Performances Regulations", Vol. 24, *Boston University International Law Journal*, 213-282 (2007)

⁴ For detailed analysis of the Right of the creator to decide the completeness of his work, refer, Raymond Sarraute, "Current Theory on the Moral Right of Authors and Artists under French Law" Vol. 16 No. 4, *The American Journal of Comparative Law*, 465-486 (1968)

⁵ Section 85 of UK's Copyright Design and Patent Act, 1988



allows individuals “to carry out projects in the world”. Property rights are the best way to help individuals achieve the full degree of freedom possible to them.

In the Hegelian account, the importance of one’s personality and the expression of selfhood in things necessitates property rights. The importance of individual autonomy and the human need to carry out self-motivated projects makes up the Kantian argument.⁶Hence, the writings of Kant and Hegel supported the notion that private property rights are of paramount importance if they promote self-expression and human development. Moreover, Hegel discussed the dualistic approach to intellectual property as comprised of both moral and economic rights.⁷

The credit for the legal recognition to Moral Rights can be given to the Civil Law Countries like France and Germany. Whereas, the Common Law Countries gave more importance to the Monistic doctrine in Intellectual Property by focusing only on the Economic gains to be derived out of the said property and hence were reluctant to include the Moral Rights framework in their legislations till they were pressurized by the International Organisations.

The French and German Copyright regime seems to be highly convincing of the Hegelian and Kantian Theories as having optimum protection to moral rights of creators. The development of the concept of Moral rights can be considered to have its origin during the period of European Romanticism which originated in Europe during the end of the 18th Century and extended up to the mid of the 19th Century.⁸The French see art and literature as the epitome of their society and have given utmost importance and prominence to the ART itself, rather than making art as a tool for economic gains.

The recognition of Moral Rights into legislative texts has been a gradual and a later development. The jurisprudence of conceptualisation of Moral Rights was the product of judicial decision making when the courts were made to decide issues relating to cultural role of authors and adoration of an artist. The legal protection of moral rights developed as a result of social concerns about ethics and justice.

The first case on Moral Rights as per Calvin D. Peeler was decided in 1826 where private rights of an author were recognised.⁹Whereas many other Authors have specified the 1828 decision of the Paris Court on droit de divulgation as the first case on Moral Rights.¹⁰The case decided by the French Court in 1828, declared the Right to disclosure in the case of Widow Vergne v. Creditors of Widow Vergne.¹¹A music Composer in this case performed his work in a Competition and died before its publication. The creditor of the deceased sued and claimed the composition as a part payment to his debt. The Court denied seizure of the unpublished manuscript

⁶ Michael A.Kanning, *A Philosophical Analysis of Intellectual Property: In Defense of Instrumentalism* (2012). Graduate Theses and Dissertations. [Http://Scholarcommons.usf.edu/etd/4094](http://scholarcommons.usf.edu/etd/4094); Also see Peter Drahos, *A Philosophy of Intellectual Property*, Dartmouth Publishing Co. Ltd., England, 2001; Australian National University, 1955; Alen Patten, “Hegel's Justification of Private Property”, Vol. 16, No. 4, *History of Political Thought*, 576-600(1995); Also see Lior Zemer, “Moral Rights: Limited Edition”, Vol. 91 *Boston University Law Review*, 1519; Also see Jeanne L. Schroeder, “Unnatural Rights: Hegel and Intellectual Property”, Vol. 60 *University of Miami Law Review*, 453 (2006); Benjamin N. Cardozo School of Law- Jacob Burns Institute for Advanced Legal Studies, 2004, Working Paper No. 80; Also see Robert C. Bird and Lucille M. Ponte, “Protecting Moral Rights in The United States And The United Kingdom: Challenges And Opportunities Under The U.K.’S New Performances Regulations” Vol. 24, *Boston University International Law Journal*, 213-282 (2007)

⁷ Robert C. Bird and Lucille M. Ponte, “Protecting Moral Rights in The United States and The United Kingdom: Challenges and Opportunities Under The U.K.’S New Performances Regulations”, Vol. 24, *Boston University International Law Journal*, 213-282(2007)

⁸ Mira T. SundaraRajan, “Moral Rights and the Protection of Cultural Heritage: Amar Nath Sehgal v. Union of India,” Vol 10, No. 1, *International Journal of Cultural Property*, 79 (2001)

⁹ Calvin D. Peeler, “From the Providence of Kings to Copyrighted Things (And French Moral Rights)” Vol. 9 No. 2, *Indiana International and Comparative Law Review*(1999)

¹⁰ Andre Bertrand, “LE DROIT D’AUTEUR ET LES DROITS VOISINS” 219 (1991) as cited in *ibid.*; See Robert C. Bird And Lucille M. Ponte, “Protecting Moral Rights In The United States And The United Kingdom: Challenges And Opportunities Under The U.K.’S New Performances Regulations” Vol. 24, *Boston University International Law Journal*, 213-282(2007)

¹¹ Cour D’appel [Ca] [Regional Court of Appeal] Paris, Le Ch., Jan. 11, 1828, S. Jur. II 1828



before its publication. Further, in a contract between James McNeill Whistler and Lord Eden, the Court upheld the same right and allowed refusal of delivery of portrait of Lady Eden.¹²

In 1836, the Right to Attribution was declared by the French Court in a dispute between a composer and a director of musical concerts in the case *Masson de Puitneuf v. Musard*. The Court found that the composer had the legal right to require that his name be used because, otherwise, there might be damage to his reputation. Similarly, the court in *Vergniaud*¹³ also decided that the law required there be no name added to or substituted for that of the authors, protecting the right of paternity.

The Right to integrity was first recognized in 1845 by the trial Court of Paris in *Marquam v. Lehuby*, when it blocked a publisher from altering an author's work, even though the author, Marquam, had sold all of his legal rights in that work to that publisher. The publisher in this case attempted to cut down some 40-50 pages of the book to make it marketable and was restrained on the ground of integrity.

Indeed, in the French Code de la Propriété Intellectuelle ('CPI'), moral rights are codified even before economic rights. Article L121-1 CPI protects five moral rights: attribution, integrity, disclosure or first publication, withdrawal, and a right against abusive criticism. Two fundamental characteristics apply to these rights in France: inalienability and perpetual protection. These mean that an author cannot waive or assign his moral rights, which are 'perpetual, inalienable and imprescriptible' and 'transmitted mortis causa to the heirs of the author' (Article L121-1).¹⁴

MORAL RIGHTS: INTERNATIONAL FRAMEWORK

The Dualistic approach of the Civil Law Countries by providing Economic and Non-Economic rights to the Authors and Creators got international recognition in the treaties as well. The inclusion of Moral Rights provision in International Conventions on Copyright obligated the Members to provide minimum protection to Moral Rights in their respective legislations.

The Human Rights perspective of Moral Rights is found in Article 27(2) of the Universal Declaration of Human Rights, 1948 which provides protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.¹⁵ Although the recognition of Moral Rights in these Human Rights instruments is not in specific terms, but it broadly envisages protection to moral interests from such properties of which he is the author. It can be said that the human rights perspective of moral rights is established by these provisions and they have a human right to moral interests in their intellectual properties.

Much before the Human Rights were documented in form of Conventions at the International level, the movement for protection of Intellectual Property at the International level had begun. The middle of the nineteenth century saw significant breakthroughs for a uniform protection of IP rights across national boundaries. This was also needed due to rise in international trade amongst States. The failure of the International Exhibition in 1873 at Vienna led to the formation of a Paris Convention for the protection of Industrial Property in 1883. Followed by Paris Convention was the Berne Convention for the protection of Literary and Artistic Works, 1886. Before these treaties were finalised, there were bilateral arrangements amongst States, but these treaties brought uniformity amongst Member States by laying basic principles in the form of minimum standards. With only eight original signatories, the membership of Berne has grown to 177

¹² *Eden C. Whistler*, Ca Paris, 1898 D.P. II 465, Aff'd 1900 D.P. I 497

¹³ CA Paris, 3e ch., Jan. 12, 1848, D.P. II, 1848 as cited in Calvin D. Peeler, "From the Providence of Kings to Copyrighted Things (And French Moral Rights)", Vol. 9 No.2, *Indiana International and Comparative Law Review*, (1999)

¹⁴ Iona Harding And Emily Sweetland, "Moral Rights in The Modern World: Is It Time for A Change?" Vol. 7 Issue 8, *Journal of Intellectual Property Law & Practice*, (2012); Also see Lior Zemer, "Moral Rights: Limited Edition", Vol. 91 *Boston University Law Review*, Robert C. Bird and Lucille M. Ponte, "Protecting Moral Rights In The United States And The United Kingdom: Challenges And Opportunities Under The U.K.'S New Performances Regulations", Vol. 24, *Boston University International Law Journal*, 213-282 (2007)

¹⁵ Article 15(c) of International Covenant on Economic, Social and Cultural Rights, 1966 is in parimateria with the said Article.



Contracting parties.¹⁶This depicts the importance of Berne Convention even in the post-WTO Era. The WTO-TRIPS Agreement is a 'Berne Plus' model for Copyrights. In fact, TRIPS does not mandate fulfilment of certain provisions of Berne Convention by the Member Nations.

Berne Convention has through the times subjected to revisions¹⁷; at times it has been diluted to the wishes of developed nations. With a need to substantiate the regime of Moral Rights in the International framework, the Berne Convention included Article 6bis in its 1928 revision. The original Article 6bis was further amended in 1979 to attract non-members.

Some countries which did not believe in the concept of Moral Rights were reluctant to join Berne Convention. For them, it was only the Utilitarian principle which was the basis of exploitation of Copyright. Moral rights grew out of the civil law tradition employed in much of the world. Civil law countries emphasize an ultimate goal of protecting an author's rights in his work. The U.S., on the other hand, views copyright as a tool to maximize creative output by balancing authors' rights with the public's right of access, resulting in a more flexible approach to protection.¹⁸For e.g. United States gave it accession to Berne Convention in 1988, and brought its law named Visual Artist Rights Act in 1990 with a main objective to grant protection to moral rights. Although US was wanting to become member of International forum on Copyright but did not sign Berne Convention as it thought that it has provisions favouring European nations. Hence a new treaty was formulated for countries that did not want to enter into Berne Convention. The Universal Copyright Convention, 1952 was adopted under the aegis of UNESCO with a view to extend international copyright protection universally. The Convention nowhere provided for the protection to Moral Rights, hence it was accepted by Nations seeking flexible Copyright protections. However, with the WTO's TRIPS Agreement and increased membership of Berne Convention¹⁹, the UCC has lost its significance.

Article 6bis of Berne Convention which was originally introduced in 1928²⁰ with the Rome Revision was amended in 1979²¹, with an objective to open its ambit to wider protection of Moral Rights. The shift from 'Author's Copyright' to 'Author's Economic Rights' in Article 6bis indicates that Moral Rights protection has become extensive enough to include any kind of economic right that the Author transfers by way of transfer

¹⁶ www.wipo.int visited on 18th April 2019

¹⁷ For detailed information on Berne Convention see Guide to Berne Convention for the Protection of Literary and Artistic Works, WIPO Publication No. 615(E)

¹⁸ Sutherland Asbill & Brennan LLP., Berne Convention Basics (2004)

¹⁹ Total Contracting parties to Berne Convention as on April 2019 is 177 retrieved from www.wipo.int, visited on 18th April 2019

²⁰ Article 6bis as originally introduced in Berne Convention reads as-

(1) Independently of the author's copyright, and even after transfer of the said copyright, the author shall have the right to claim authorship of the work, as well as the right to object to any distortion, mutilation or other modification of the said work which would be prejudicial to his honour or reputation.

(2) The determination of the conditions under which these rights shall be exercised is reserved for the national legislation of the countries of the Union. The means of redress for safeguarding these rights shall be regulated by the legislation of the country where protection is claimed.

²¹ (1) Independently of the author's economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honour or reputation.

(2) The rights granted to the author in accordance with the preceding paragraph shall, after his death, be maintained, at least until the expiry of the economic rights, and shall be exercisable by the persons or institutions authorised by the legislation of the country where protection is claimed. However, those countries whose legislation, at the moment of their ratification of or accession to this Act, does not provide for the protection after the death of the author of all the rights set out in the preceding paragraph may provide that some of these rights may, after his death, cease to be maintained.

(3) The means of redress for safeguarding the rights granted by this Article shall be governed by the legislation of the country where protection is claimed."



agreements. Article 6bis provides for two types of Moral Rights protection by the Member Countries, viz. Right to paternity and Right to Integrity. Right to Integrity protection has also been widened with the amended version of Article 6bis with the inclusion of the term 'or any other derogatory action'. Further, the amended Article 6bis also stipulates the term of protection of such rights, subject to exceptions. Overall it requires protection at least up to the term of economic rights.

The Right to divulgation and right to withdrawal have not been included within the framework of 'Moral Rights' under the Berne Convention. However, indirectly they have been protected under various articles of Berne Convention. The probable reason for not having protection of these two rights under Berne Convention may be non-consensus of Member Nations, as already they were reluctant in agreeing with the inclusiveness of Moral Rights.

The World Intellectual Property Organisation (WIPO) established in 1967 took over the administration of treaties which were looked by BIRPI (United International Bureau for the Protection of Industrial, Literary and Artistic Property), Berne Convention being one of such treaties. With WIPO taking care of the administration of Berne Convention, the membership and the ambit of activities relating to Copyright protection has grown in leaps and bounds. WIPO has not restricted its actions only to Berne but has also extended to Copyright protection needed with the changes in technology. The International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, 1961 popularly known as the Rome Convention; was signed with the invention of tape recorders which made copying easy. The first ever treaty for performers and producers of phonograms, however, does not provide protection for Moral Rights. The protection remained in vacuum till the WIPO Internet Treaties were enacted.

The two Internet treaties, WIPO Copyright Treaty (WCT) and WIPO Performances and Phonogram Treaties (WPPT) were adopted by the WIPO Diplomatic Conference on Certain Copyright and Neighbouring Rights Questions took place in Geneva from December 2 to 20, 1996. The objective of these Internet Treaties was to mark and extend copyright protection to important new technological developments that took place including reprography, video technology, compact cassette systems facilitating "home taping," satellite broadcasting, cable television, the increase of the importance of computer programs, computer-generated works and electronic databases, etc.²²

The importance of these treaties grew even in the post-TRIPS regime as the TRIPS agreement did not respond to all challenges posed by the new technologies, and, whereas, if properly interpreted, it has broad application to many of the issues raised by the spectacular growth of the use of digital technology, particularly through the Internet, it did not specifically address some of those issues.²³

WCT, in its Article 1 provides that the Treaty is a special agreement within the meaning of Article 20 of Berne Convention, whereas Article 1 of WPPT provides that this Treaty shall not derogate from existing obligations that Contracting Parties have to each other under the Rome Convention. Hence both the Treaties are supplementary to the other existing treaties on copyright. WCT does not provide for a separate Moral Rights protection as Article 6bis of Berne Convention sufficiently provides for the same. Article 1(4) of WCT provides that Contracting Parties shall comply with Articles 1 to 21 of Berne Convention and the Appendix of the Berne Convention.

WPPT provides Moral Right protection to Performers on similar terms²⁴ as that of Article 6bis. Further, WPPT

²²International Bureau of WIPO: *The WIPO Copyright Treaty (WCT) And The WIPO Performances and Phonograms Treaty (WPPT)*

²³Ibid.

²⁴ Moral Rights of Performers (1) Independently of a performer's economic rights, and even after the transfer of those rights, the performer shall, as regards his live aural performances or performances fixed in phonograms, have the right to claim to be identified as the performer of his performances, except where omission is dictated by the manner of the use of the performance, and to object to any distortion, mutilation or other modification of his performances that would be prejudicial to his reputation.

(2) The rights granted to a performer in accordance with paragraph (1) shall, after his death, be maintained, at least until the expiry of the economic rights, and shall be exercisable by the persons or institutions authorized by the legislation of the



has reshaped the protection granted to performers and producers of phonograms by providing International recognition to Moral Rights for the first time.

To regulate copyright for Audio-visual performances, The Beijing Treaty on Audio-visual Performances in 2012. The Treaty which again is not in derogation with other existing treaties, deals with the IPRs of performers in Audio-visual Performances and provides specific protection to Moral Rights under its Article 5²⁵ apart from other economic rights.

A major twist in the Moral Rights regime is its non-existential place in the TRIPS Agreement. Although TRIPS Agreement in its Article 2 provides non-derogation from existing IPR Treaties, Moral Rights has been an exception. Article 9 of the Agreement which provides for its relationship with Berne Convention requires that Members shall have to 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 6bis of that Convention or of the rights derived therefrom.

Discussions on inclusion of Moral Rights during the Uruguay Round and consequentially its non-inclusiveness, once again established the dominance being enjoyed by the Common Law Countries, especially United States. (Doyle S J 1994)²⁶ After having signed the Berne Convention, US did enact Visual Artists Rights Act, 1990 (VARA) but the extension of moral rights protections seems to be vague so far as all categories of creators are concerned with copyrights.²⁷ Also VARA is inadequately protecting moral rights and does not fulfil the obligations arising out of Berne Convention.²⁸ US always premised its Copyright protection to economic benefits. It viewed personal incentives to be incompatible with economic agreement that was meant to facilitate trade.²⁹

Another reason for non-inclusiveness of Moral Rights into TRIPS Agreement was that the objective of WTO is to facilitate Trade and IPRs are considered to be equivalent to goods and services being traded. Economic

Contracting Party where protection is claimed. However, those Contracting Parties whose legislation, at the moment of their ratification of or accession to this Treaty, does not provide for protection after the death of the performer of all rights set out in the preceding paragraph may provide that some of these rights will, after his death, cease to be maintained.

(3) The means of redress for safeguarding the rights granted under this Article shall be governed by the legislation of the Contracting Party where protection is claimed.

²⁵(1) Independently of a performer's economic rights, and even after the transfer of those rights, the performer shall, as regards his live performances or performances fixed in audio-visual fixations, have the right: (i) to claim to be identified as the performer of his performances, except where omission is dictated by the manner of the use of the performance; and (ii) to object to any distortion, mutilation or other modification of his performances that would be prejudicial to his reputation, taking due account of the nature of audio-visual fixations. (2) The rights granted to a performer in accordance with paragraph (1) shall, after his death, be maintained, at least until the expiry of the economic rights, and shall be exercisable by the persons or institutions authorized by the legislation of the Contracting Party where protection is claimed. However, those Contracting Parties whose legislation, at the moment of their ratification of or accession to this Treaty, does not provide for protection after the death of the performer of all rights set out in the preceding paragraph may provide that some of these rights will, after his death, cease to be maintained. (3) The means of redress for safeguarding the rights granted under this Article shall be governed by the legislation of the Contracting Party where protection is claimed.

²⁶Holderness M, "Moral Rights and Authors' Rights: The Keys to the Information Age, *The Journal of Information, Law and Technology*, (1998)

²⁷ Elizabeth Schéré, "Where is the Morality? Moral Rights in International Intellectual Property and Trade Law", Volume 41, Issue 3, *Fordham International Law Journal* (2018); Also see Frances Lennard, "The impact of artists' moral rights legislation on conservation practice in the United Kingdom and beyond", Vol. 1, ICOM Committee for Conservation (2005); Also see Roberta Rosenthal Kwall, *The Soul of Creativity: Forging a Moral Rights Law for the United States*, (Stanford Law Books, California, 2010), she claims legislation regulating moral rights in the United States "not only is poorly drafted, but also reflects questionable and seemingly inexplicable choices.

²⁸Lior Zemer, "Moral Rights: Limited Edition", Vol. 91 *Boston University Law Review*, 1519

²⁹ Ibid.



exploitation and the international trade are the genesis of WTO Agreements; which has no standing for philosophical foundations.³⁰

MORAL RIGHTS: INDIAN PERSPECTIVE

The first modern legislation on Copyright in India was enacted in the year 1914 which was based on the British Copyright Act, 1911 which has no mention about Author's Special Rights Viz. Moral Rights. The Copyright Act, 1957 replaced the 1914 Act and provided a comprehensive, independent and a self-contained law on Copyright. It also provided for Author's Special Rights under Section 57³¹, which has been amended twice i.e. in 1994 and 2012. The first amendment of Section 57³² by Act 38 of 1994 actually narrowed down the application of Moral Rights by adding the words "or other act in relation to the said work which is done before the expiration of the term of copyright". It means the original Section 57 did not provide for any specific term of claiming Author's Special Rights. Conversely, the 2012 amendment to Section 57³³ has reiterated the original Section 57 with regards to the term of copyright.

Further, the original Section 57 had the words 'prejudicial to his honour or reputation' found place in sub clause (b) of sub section (1) of section 57. Legislature thought that the existing provisions, whereby even distortion, mutilation and modification of the work which are not prejudicial to the author's honour or reputation would violate the author's special rights may have anomalous unintended consequences and were, incidentally, in

³⁰Arathi Ashok, "Moral Rights – TRIPS and Beyond: The Indian Slant", *Journal, Copyright Society of the U.S.A.*, 697-709 (2013)

³¹ Original Section 57 of Copyright Act, 1957: Author's special rights. —

1. Independently of the author's copyright, and even after the assignment either wholly or partially of the said copyright, the author of a work shall have the right to claim authorship of the work as well as the right to restrain, or claim damages in respect of,-

(a) any distortion, mutilation or other modification of the said work; or

(b) any other action in relation to the said work which would be prejudicial to his honour or reputation.

(2) The right conferred upon an author of a work by sub-section (1), other than the right to claim authorship of the work, may be exercised by the legal representatives of the author

³² 57. Author's special rights. —

1 [(1) Independently of the author's copyright and even after the assignment either wholly or partially of the said copyright, the author of a work shall have the right—

(a) to claim authorship of the work; and

(b) to restrain or claim damages in respect of any distortion, mutilation, modification or other act in relation to the said work which is done before the expiration of the term of copyright if such distortion, mutilation, modification or other act would be prejudicial to his honour or reputation:

Provided that the author shall not have any right to restrain or claim damages in respect of any adaptation of a computer programme to which clause (aa) of sub-section (1) of section 52 applies.

Explanation. — Failure to display a work or to display it to the satisfaction of the author shall not be deemed to be an infringement of the rights conferred by this section.]

(2) The right conferred upon an author of a work by sub-section (1), other than the right to claim authorship of the work, may be exercised by the legal representatives of the author

³³ 57. Author's special rights. —

1 [(1) Independently of the author's copyright and even after the assignment either wholly or partially of the said copyright, the author of a work shall have the right—

(a) to claim authorship of the work; and

(b) to restrain or claim damages in respect of any distortion, mutilation, modification or other act in relation to the said work 2 [***] if such distortion, mutilation, modification or other act would be prejudicial to his honour or reputation:

Provided that the author shall not have any right to restrain or claim damages in respect of any adaptation of a computer programme to which clause (aa) of sub-section (1) of section 52 applies.

Explanation. — Failure to display a work or to display it to the satisfaction of the author shall not be deemed to be an infringement of the rights conferred by this section.]

(2) The right conferred upon an author of a work by sub-section (1), 3 [***], may be exercised by the legal representatives of the author.



excess of the requirement of Berne Convention.³⁴ Hence the 1994 amendment clubbed clauses (a) and (b) to be applied only when the honour or reputation of the Author is in question, bringing it in conformity with the Berne Convention.

It has to be noted that as originally enacted, Section 57 of the Copyright Act, 1957 was very widely worded because of the fact that the words "would be prejudicial to his honour or reputation" which found mention in sub Clause (b) of sub Section (1) of Section 57 were not qualifying sub Clause (a) of sub Section (1) of Section 57. Further, the words "any other action" which found mention in sub Clause (b) implied that the action could be other than a claim for damages or a claim for injunction. Post amendment, as the section stands effective from 10.5.1995, the legislature has restricted the right of the author to claim damages or to seek an order of restrain. Further, proof of prejudice to the author's honour or reputation has been made the sine qua non for claiming damages.

To reiterate, it can be said that the importance of these rights stem from the basic idea that a person's right towards his credentials associated with his creation should never cease. Therefore Section 57 of the Act specifically provides "Independently of the author's copyright and even after the assignment either wholly or partially of the said copyright, the author of a work shall have the right.....". This implies that even after assignment of a copyright the Author's right continues over his creation to the extent of claiming his authorship or creation and also to preserve and protect his honour and reputation such that such a work is not mutilated in any manner whatsoever.

However, the question of the life of such right crops up while discussing this issue. Under the Act of 1957, Section 57 (1) starts with the words "Independently of the author's copyright....." whereas S. 57(1)(b) (before 2012 amendment) read as "to restrain or claim damages in respect of any distortion, mutilation, modification or other act in relation to the said work which is done before the expiration of the term of copyright if.....". Upon reading Section 57(1), it can be interpreted that the term of a moral right is independent of the term of the copyright. Whereas clause (b) as above led to the understanding that the life/term of any moral right associated with a copyright will continue till the term of the copyright itself. Thereby, effectively speaking any creation/work, if mutilated in any manner after the expiry of the copyright, the creator could not have initiated any action for preservation or protection of his name and honour. In other words, his claim towards authorship as under subsection (1)(a) would be lost once the term of copyright got over. This was creating a confusion regarding the exact term of the moral rights. This was not exactly what would have been the intention of the legislators therefore in the 2012 amendment to the Act, the words "which is done before the expiration of the term of copyright" were omitted. This amendment by omitting these specific words opens up a wholly new understanding of the section by removing the anomaly existing before. Now the interpretation of the section can be that the term of moral rights will remain independent of the term of the copyright which goes in conjunction with the initial words of the section.

Further the deletion of the words "other than the right to claim authorship of the work" in Section 57(2) clearly indicates that both Moral Rights or Author's Special Rights are perennial in nature and can be exercised by the legal representatives of the Author.

Section 57 clearly overrides the terms of the contract of assignment of the copyright. The contract of assignment would be read subject to the provisions of section 57 and the terms of contract cannot negate the special rights and remedies guaranteed by section 57. The assignee of a copyright cannot claim any rights or immunities based on the contract, which are inconsistent with the provisions of section 57.³⁵ Also Section 57 provides a remedy for plagiarism which is increasing with the advent of internet.

The first recognition to Performer's Rights in the international platform was given through the Rome Convention 1961. The regime of Performers' Rights developed much later with the development of technologies for recording and broadcasting their performances in public.³⁶

Although, the 1994 amendment introduced the concept of Performers' Rights for the first time, it did not

³⁴ *Amarnath Sehgal v. Union of India*, 117 (2005) DLT 717, 2005 (30) PTC 253 Del

³⁵ *Mannu Bhandari v. Kala Vikas Pvt. Ltd.*, AIR 1987 Delhi 13

³⁶ International Federation of Actors, "The Moral Rights of Performers: The Current Situation 2013"



provide for Moral Rights of Performers until 2012.³⁷The 2012 Amendment inserted Section 38B for protecting Moral Rights on similar terms as that of Section 57. However, it is absolutely silent on the part of life of Moral Rights of performers.

The Judicial Review on Moral Rights is scanty in India, however, the Courts while deciding the issues of Moral Rights have exponentially developed the jurisprudence of Moral Rights in India.

*Amarnath Sehgal v. Union of India*³⁸ is a landmark case that involved the removal of the bronze mural sculpture, which was placed in VigyanBhavan, New Delhi and created by internationally renowned artist Shri Amarnath Sehgal. The mural was pulled down and consigned to the storeroom in 1979 without the permission, consent or authorization of the plaintiff. Plaintiff considered the mural to be an important part of India's cultural heritage and wrote to the Government. In reply, the plaintiff was shown sympathy and requested not to go to the Court on an assurance to deal with the work fairly. However, no positive action was taken by the Government, which led the plaintiff to take shelter of Section 57 praying permanent injunction to restrain the defendants from further distorting, mutilating or damaging the plaintiff's mural, damages and delivering up the mural. In 1992, an interim order was passed by Justice Jaspal Singh restraining the defendants from causing any further loss and injury to the plaintiff's mural and from doing anything as is prejudicial to his honour or reputation as the author of the work.

The Court pointed different Moral Rights of the Creator as Paternity Right, right to disseminate his work i.e. the 'divulgarion or dissemination right, right to maintain purity in the work i.e. integrity, right to withdraw from publication ones work i.e.retraction. The Court observed that Except for the 'divulgarion or dissemination right' which perhaps is guided by commercial considerations, the other three rights originate from the fact that the creative individual is uniquely invested with the power and mystique of original genius, creating a privileged relationship between a creative author and his work.....could be captioned under the banner "The Authors Moral Rights".

The Court observed that "language of Section 57 does not exclude the right of integrity in relation to cultural heritage. The cultural heritage would include the artist whose creativity and ingenuity is amongst the valuable cultural resources of a nation. Through the telescope of section 57 it is possible to legally protect the cultural heritage of India through the moral rights of the artist."

The Court referred to various International Conventions and Declarations, and pointed that there is an urgent need to interpret Section 57 of the Copyright Act, 1957 in its wider amplitude to include destruction of a work of art, being the extreme form of mutilation, since by reducing the volume of the authors creative corpus it affects his reputation prejudicially as being actionable under said section. Further, in relation to the work of an author, subject to the work attaining the status of a modern national treasure, the right would include an action to protect the integrity of the work in relation to the cultural heritage of the nation. It was further held that the defendants have not only violated the plaintiff's moral right of integrity in the mural but have also violated the integrity of the work in relation to the cultural heritage of the nation.

Justice Nandrajog decided the case in favour of plaintiff opined that the mural, whatever be its form today is too precious to be reduced to scrap and languish in the warehouse of the Government of India. It is only the plaintiff who has a right to recreate his work and, therefore, has a right to receive that the broken down mural. Plaintiff also has a right to be compensated for loss of reputation, honour and mental injury due to the offending acts of the defendants.

In view of the ongoing tussle between Amarnath Sehgal and the Government of India, the 1994 amendment included an explanation stating that "Failure to display a work or to display it to the satisfaction of the author shall not be deemed to be an infringement of the rights conferred by this section."³⁹ This was inserted in order to save the Government's stand against Amarnath Sehgal. Berne Convention does not provide for any such provision under Article 6bis.

³⁷ The U.K. took the first tentative steps toward the protection of moral rights in music through the adoption of The Performances (Moral Rights, etc.) Regulations 2006

³⁸ 117 (2005) DLT 717

³⁹ Mira T. SundaraRajan, "Moral Rights and the Protection of Cultural Heritage: Amar Nath Sehgal v. Union of India", Vol 10, No. 1 *International Journal of Cultural Property*, 79- 94(2001)



Another significant case on Moral Rights is Mannu Bhandari v. Kala Vikas Pictures Ltd.⁴⁰ which involved the issue of screening of novel written by Mannu Bhandari who is an acclaimed writer by the production house Kala Vikas Pictures Ltd. The Respondent had made certain changes while making the film from the novel 'Aapka Bunty' written by the Appellant and the same was challenged u/s. 57 of Copyright Act, 1957 as distortion to her work. Although the parties could reach to settlement, the judgement became otiose. The Court gave the judgement as no decision of any Court of law was available on the interpretation of Section 57 of the Copyright Act, 1957.

The Court while giving judgement observed, "The hallmark of any culture is excellence of arts and literature. Quality of creative genius of artists and authors determine the maturity and vitality of any culture. Art needs healthy environment and adequate protection. The protection which law offers is thus not the protection of the artist or author alone. Enrichment of culture is of vital interest to each society. Law protects this social interest. Section 57 of the Copyright Act is one such example of legal protection. Section 57 lifts authors' status beyond the material gains of copyright and gives it a special status." The Court also held that Section 57 clearly over-rides the terms of the Contract of assignment of the copyright and terms of contract cannot negate the special rights and remedies guaranteed by Section 57.

The Court held that only "certain modifications" which are necessary for converting the novel into a film version are allowed with the consent of the author. The said 'certain modifications' should also not distort or mutilate the original novel. The Court has, therefore, to balance the artistic treatment of subject by the author and that by the Director.

MORAL RIGHTS: CONCERNS AND CHALLENGES

1. *Enforcement of Article 6bis of Berne Convention:* Berne Convention provides for Rights which are obligatory on the State Parties⁴¹ subject to reservations allowed⁴², hence it is obligatory for the members to provide for protection as per the Convention through their National legislations. The Berne Convention does not specifically provide for enforcement of obligations by the Member nations. Although in its text it is clear that the obligations are binding, there is no mechanism to punish/initiate action against any country which has not fulfilled the minimum standards of Berne. Berne Convention is administered by WIPO which generally does not contain any detailed provisions on dispute settlement between Member Nations. Article 33 of the Berne Convention provides for recourse to International Court of Justice when there is a dispute between two or more Members with respect to interpretation or application of the Convention. However, such recourse has, however, hardly ever occurred. Countries have generally preferred to solve potential disputes bilaterally⁴³ which is also permitted by the same Article. Also, Article 33 provides for reservations from the jurisdiction of ICJ, hence it can be inferred that the enforcement mechanism under the Berne Convention is not obligatory and is not in terms similar with WTO-Dispute Settlement Body.

WTO-DSB can entertain disputes between Members of WTO arising out of TRIPS Agreement. Hence Article 1 to 21 of Berne Convention, if not fulfilled by any Member can be disputed before DSB. However, the non-compliance of Article 6bis of Berne Convention in the TRIPS Agreement⁴⁴, brings Moral Rights framework beyond the purview of WTO-DSB.

2. *Protecting Moral Rights Across Jurisdictions:* The advent of technology and the invention of cyber space has left no boundaries for the use of content available on the internet. This poses a difficulty while protecting Moral Rights of creators. Works available online are threatened for unauthorised usage by anyone

⁴⁰ AIR 1987 Delhi 13

⁴¹ Article 36 of the Berne Convention

⁴² Article 30 of the Berne Convention

⁴³ Mr. Henry Olsson, Judge at the Court of Appeal, and Special Government Adviser, *Overview of The International Protection of Copyright and Neighboring Rights: From the Berne Convention for the Protection of Literary and Artistic Works to the Agreement on Trade-Related Aspects of Intellectual Property Rights (The Trips Agreement)*, (Ministry of Justice, Stockholm, WIPO/CR/KRT/05/1)

⁴⁴ Article 9 of TRIPS Agreement



across the globe, through unlimited copying and translation and adaptation of the same in a creative or destructive manner⁴⁵ which poses challenges in enforcing Moral Rights. Common Law Countries which avoided Moral Rights obligations had to finally surrender due to advent of technology that pressurized Developed Nations like the UK and US to legislate upon Moral Rights.⁴⁶

Undoubtedly, the basic principles of Berne Convention provide for National Treatment Rule and Automatic protection in the member States. Practically it becomes very difficult to protect the Moral Rights when infringed through Cyber Space. Firstly, it may not come to the notice of the creator that his work is infringed beyond the borders; Secondly, even if he gets the information of his work being infringed, he will have to approach the National Courts of the Country where his work has been infringed. This is postulated in the National Treatment Rule, which provides that works originating in one of the member States are to be given the same protection in each of the member States as these grants to works of their own nationals. Practically, it happens to be very difficult for the Creator to travel to the Nation where his right is infringed and file a suit which is subject to the National Laws and Official languages of the countries concerned. Hence it becomes non-feasible and expensive for the creator to protect and avail remedy for the infringement of Moral Rights. The WIPO-Internet treaties have aimed at preventing unauthorized access to and use of creative works on the internet or other digital networks. The treaties provide technological adjuncts to ensure the rights of creators. These are 'anti-circumvention measures' and protection to 'rights information system'.⁴⁷ The problem still persists while seeking cross border remedies!

Another difficulty in protecting Moral Rights across jurisdictions arises as Moral rights are not consistently recognized across the world. Some countries provide for a very strong framework of Moral Rights whereas others although being signatories to Berne Convention have found ways to avoid protection of Moral Rights. As observed above, there is huge difference in providing for a Moral Rights framework between Civil Law and Common Law Countries. Countries which consider recognising Artists' personality have placed Moral Rights on a high pedestal.

Certain legal systems provide moral rights protection to authors similar in strength to the set of economic rights. In contrast, American copyright law rewards economic incentives almost exclusively and lacks adequate moral rights protections.⁴⁸ In US, VARA, which was adopted to meet obligations under the Berne Convention, gives creators of certain works of visual arts limited rights of attribution and integrity. These rights are not transferable but may be waived.

Similarly, the UK provides for waiver of right to integrity by the author in writing, which has made protection to Moral Rights in the UK weaker.⁴⁹ Hence by including the waiver provisions in the Moral Rights provisions, the objective of Berne Convention is vitiated. Discrepancies arise when an author has waived his rights in UK or US, he can nevertheless claim his Moral Rights in countries having no waiver provisions. Also, the UK provides for Assertion of Moral Right to attribution in writing to let others to know that the Author wishes to exercise his rights. If the creator fails to assert his right to paternity, he may be missed to be identified as the creator of such work.

⁴⁵ Ying Zhou, "Moral Rights in the Information Society", Vol. 5, *Beijing Law Review*, 107-113 (2014)

⁴⁶ Robert C. Bird and Lucille M. Ponte, "Protecting Moral Rights in The United States and The United Kingdom: Challenges and Opportunities Under The U.K.'S New Performances Regulations", Vol. 24, *Boston University International Law Journal*, 213-292 (2007)

⁴⁷ https://www.wipo.int/copyright/en/activities/internet_treaties.html

⁴⁸ Roberta Rosenthal Kwall, *The Soul of Creativity: Forging a Moral Rights Law for the United States*, (Stanford Law Books, California, 2010)

⁴⁹ Ibid; Also see Stephanie Wickenden, "Artistic Works and Artists' Rights—Redrawing the law where the Author proposes that contractual terms assigning copyright and waiving moral rights should have no effect unless the terms are individually negotiated in view of increasing Standard form contracts. Also, the author proposes of abolition of Section 78 of CDPA which requires assertion for Moral Rights, available at

https://www.barcouncil.org.uk/media/313944/_46_stephanie_wickenden.pdf; Also see Jonas Brown-Pedersen, "The Inadequacy of UK Moral Rights Protection: A Comparative Study on the Waivability of Rights and Recontextualization of Works in Copyright and Droit D'auteurs Systems" Vol. 3, *LSE Law Review*, 115-128 (2018)



The difficulty arises when a non-UK Author is seeking his Moral Rights protection in UK. Like in India there is no need of any assertion for claiming right to paternity and is granted ipso facto to the creator. What would be the fate of the creator for protection of his work in UK, where assertion is a pre-condition? Vice-versa, a UK creator may not be able to claim his moral rights in UK itself for want of assertion, whereas in other jurisdictions he can!

Although WIPO Arbitration and Mediation Center can be approached for resolution of disputes, due to lack of uniformity in laws protecting Moral Rights, the dispute resolution goes haywire.

3. *Term Of Moral Rights:* Berne Convention obliges the members to protect Moral Rights for a period until the expiry of the economic rights after the death of the creator. It further provides that such rights be exercisable by the persons or institutions authorised by the legislation of the country where protection is claimed. It provides an exception for those countries whose legislation, at the moment of their ratification of or accession to this Act, does not provide for the protection after the death of the author of all the rights set out in the preceding paragraph may provide that some of these rights may, after his death, cease to be maintained.

Due to this reason, the term of protection of Moral Rights varies from country to country. The language of the Berne Convention is open for interpretation granting perpetual moral rights. It is upon the States to legislate on the term of moral rights. The International Federation of Performers conducted a survey and found that among the countries that responded to the FIA questionnaire, only Cameroon, Colombia, Spain, France and Romania guarantee permanent and inalienable moral rights to performers. The right of paternity and integrity in those countries may therefore be exercised long after the death of the performer by their estate. In each case, these are Latin countries or countries strongly influenced by French law.⁵⁰

Duration of moral rights in the UK is generally for the duration of copyright though, in the case of the right to object to false attribution, this is limited to twenty years after the author's death. The integrity and paternity rights last for seventy years post-mortem.⁵¹

Whereas in the U.S., moral rights expire upon the death of the author, in Canada they last 50 years after the author's death. In some countries it would expire on the death of the author like Czech Republic, Japan and Slovakia.

As noted above, in India, moral rights protection has been extended forever with the 2012 amendment, which before was limited in duration.

With respect to performers' moral rights as provided under Section 38B of Copyright Act, 1957, the Indian Law is silent on the term of protection. Specifying term of moral rights is important in context of technological advancement which poses threats for distortions and mutilations. Whereas, the U.K. took the first tentative steps toward the protection of moral rights in music through the adoption of performance regulations that went into effect on February 1, 2006 by enacting The Performances (Moral Rights, etc.) Regulations 2006.

4. *Vagueness Of Terms In Protecting Right To Integrity:* Article 6bis and the legislations of various countries protecting Right to Integrity uses various terms like treatment, mutilation, distortion, alteration, addition, deletion, which are subjected to different interpretations by different courts and creators. There cannot be any rocket science technique to resolve moral rights issues and that makes the enforcement difficult. Honour and reputation also owes different meaning and should not be mixed up to be same.⁵² Many courts, however, have struggled to interpret several provisions of the VARA. One of the major difficulties for the courts has been interpreting whether a work rises to the level of recognized stature to qualify for protection against any destruction.⁵³

⁵⁰International Federation of Actors, "The Moral Rights of Performers: The Current Situation 2013"

⁵¹ Tate Papers, "Digitisation and Conservation: Overview of Copyright and Moral Rights in UK Law" No. 8, available at <https://www.tate.org.uk/research/publications/tate-papers/08/digitisation-and-conservation-overview-of-copyright-and-moral-rights-in-uk-law>, visited on 26 November 2018.

⁵²Cheng - Davies, T. S. L. "Honour in UK Copyright Law is Not 'A Trim Reckoning' – Its Impact on the Integrity Right and the Destruction of Works of Art", 36(2), *Oxford Journal of Legal Studies*, 272-303(2016)

⁵³ Moral Rights, Termination Rights, Resale Royalty, And Copyright Term Hearing before the Subcommittee on Courts, Intellectual Property, and the Internet of the Committee on the Judiciary House of Representatives, One Hundred



On a contradictory note, these terms can also be misused to give rise to unnecessary and unscrupulous claims by the Creator of the work when he starts using these Moral Rights as a pretext to garner extra money from such buyer under threat of litigation. The smallest of addition to a sculpture say for e.g. a crown placed on the head of the sculpture could be used as a pretext to harass the innocent buyer. Hence anomalies arise due to non-definitiveness of the terms which are dependent on subjective and objective interpretations to be decided at the discretion of the Courts.

CONCLUSION

Moral rights being of a special nature having a lot of importance, must be accorded special treatment so that justice is meted out properly. The protection accorded to Moral Rights is not consistent throughout the world as different countries have different laws. Also, Berne Convention has failed in enforcing countries to codify Moral Rights provisions as required.

There are varied challenges as noted above for protection of Moral Rights of creators, WIPO should conduct in depth researches and try to find solution to strengthen the rights.

To conclude, the author believes that Moral Rights must be given prominence and protection accorded to such rights should be at a level field throughout the world to preserve the creativity and its development of human mind and skills.