MORAL RIGHTS IN INDIA: A CALL FOR HOLISTIC REVIEW

*Manu Chaturvedi**

ABSTRACT

This essay has been written with the objective of discerning the legal framework within which moral rights operate within India. To this end, the author begins by delineating various instances and events that chronologically mark the evolution of this concept internationally, as well as within India. While keeping one eye firmly on its conceived purpose, this note reveals that beyond the formal rhetoric of legal systems across the world, moral rights have been dealt with erroneously, inadequately and in distinction with their economic counterparts within the copyright bundle which have received much more careful consideration. By highlighting political biases, regressive policies and stark contradictions, as are plainly obvious from the final texts of initiatives such as the TRIPS Agreement, the author not only seeks to bring evidence of this predicament and reasons thereof, but also underscore its impact on Indian Intellectual Property Law which has evolved simultaneously through legislations, amendments and case law. These are analyzed to the extent they reveal inequitable predispositions at the behest of the Indian legislature and courts which are ostensibly bound by aforementioned international convictions. Recent developments through case law are also discussed with the purpose of identifying and exploring contemporary ways of tackling ambiguities inherited through legislation. Finally, in light of advancing challenges a case for reviewing and reverting back to the holistic and prescient principles embodied within the Berne Convention is made out.

INTRODUCTION

> *"Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author"*[1]

Moral rights were formally developed by French case law during the nineteenth century when personalist doctrines influenced the emerging Author's Rights system.[2] The essential idea underlying these rights is to protect the author beyond his and the society's mere economic interests in the intellectual property; and help secure his artistic and similar non-economic interests. It follows then, that they thrived in author centric regimes rather than utilitarian

* B.A.,LL.B. (Hons.), The West Bengal National University of Juridical Sciences (NUJS), Kolkata

1 Universal Declaration of Human Rights, Article 27(2)

2 Graham Dutfield & Uma Suthersanen, *Global Intellectual Property Law, Edward Elgar Publishing Ltd.,* pg.75 (2008)

copyright regimes where morality was often dealt with some degree of bungling reluctance. But copyright theory too has evolved over time. Present day systems have expanded beyond protection of mere economic interests and begun absorbing traits previously exclusive to author centric systems. Economic factors have ceased to exclusively constitute its core and copyrights have come to be viewed as an accommodating bundle of various rights, with enough space to accommodate varying versions of moral rights as well. Amongst intellectual property regimes across the international community, most narratives of copyright now include a chapter on moral rights. However, as far as the collective drive towards global **standardization of copyright norms** is concerned, a strong discourse on moral aspects remains conspicuously exempt[3]. One hopes that differences in the underlying philosophies amongst the various schools of thought will soon be overcome through a gradual process geared towards creating a unified, holistic and universally agreeable copyright regime in which morality is equally harmonized.

To this end apparently, various international documents have come about. Starting with the Berne Convention in 1886 up until present day, international copyright standards have been developed through the following platforms: the TRIPs/WTO system, the World Intellectual Property Organization (WIPO), and the Copyright Harmonization Directives of the European Union. Unfortunately however, treaties and agreements that have emanated from them have lacked political will and shown inconsistency in their treatment of moral rights Attempts, if any, made by them to develop a watertight narrative of moral rights (grounded in positive law) have mostly failed. It can in fact be shown that in years since the Berne Convention there has been a counter-productive tendency to water down obligations.

Section 1

Moral Rights & International Limbo

Before the onset of a host of regressive literature, authors' moral rights had been eloquently laid out in the Berne Convention for the Protection of Literary and Artistic Works, 1886. Since then, the provisions within have undergone subtle changes and witnessed exponentially savage interpretations to suit developed countries who prefer a loose noose. Nevertheless, article *6bis*(1) of the Berne Convention (1971) provides:

> *"Independently of the author's economic rights, and even after the transfer of said rights, the author shall have the right to claim authorship of the work, and to object to any*

3 AK Agarwal & SS Priyatham, *Moral Rights in Copyright Law,* (2003) 8 SCC (Jour) 3

> *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."*

Hence, a case for moral rights seems to have been made even at nascent stages of formal copyright discourse. They were considered essential to impregnate authors with substantive personal rights over their creations and expressions. In fact, by deciding that they were immutable in the hands of the author it seems that the drafters ventured to lay equal emphasis on moral rights and economic rights and hoped to treat them independently of each other. It was perhaps felt that in order to mould it into at an effective and universally agreeable regime, copyright laws needed to take both, economic and non-economic considerations on board and enforce them with across the board with some degree of authority. But this system required localized support structures in the form of national statutes, guidelines, doctrines and precedents to determine the issue of infringement of moral rights and this was not forthcoming. Faced with an annoyed publishing industry that spanned the globe and national laws that were tailored to national priorities, confusion began soon after as disagreement reined between two blocs of developed territories that were helpless in the face of rivaling cultures and demands- Europe and America. The result was Article 9(1) of the TRIPS Agreement provides:

> *"Members shall comply with Articles 1-21 and the Appendix of the Berne Convention (1971). 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 there from."*

Thus, while on the one hand the Berne Convention and even the Universal Declaration of Human Rights[4] envisaged moral rights, both within or outside the purview of copyright law, the TRIPS agreement, for reasons that can be speculated upon,[5] effectively denuded the importance of the two in one irrational sweep. In a globalised framework, the effect of this exemption clause has been to further distance international dialogue from the ultimate objective of generating consistency across borders. Thus, while in the United States- where

4 Article 27 (2) reads: 'Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author'

5 Supra n.3, Author states reasons as follows: *First*, although most common law countries have adopted the moral rights provision, the tensions between copyright and author's rights system have not disappeared. The persistence of conceptual differences about the appropriate form of copyright law is apparent in the incomplete and unsatisfactory codification of moral rights in the common law system. *Secondly*, the reason for legislation about moral rights has been a degree of concern about their economic effects. Here, the common law countries have been

there is a general reluctance on the part of the entrepreneurial lobby to prioritize dictates of good faith, propriety and fairness over bargaining powers innate to the marketplace- the resultant protection of moral rights has largely been meek; nations like Germany and France have consistently and unquestionably strived for enforce them.[6] To exemplify, while France's regime[7] declares moral rights 'perpetual, inalienable and imprescribtible' (even after the expiry of the term of copyright), in England most moral rights (Except the right against false attribution) expire along with the copyright.[8] USA's copyright laws failed even to recognize any statutory moral rights protection up until 1990. Only with the passing of the "Visual Artists Rights Act" of 1990[9] were they partly recognized with limitations such as unenforceability in case the author is no longer alive.[10]

In recent times therefore, moral rights have not been as troubled with jurisprudential inquisitions at the behest of copyright regimes, which more or less now concur on their inclusion. Emerging literature points to a more intrinsic duality -if not chaos- which has divided copyright regimes across the world depending upon the nature and extent of moral rights they have provisioned for. In other words, countries remain free to extend or curb moral rights in any which way they please despite the formidable labyrinth of international agreements and conventions that are aimed at standardization, precisely because the net effect of such instruments is to enable them to circumvent obligations like that of the Berne Convention. That this is primarily an offshoot of economic and political discourse is quite obvious, but a closer look reveals that this duality persists equally because the state actors breed a deeper disregard towards maintaining jurisprudential discipline and loyalty. To this day, the international community continues with their wanton methods, marked by a generally poor understanding, development and employment of sound models. For example, though Hegel's conceptions of personality and property are quintessential to the discourse of copyrights, their role in contextualizing moral rights continues to be limited to academic investigation and has lacked sound practical application.

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most fearful about the practical consequences of introducing protection for moral rights into systems that traditionally emphasize economic rights. *Finally*, the exclusion of moral rights from international harmonization efforts may have to do with a fundamental incompatibility between the philosophy of moral rights and the commercial thrust of the international copyright regime.

6 Colston, C & Gallaway, J, *Modern Intellectual Property Law*, 3rd Ed, MPG Book Group, 448-450 (2010); Cornish W, Llewlyn D & Aplin T, *Intellectual Property: Patents, Copyrights, Trademarks and Allied Rights*, 7th Ed, Sweet & Maxwell, London, 513 (2010)

7 Article 6, Law of March 11, 1957

8 Colston, C & Gallaway, J, Modern Intellectual Property Law, 3rd Ed, MPG Book Group, 454 (2010)

9 Now encapsulated within Section 106-A of the American Copyright Act of 1976.

10 See generally Daniel Grant, "*Before you cut up that Picasso*….", World Monitor, February, 1992

A conspicuous lack of direction, best represented by the aforementioned international discourse, is an illustration of such an attitude. The fluid ease with which states' switch- are allowed to switch- their loyalty from Hegel's model[11] to Kantian conceptions regarding duality of rights[12] (economic and moral rights in this instance) has fuelled bedlam. Thus while the Berne Convention could be seen as allowing Kant to put his foot in the way of the door of copyright regimes (which have primarily developed along Hegelian Models), TRIPS can be considered regressive inasmuch as it gives signatory states an easy option of showing him out again, or oddly enough: letting him in with an uneasy share of Hegel's pie.

SECTION 2

Indian Scenario: Unique Issues post Amendment

One must analyze the Indian regime while keeping this web of international protocols in mind. Under Indian Copyright Act, moral rights find expression in Section 57. Initially this section was only applicable to literary works, thus leaving authors of other works in a vacuous hole. But in *Mannu Bhandari v. Kala Vikas Pictures*[13] this position was corrected and the amplitude of Section 57 was widened to include works other than literary ones. Also, by affording recourse to authors in cases of complete destruction of their work, Section 57 has arguably been interpreted as granting the moral right of integrity to the author in distinction with the authors repute.[14] That is to say that Indian law has moved beyond or at the very least widened the very scope of an author's

11 Contextually, it is relevant that Hegel saw property as an external tool, a means to the ultimate goal of aiding the personality by enabling the property-holder to exercise subjective freedoms. To him, intellectual property too was yet another form of property and therefore another means to an end. By contrast, Hegel's conception of personality, which gave rise to moral considerations and with which he also sometimes twined inalienability and perpetuity, was irrelevant to intellectual property inasmuch as intellectual property could not be viewed as an end in itself but only as a means (like other property). Logically, he stated that if 'intellectual property' is itself an end in possession of qualities like inalienability, it definitely cannot serve as an object and cannot rightfully be subjected to the regime of property which presupposes alienability. But that is not to say that Hegel completely rejected moral considerations in the sphere of intellectual property. In fact, he would acquiesce to society's decision to do so, if society adopted a positive law of property with respect to *other* objects in the economy. In plain speak, such moral rights could not be blessed with personalist traits such as inalienability or perpetuity but could only subsist or survive at par with other property rights. This is also known as the monistic view of Hegel's Model.

12 By contrast, Kant was of the view that intellectual property sustained an inherent duality between its moral and economic aspects. This coupled with his own personalist persuasions in turn led him to conclude that intellectual property demanded a separate and mutually exclusive sets of economic and moral rights in which the former terminated as per regulation while the latter were inalienable and ever-perpetuating.

13 AIR 1987Del 13

14 In Amarnath Sehgal v Union of India (2005) 30 PTC 253 (Del) complete destruction of a work was included within Section 57(1)(a). Moral rights seek to preserve an author's repute which has traditionally been connected with an existing work and its display thereof to the

reputation to include his sum corpus and gone on to seek protection of intellectual propriety injected by the author into his work even when such a work is incapable of influencing his reputation directly.[15] In many legal systems however, even the Berne Convention's provision have regularly been− interpreted by commentators[16] and other legal instruments[17] to disallow recourse to author's in case of complete destruction as the aforementioned argument pertaining to the extrinsic measure of an author's repute continues to hold good and it has been commonly understood that rights pertaining to non-existent works cannot be said to exist. Having said that, countries like France adhere to regimes which make heavy weather of moral riddance and as stated above, make moral rights perpetual and alienable. The Indian judiciary seems to have concurred with the French in this matter at least.

Further, an issue of equal concern is division amongst different institutions of the Indian legal system itself. For example, courts in India have held the destruction of a work have negative consequences for an author's reputation, at the very least, because it would reduce the overall size, and possibly quality, of his artistic corpus.[18] Yet, the court's contemporary liberalist sentiments cannot be interpreted to conclude that every player of the Indian legal system has supported such calls to widen the amplitude of moral rights. The Indian legislature has in fact consistently worked to erode the scope of widely interpreting Section 57. For instance, up until 1984 Section 57(1)(b) could be interpreted to conclude that moral rights could outlive the term of copyright because the provision did not address this specifically; an amendment of Section 57 in 1984 clarified the legislature's position:

> *(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:*[19]

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public. That is to say that reputation is a relative measure that comes into existence only upon the authors interaction with the public, through his work in this case. Thus, the traditionalist argument would be that in the event of complete destruction as a result of which the work ceases to exist, there can be no qualms raised as to damage to the author's repute visa vis such a work. This was a loosing argument in the instant case.

15 *Ibid.*

16 Cornish W, Llewlyn D & Aplin T, *Intellectual Property: Patents, Copyrights, Trademarks and Allied Rights*, 7th Ed, Sweet & Maxwell, London, 522 (2010)

17 Most noticeably the Paris Treaty, 1971 which creates diplomatic exceptions allowing countries to limit "some" of the moral rights to a lesser period

18 Mira T Sundara Rajan, *Moral Rights in the Public Domain: Copyright Matters in the Works of Indian National Poet C Subramania Bharati*, Singapore Journal of Legal Studies, 161 (2001)

19 Indian Copyright Act, 1957

Realigning the Indian position with the widely popular international law interpretation of the relevant provisions of the Berne Convention, the amendment denuded the right of integrity to the expiration of the term of copyright in the work even where the Berne Convention allows for countries to extend the framework of moral rights well beyond the expiry of the copyright under Article 6(1).[20] Perhaps it is in light of the aforementioned provisions of the TRIPS agreement- that waive the obligation of countries with respect to adhering to this particular provision of the Berne Convention- that the Indian position seems to have developed in such a way. It is submitted that this altered position, though very much in line with interpretations of other states and not in breach of contemporary standards of jurisprudential discipline (since many regimes like Germany, England etc have similar provisions that draw on stable monistic interpretations of the Hegelian model[21] has created a myriad functional irrationalities in the workings of the regime.

Consider an example highlighted by M. Kochupillai in her article on moral rights[22], *a case where "X" a famous musician and poet performs at Siri Fort auditorium (New Delhi) on Jan 1 2000. "Y," a person in the audience records the performance and after the expiry of the 50 year performer's right period, makes the work available to the public. Now presume that "Z", for reasons best known to her, mutilates and distorts the recording in a manner that harms the reputation of X. In these facts and in the light of Section 57, does X not have a right to prevent this mutilation or claim damages (presuming X is still alive)? If X is deceased at the time of the mutilation, don't his successors have a right to seek an injunction and claim damages?*[23]

Further, to illustrate the problem upon which the amendment is grounded consider the following argument which is based purely upon the objectives of copyright law. Intellectual property rights stem from relatively contemporary reinterpretations of traditional property rights. Amongst various techniques of granting these rights that could be used for enforcing this system of owning, trading and disseminating intellectual property, the most common one - which

20 "Independently of the author's economic rights, and even after the transfer of 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."

21 Cornish W, Llewlyn D & Aplin T, *Intellectual Property: Patents, Copyrights, Trademarks and Allied Rights*, 7th Ed, Sweet & Maxwell, London, 512 (2010)

22 Mrinalini Kochupillai, *Moral Rights Under Copyright Laws: A Peep into Policy- Part III*, available online at http://spicyipindia.blogspot.com/2008/01/moral-rights-under-copyright-laws-peep.html

23 *Ibid.*

India follows and the Berne Convention prescribes- is Copyrights. As opposed to the problematic sole authorship systems that tend to hinder innovation and choke dissemination by granting all rights exclusively to the author, copyright systems are much more stable as they work to mutually incentivize the author and the society which enables him. They have flourished generally as the main stay of dynamic intellectual property jurisprudence because they are most likely to adapt and further it's objective: to attain a balance between incentive for innovation, dissemination and private ownership. Ds Ciolino sums up these rights rather eloquently: '*once vested, the bundle of rights known collectively as "the copyright" gives the author the exclusive rights to reproduce, to adapt, to distribute, to perform publicly and to display the copyrighted work"*[24] and might one add, for a limited period of time. It is precisely this "bundle of rights" that lends copyrights a reflexive advantage over other systems. The fact that copyrights are further divided down the economic and moral passages allows for greater room to counter-balance these objectives.

Now given that it is a bundle wherein strands of rights (moral or economic) can exist independently of each other, there is no reason to suggest that a copyright should mandatorily exist as a sum of blanket rights that cease to exist all at once or swell into collective existence. Indeed, exclusive economic rights need trimming for the purposes of balancing dissemination and monopolies that might be created. But moral rights present no such dilemma. They merely seek to preserve the most personal of the *'original author's'* rights and his alone, not of the distributor or the copyright owner. Thus they exclusively and un-intrusively (with respect to knowledge-based utilitarian– objective of dissemination) further that side of objectives which protect personal rights and therefore incentivize the intellectual property regime. This submission, vastly different from the monistic interpretation of the Hegelian model, echoes within Kant's comprehension of the duality of copyrights owing to which he distinguished a real right from a personal one which can never be alienated even if the copyright as a 'whole' is transferred[25] (The Berne convention, Artcle 6*bis*, draws from this Kantian thought). This is not surprising given the strong assumptions under any legal system with regard to protecting basic rights of reputation and expression of any individual. Indeed, it has even been argued that moral rights possess as much under copyright law (in theory again) as do fundamental rights in the constitutional sphere.[26]

24 DS Ciolino, *Why Copyrights are not Community Property*, Louisiana La Review 127, 133 (1999)

25 Lior Zemer, The Idea of Authorship in Copyright, Ashgate Publishing Ltd, pg. 61 (2007)

26 M. Kochupillai, *Moral Rights Under Copyright Laws: A Peep into Policy- Part I*, available online at http://spicyipindia.blogspot.com/2007/12/moral-rights-under-copyright-laws-peep.html

Owed to such developments, a procedurally sound and legally correct enforcement of moral rights has become rather difficult post the 1994 amendment to the Indian Copyright Act, 1957. A good example of this would be the dichotomy that the court swallowed, inadvertently or otherwise, in *Smt. Mannu Bhandari* v. *Kala Vikash Pictures Pvt. Ltd. and Anr*.[27] Addressing waiver of moral rights in cases where the copyright has been assigned by the original author to another party, the court stated thus:

> "*Section 57 confers additional rights on the author of a literary work as compared to the owner of a general copyright. The special protection of the intellectual property is emphasized by the fact that the remedies of a restraint order or damages can be claimed "even after the assignment either wholly or partially of the said copyright.." Section 57 thus clearly overrides the terms of the Contract of assignment of the copyright."*

Therefore, while the court perpetuates moral rights and gives them precedence over contractual agreements even when the copyright has been willfully assigned to another party, it is bound to fail if it attempts to enforce moral rights in favor of authors on the expiry of a copyright. One may wonder as to how the law can, in one instance peel moral rights away from a reassigned copyright bundle in order to preserve it; while wholly discharging moral rights along with the termination of the rest of the copyright bundle in another. To some extent, courts can claim helplessness in the face of constitutional doctrines that mandate separation of powers and it could be said that they ventured as far as was possible while interpreting the letter of the law. Even then it can perhaps be said that the court, in light of its liberal discourse, could've at least addressed the notional absurdity in *obiter.* All in all, such incongruities in the Indian scenario can be owed as much to our poor legislative foresight as to the melee of contravening cues that every country like ours must take from International Copyright Conventions and Agreements that have lacked will to regulate.

Section 3

Outstanding Issues Pertaining to Enforcement of Moral Rights

The degree dilemma: Since moral rights' intrinsic justification lies along the lines of either the authors repute or a certain aesthetic measure of intellectual proprietary that he injects into a work, how much force must be given to moral rights of an author of a work which requires a lower standard of originality? In

27 AIR 1987 Delhi 13.

India, where there are two spins on a minimum standard of originality to have a claim for copyright (one with regard to original works like novels, paintings, etc and another with regard to compilations), how must courts respond with respect to gauging the extent and nature of infringement? One way forward would be to follow the Franco-German model wherein a high standard of originality with respect to copyright applications in general prospectively sets off problems which may arise upon enforcement of moral rights.[28] Similar provisions relating to higher standards of originality can be found in English and American statute books.[29] The improbability of altering our benchmarks in favour of Anglo-American models seems highly unlikely though. It may also be argued by those who hold moral rights in very high regard[30] that they simply should not be tied up with originality especially after an author's work has already achieved copyrightability. To them the degrees dilemma is unavoidable because it is innate to every determination of a moral breach. Courts just cannot avoid subjective determinations even when they are dealing with work that possesses a remarkably high standard of originality. Having said that, the Anglo-American model may still prove gain worthy in the Indian context, given the sheer volume of potentially offended authors' which may clog overburdened courts.

The Subjectivity/Objectivity Divide: While determining infringement of moral rights there are primarily two tests that may be applied[31]: (a) subjective test requires the author of the work to establish such infringement while (b) an objective test requires expert or public opinion to establish such infringement. Though the *degrees dilemma* persists unresolved, to the best knowledge of the researcher, Indian courts have implicitly allowed the subjective test to prevail in the *Amarnath case*.[32] Holding that a moral right includes the right to object to a complete destruction or disappearance of the work from the public eye, the court held that this was tantamount to disrepute to the sculptor. Facts revealed that Sehgal's work was kept away under government storage. Under an objective theory, he would've been unable to prove infringement as he suffered no loss of reputation or other moral harm because the public could not see his

28 Colston, C & Gallaway, J, Modern Intellectual Property Law, 3rd Ed, MPG Book Group, 449 (2010)

29 The Copyright, Designs and Patents Act, 1988;

30 Kochupillai attempts to place moral rights in copyrights on the same pedestal as fundamental rights in the constitution. Such a comparison, one feels, is more an attempt to rhetorically establish the significance of moral rights rather than an exercise in constitutional theory.

31 Colston, C & Gallaway, J, *Modern Intellectual Property Law*, 3rd Ed, MPG Book Group, 460 (2010); See generally Frisby v. BBC [1967] Ch. 932; Amarnath Sehgal v Union of India(2005) 30 PTC 253 (Del)

32 (2005) 30 PTC 253

work at all. Therefore, by recognizing his right to object under a moral rights theory, the Indian courts seem to have endorsed a subjective view where the author was considerably troubled by the disappearance of his work from the public eye.[33] Further, In light of the explanation appended to Section 57(1)(b), which specifically excludes "failure to display" from the ambit of the provision and perhaps preempts such subjective inferences at the behest of the judiciary, it remains to be seen how the courts will react in a situation similar to Amarnath Sehgal's.

Conclusion

To conclude, the researcher is of the view that the dilemma that afflicts moral rights' enforcement persists, unresolved and very far from a solution too. The first challenge and one yet to be overcome is that of long persisting traditional perspectives and legal differences amongst various jurisdictions that have run counter too often and need reconciliation in view of globalization and access. Only then can there be even a semblance of progress towards the tall task of harmonizing and then effectively enforcing moral rights. Thus, both the judiciary and the legislature must take urgent steps to inject flexibility and expertise in the field copyright law, in order to best protect moral rights and economic interests. Though the Indian judiciary may be lauded for its attempts to develop a hybrid copyright regime that is arguably tailored to meet indigenous needs (bridging the Hegelian model with the Kantian model is one such initiative), on balance, it seems that the maintenance of such a separate regime for the protection of moral rights, independent of the global trends towards copyright harmonization may produce more negative than positive results.[34] It may, for one, dissuade authors given to certain other systems of copyright from participating or engaging with the Indian system. Therefore, initiative at both the international and domestic spheres, needs simultaneous execution. What needs to be understood and imbibed is the already existing jurisprudence of the Berne Convention which foresaw the interdependent nature of economic and moral rights and obligations while somehow renegotiating politically sound but logically impaired initiatives like the non-conformity clauses in TRIPS which have the effect of forestalling domestic initiative. In fact, in cases such as the revision of Section 57(1)(b) to provide for termination of moral rights, international pressure accounts for withdrawal of good laws grounded on sound jurisprudence.

33 See Prof. Basheer's Comment, Mrinalini Kochupillai, *Moral Rights Under Copyright Laws: A Peep into Policy- Part III*, available online at http://spicyipindia.blogspot.com/2008/01/moralrights-under-copyright-laws-peep.html

34 Supra n.3

In light of the Indian scenario discussed above, it is imperative that both legislators and jurists undertake a critical revaluation of norms and motives that ought to govern their discourse. It will not do for the legislature to pull in one direction while the judiciary attempts to stretch in another. Indeed, for the legislature to pull in two different directions itself is not great sign either. Aforementioned examples wherein courts drew exclusively on the legislature's wording of Section 57(1)(b) to widen the amplitude of moral rights (rights to survive assignment: *Mannu Bhandari's* case) and in the process, indicated the legislature's liberal intentions on one hand and the legislature's inferable intent to narrow the scope of moral rights on the other (Amendment of 1994 which terminated the right along with copyrights) are a cause for worry, both in terms of theoretical incompatibility and practical application. It begs the questions, what really is the Indian legislature's stance? Until recently, no right answer could be found but lately there is cause for wary optimism. The 2010 Amendment Bill which seeks to harmonize intrinsic jurisprudence and get rid of this drafting dystopia by revoking the expiry clause pertaining to moral rights (mentioned above and added by the 1984 amendment) should go a long way in achieving much needed cogency. Such an amendment will help moral rights survive not merely assignment but also expiry of the copyright bundle. However, it is yet to see the light of day and brief perusals indicate that much more work needs to be put in to support and clarify other aspects of the bill which include widening the pool of beneficiaries of moral rights to include performers, directors (films) etcetera.[35] Considering most incongruities and ambiguities in the lead up to a discourse on moral rights stem from drafting blues, we'll all do well not to lay our eggs in any one basket just yet. Having said that, it is hoped that an improved bill and bolstered political will can soon clear the air as to where Indian law stands vis a vis the Kantian model of duality of rights: in the affirmative.

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