

Copyright and Related Rights Law

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WEEK - 10

LECTURE – 49

Author's Special Rights – 1

Welcome back to this course on copyright and related rights law. In the previous few sessions, we have understood the economic rights that are provided to copyright holders under section 14 of the Indian Copyright Act. We have also understood some industry-specific terminology, and what those rights mean in those respects. In that sense, we also discussed mechanical rights, synchronization rights, a differential understanding of performing rights, and sound recording rights. In today's session, we are going to begin a discussion on authors' special rights. These rights, as they have been aptly titled, are special to the author over and beyond the economic rights provided under section 14.

As already cited, section 57 states authors' special rights. Let us think about what kind of specialty these rights would be attributed to. Since these rights lie beyond section 14, in terms of the additional value we bring to the author, we can say that they are special. Please note that these are over and above section 14 rights.

It is therefore pertinent that we understand how these rights go above and beyond economic rights. To do this, let us refer to the French IP code, and having understood how the French IP code approaches such rights, we will return to our understanding of section 57. In the French IP Code, let us look at Article L121-1. It says an author shall enjoy the right to respect for his name, authorship, and work. The right shall attach to his person.

It shall be perpetual, inalienable and imprescriptible. It may be transmitted mortis causa to the heirs of the author. Exercise may be conferred to another person under the provisions of a will. This provision reveals that moral rights are something that has a deep connection with the author, much deeper than their exercise in a commercial manner with respect to a work. According to this provision, it is connected to him.

When an individual undertakes an act of creation, such as a work of art. If we consider that the expression comes from within a person's attributes of personality attached to the

work when he creates it. Then we can make a distinction between the interest that such an author would have in commercial utilization. Versus the interest the author would have in preserving his work, protecting it against any action that would be prejudicial to his respect and honor. Therefore, this provision states that the moral right of the author is perpetual.

This cannot be restricted to the term of copyright, which is a restriction on the control over the commercial utilization of the work. Such a bond between the person and his work is not something that can be taken away very simply just by a term. It is also not something that can be given away. Can a person give away part of his personality? Clearly not. I'm sure you understand, that the bond a person can have with his work could be the kind of bond that a mother has with her child.

That a person has with himself. It is a bond that is very deep and is rightly found by the French IP code to be something that is perpetual and connected to the person. Let us then understand the distinction between section 14 and section 57. Section 14 provides for copyright, which is aimed at protecting the economic interests of the author primarily. Section 57 is concerned with the inherent connection that the work has with the author.

Ask yourself, is this not a personal bond? As has been provided within the French IP code, where it says the right shall attach to his person, we can say that it definitely is personal property. Let us then look at the Indian Copyright Act and section 57. Section 57 starts by saying in clause 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, first, authorship of the work. Let us split the component parts in this clause in 57. Let us start with understanding the phrase independently of the author's copyright.

What this means is that section 14 rights, which are copyright and economic in nature, will vest with the author of the work. but as we have understood an author need not be the first owner of a work, you would recall in our earlier discussions we have discussed how under section 17. The application of certain circumstances provided under section 17 ensures that, What would otherwise have been the first ownership of the author would be the first ownership of another person. We had discussed a contract of service in this regard, as you would recall. Now, despite the consideration of who the first owner of the work is, there would be no connection between section 14 and section 57.

It is independent of who the copyright holder is. This is the first portion of Section 57, Clause 1. Let us look at the second component. It says even after the assignment. Meaning that if the author was, in fact, the first owner of copyright and had all the economic rights under section 14, then assignment occurred.

Meaning that the ownership of the work was transferred. you would recall, we have discussed assignments and we have made a distinction between an assignment and a license, wherein we understood, that in an assignment there is a transfer of ownership in licenses; there is no such transfer of ownership. Therefore, in the case of an assignment where the owner of the copyright is someone else, That would also not have any bearing on the author's special rights. They will still subsist with the authors. The third component of this clause refers to the said copyright.

This is relevant because this provision deals with an author's special rights; the author is connected to a work, and the author and work are connected to copyright. With respect to performance, we have considered a similar provision under Section 38B. You would recall that earlier discussion as well. Let us then look at the first type of the author's special right. According to the Indian Copyright Act, this is the right to claim authorship of the work.

Claiming authorship means claiming attribution or acknowledgment of the author with respect to their work. Attribution means the action of ascribing a work or remark to a particular author, artist, or person. Because this bond is so closely knit between the author and the work, it is only but natural, that any utilization of a work by a person would have to be in such a way that such work, is attributed to its originator or in other words who the author is. In that respect, let us look at Section 2, Clause d, which tells us who the author of a work is. You can see it says that with respect to a literary or dramatic work, it is the author.

With respect to a musical work, it is the composer who is responsible. With respect to a cinematograph film, it is the producer and so on. We have looked at Section 2 Clauses on several occasions in our previous discussions. Consider a composition. If a sound recording were to use a composition, then it would require authorization under section 14.

By now, all of you know that the composer of a musical work has the copyright to make a sound recording. Even though the sound recording producer has received due authorization under section 14, that does not suffice with respect to section 57. Under section 57, the sound recording producer must attribute the composer. If you, the listener, are the composer of that particular composition, then the sound recording producer must credit you for your composition. This is over and beyond section 14 authorization.

Let us look at the unamended section 57 present in the original Copyright Act of 1957. The particular provision I would like you to focus on is clause 2 of section 57. It used to say that the right conferred upon an author of a work by subsection 1, other than the right to claim authorship of the work, may be exercised by the legal representatives of the author. What this provision would, in effect, do would be to limit the exercise of the right

to claim authorship up until the lifetime of the author. But in terms of what we understood, moral rights should be something that is perpetual.

Could a work be used even after the author's lifetime? Can the bond between a work and the author be removed simply because the author is no longer alive? Surely, this is not the case. And therefore, the 2012 amendment, in recognition of this bond between the author and his work, has removed the phrase "other than the right to claim authorship." Meaning that the limitation that existed with respect to the claim of authorship or the claim of attribution concerning a work being limited to the lifetime of the author has now been removed. The heirs of the author can claim authorship even after the author is no longer alive where his work has been used. Let us move to the second right provided under section 57, which is the right of integrity.

Let us take a look at what 57, clause 1, sub-clause b is saying. It says: to restrain or claim damages in respect of any distortion, mutilation, modification, or other act in relation to the said work, if such distortion, mutilation, modification or other act would be prejudicial to his honour or reputation. You would note that actions of distortion, mutilation or modification, are linked to a prejudice that has resulted in the honour or reputation of the author. Let us take a look at what these terms mean. In looking at the meaning of these terms, we are revising what we had already seen when we discussed the moral rights of performers.

To distort would be to give a misleading or false account or impression of. Mutilation is to inflict a violent and disfiguring injury. Honor is high respect and great esteem. Reputation is the belief or opinions that are generally held about someone or something. Let us understand that it is not any kind of distortion, any kind of mutilation, or any kind of modification that is covered as an infringement under section 57.

It is only that specific kind of distortion, mutilation, or modification that will prejudicially affect or honor the reputation of the author. What is honor? Honour is defined as esteem. It is one's view of oneself, the respect one holds for himself, his personality. Reputation is the respect that others have for an author. We will see that in the original Copyright Act, the unamended provision did not require such a connection between distortion, mutilation, or modification and honor or reputation.

Please see section 57, clause 1(a); it says: any distortion, mutilation, or other modification of said work or any other action in relation to the said work which would be prejudicial to his honour or reputation. Being an all-encompassing provision, the clause is a wide-scope provision that extends to, as I was saying, any kind of distortion, mutilation, or modification—anything at all. In other words, making any change beyond what the author had provided as a work could effectively come within the ambit of section 57. Therefore, the older provision encompassed any kind of distortion, mutilation, or

modification, and the new provision ties it to a prejudicial effect on honour or reputation. If we consider what could be the possible reason behind such a limitation, we can understand that such a wide-scoped provision would have a serious effect on the exploitation of economic rights by authors.

You can think about audiovisual works or sound recordings, for that matter, in which underlying works may be present. Where any modification may be required for the purpose of such composite work, even if it is not prejudicial to the honour or reputation of the author, it could be brought within section 57. And therefore, such a limitation ensures that only legitimate claims come before the court and, in turn, do not pose a serious encumbrance to the exercise of economic rights by other authors. Let us now look at the explanation provided under section 57, clause 1. The explanation states 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.

This particular explanation can be split into two components. The first component simply states that failure to display a work shall not be deemed an infringement. Which means that upon assignment, if the ownership of a particular work is with another individual and that individual, in consideration of the market, is not displaying the work - where have we come across this word before? When we discussed communications, if the work is not being communicated, then such a failure cannot be brought under section 57. We can realize that such a provision has been brought in to ensure that the application of moral rights, which is independent of any assignment, will not pose an encumbrance to the assigning. The second component states the failure to display to the satisfaction of the author.

The satisfaction of the author is a subjective consideration. Therefore, the assignee may have displayed a particular work in a certain way simply because it is not to the satisfaction of the author. That is not something that can be brought as a claim under 57. Therefore, this explanation poses an important limitation with respect to section 57, and something that we will discuss in much detail when we look at the Raj Rewal case, which we had also discussed earlier, when we talked about architectural works. In the next session, we are going to continue our discussion on authors' special rights.

We will look at some other kinds of moral rights that are provided in various parts of the world. And we will look at some important cases in India that have discussed moral rights. Thank you for joining me. See you all in the next session. Thank you.