

Copyright and Related Rights Law

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WEEK - 10

LECTURE – 50

Author's Special Rights – 2

Welcome back to this course on copyright and related rights law. In the previous session, we had started our discussion on understanding the author's special rights under section 57 of the Indian Copyright Act. We had understood that these were independent of an author's rights. In other words, it is over and above copyright under section 14. We will continue our understanding of the author's special rights in this session. The first point of discussion today is the right of divulgation provided to the author under the French IP code.

We must consider that divulgence effectively means to make information known. Isn't the publication of a work making information known to the public? The right to divulgation is of a different nature because it is a moral right, something that has a deeper connection with the author. This is something that is applicable in situations where the first ownership might vest with someone else. There has been an assignment.

And in such cases as well, the right of divulgation must be specifically provided by the author. A limitation that has been placed within this provision, as you can see where the provision has been made subject to L132.24, is in respect of audio-visual works. The encumbrance that such a right of divulgation could have on the producer to freely distribute and freely commercialize the cinematograph film, which is effectively a composite work, is something that has been taken away by this provision. But in all other respects, the right to divulgation exists with respect to the author.

Still another moral right that we find under the French IP code is the right to withdraw the work from the market. Let us take a look at this provision first. In article L121.4, the French IP code states that, notwithstanding the assignment of his right of exploitation, the author shall enjoy a right of reconsideration or withdrawal even after the publication of his work with respect to the assignee. However, he may only exercise that right on the

condition that he indemnifies the assignee beforehand for any prejudice the reconsideration or withdrawal may cause him.

Let us understand that the risk of publication is traditionally not something authors bear. Authors engage in a transaction of assignment with publishers; for example, if it's a book. The publisher will then release this book into the market and, in doing so, will incur a significant investment. There is also a substantial risk that the publisher faces due to a possible failure to recover the investment that has been made with respect to such publication. Therefore, when publication occurs, there is serious interest from the publisher in terms of economic prejudice that will result for him.

Therefore, what this provision is saying is that it acknowledges the author's right of withdrawal simply because he is the author of the work. And in response to the natural connection that the author has with the work, such a withdrawal should not lose sight of the publisher's interest. Therefore, in cases of such withdrawal, if the author can indemnify the assignment, then this is an equitable position. But why would an author want to withdraw their work at all? It could be due to a change in perspective in society. Perhaps the author himself is not in favor of the work for any reason to be present in the market at that point in time.

In any case, this is a matter of personal opinion. And something that the French IP code does not restrict in any way. The provision also says, that if the author decides to have his work published after having exercised his right to reconsider or a withdrawal, he shall be required to offer his rights of exploitation in the first instance - to the assignee he originally chose and under the conditions originally determined. The provision further explains that this assignee has taken up the publication of the author's work. In consideration of good faith, the withdrawal was something that was completely at the option of the author.

This is something that must be offered to that assignee first. Having taken a look at the right of divulgation and the right of withdrawal under the French IP Code, I will now summarize my findings. Let us recall what we discussed in section 57. We discussed that the author has the right of attribution, the right to claim authorship of the work, and the right against distortion, mutilation, or modification that is prejudicial to his honor or reputation. In terms of the expanse of moral rights, or as they are called, author special rights, in India, we find a restricted application of moral rights.

In comparison, as we have seen, the French IP code offers a more expansive consideration. Focusing on Section 57, we will now take a look at two important cases that have arisen with respect to moral rights and that help us understand authors' special rights better in relation to India. The first case that we will discuss is the case of Amarnath Sehgal versus the Union of India. The Delhi High Court was considering a

case involving a famous artist named Amarnath Sehgal. Who had created a mural for the government of India to be placed in an important government building, where this particular mural was taken down without his authorization and relegated to a storeroom to collect dust.

Some parts of the mural had even gone missing, the artist approached the court to find a solution under section 57. Honorable Justice Pradeep Nandrajog, who has authored this judgment, provides in clear language the importance of moral rights and how they are to be understood with respect to section 57. Honorable Justice stated, "The plaintiff, who believes that there can be no beauty without a soul, has brought the present action hoping that the soul is given its due place and recognition in the history of law." He says the moral rights of the author are the soul of his work. The author has the right to preserve, protect, and nurture his creations through his moral rights.

When we discussed how the French IP code explains moral rights, it connects them to the person. Similarly, Honorable Justice Pradeep Nandrajog also highlights this inherent connection, this natural connection that a work has to the author, and according to him, it forms the soul of the work. Clearly, because these are the soul of the work, the author would no doubt be deeply hurt if any action that is prejudicial to such work is done by another person. Therefore, as the judge explains, the author has the right to preserve, protect, and nurture his creations. This can be done through Section 57.

To look at the nature of the mural, the judge explained that there had been research and untiring work spanning over half a decade in creating that mural. It was simply taken down without the permission or authorization of the authors. It was consigned to a storeroom where it was collecting dust. Is this kind of treatment of a work something that the author should be fine with? Even if he is not the owner of such a work, after all, once an artist has parted with the work, as was the case herein? It was the government that was the owner of the work. There was no copyright at that time that was subsisting with the artist.

But we have understood that Section 57 is independent of copyright. Therefore, the following reliefs, please pay attention, were sought by the artist. The artist claimed to restrain the defendants from further distorting, mutilating or damaging his mural, to pay damages towards compensation for humiliation, injury, insult and loss of plaintiff's reputation, and to return the mural to the plaintiff. You can see in the reliefs requested by the plaintiff the feeling of hurt in the treatment of his work. This demonstrates in clear terms what Honorable Justice has explained - forms the soul of his work.

How the artist is looking to nurture the work that he has so painstakingly made. The court looks at explaining what the types of moral rights are. As we have already understood these rights, it bears relevance to refer to how the court has looked at these rights. The

court says that when an author creates a work of art or a literary work, it is possible to conceive of many rights that may flow. The first and foremost right that comes to one's mind is the paternity right in the work.

That is the right to have their name on the work. It may also be called the identification right or the attribution right. This is the right that we had discussed as the right to claim authorship. The court further says the second right that one thinks of is the right to disseminate his work, which is the divulgation or dissemination right. It would embrace the economic right to sell the work for valuable consideration.

We had discussed that the right to disclosure is not something that is provided within section 57. Linked to the paternity right, a third right, which is the right to maintain purity in the work, can be thought of. There can be no purity without integrity. It may be a matter of opinion, but certainly, treatment of work that is derogatory to the reputation of the author or in some way degrades the work as conceived by the author can be objected to by the author. This would be the moral right of integrity.

We have seen that the moral right to integrity is provided under section 57. Will not the action of the government in this particular scenario, where it has been pulled down and relegated to the storeroom without the authorization of the author, fall within the scope of section 57? And specifically the right to integrity? It would. The court further says that one can conceive of a right to withdraw from the publication of one's work if the author feels that, due to the passage of time and changed opinions, it is advisable to withdraw the work. This would be the author's right to retract. This right is also something that is not found under section 57.

One important consideration that we must keep in mind when we look at the right of integrity, as the court explains, is that the question of a violation of the right of integrity is seen from the conception of the author. It is an objection made by the author, and therefore, the perception that will be considered must be given weight is the author's perception. With respect to the limitation that has been crafted under section 57 limiting the right of integrity to honor or reputation, the court explains had such a limitation not been made it would lead to certain anomalous consequences. Not just that, in the Berne Convention under Article 6 bis, we find moral rights. The Berne Convention, as we have seen in earlier sessions, is also an international instrument that provides the framework for copyright protection to which India is a party in Article 6 bis.

Makes this connection between the right of integrity and the honor or reputation of the artist. If, in fact, India had retained the original provision under section 57 in which any distortion, any modification, or any mutilation could be brought in. Then it would also be an expansive consideration beyond what is provided under Article 6bis of the Berne Convention. The relief that was granted by the court was a direction to return to the

plaintiff the remnants of the mural, along with a declaration that all rights in the mural shall vest with the author and not with the defendants. The absolute right of the author to recreate the mural, sell it, and seek damages.

Therefore, in upholding the moral rights of the author under Section 57, the Honourable Delhi High Court explained in very clear terms how such a moral right should be considered. Let us look at another case, which examines the author's special rights under Section 57. You would recall that we discussed this case in an earlier session in which we talked about architectural works. *Raj Rewal versus the Union of India* is an important case in which the court considered the question of whether the demolition of a building is something that can be brought within the ambit of section 57.

Let us understand this question. The right of integrity of the author is a right against distortion, mutilation, or modification of the work that is prejudicial to his honor or reputation. Can such distortion, mutilation, or modification include the demolition of a building? We had discussed in our earlier session that the owner of a building has a different interest in the building than the architect, who has an interest through copyright. We had understood the possible conflict that this will bring between the statute provided by the Copyright Act and the constitutional right to property. Let us consider how the court is looking at this issue. The court is saying, the words distortion, mutilation and modification have to be understood as making the work look, appear, be seen as something different from what the author had created, and in which creation the honor and reputation of the author vest.

The principle is that the work should not be rendered imperfect, affecting the honor and reputation of the architect. Let us principally understand what the court is saying. Is it not a matter of perspective? When a work is perceived, if a modification has been made to the work, then if that modification is in fact seen as being different in such a way as to be prejudicial to the honor and reputation of the artist, Then yes, there is a violation of the right to integrity. But this difference in perspective must be visible.

It must be perceptible. Is it possible to consider something violative of the right of integrity when it cannot be perceived? After all, if a building has been demolished, what is there for anyone to see? The court says, however, that it is explained that failure to display a work is not an infringement of rights conferred by section 57. In recognition or acceptance of that which cannot be viewed, seen, heard, or felt cannot be imperfect and cannot affect the honor or reputation of the author. We had seen in the earlier session when we discussed the explanation to section 57, clause 1. It clearly says that failure to display a work is not an infringement of copyright. The court uses this particular explanation to reason that this explanation has been brought in simply because of the consideration that if we cannot view the work, Then how is it that we can consider a

perception? Accordingly, the court then explains that there is a difference between the work itself and one of the embodiments of the work.

While distorting, mutilating, or modifying one of the embodiments of the work renders the work imperfect and prejudices the honor or reputation of the author, Destruction of the work in its entirety, i.e., making it disappear, cannot be prejudicial to the honour or reputation of the author. After all, no imperfections can be found in what cannot be seen, heard, or felt. Finally, the Court says the implementation or transformation into a building of the work of architecture is governed by other laws, such as the laws relating to town planning, building bylaws, environmental laws, and laws protecting the rights of owners of adjoining buildings.

It is thus not necessary for the building or the structure constructed to always be a true reflection of the drawings or the designs authored by the architect. The requirements of urban planning outweigh the moral rights of architects. Similarly, technical reasons to modify the building, economic reasons justifying modifications to the building, and the necessity to obtain authorization to build all prevail over moral rights. According to the judge, his research has disclosed that no jurisdiction in the world prohibits the demolition of a building or structure constructed in accordance with architectural drawings or plans. In summarizing, we can then say that in connecting our earlier discussion on architectural works, the interest of a builder in the building and the interest of the owner of the building are completely different from the interest of the architect.

Such construction of the building is regulated by other laws, and in terms of such an interest and such a conflict, we must understand that moral rights cannot be sustained. Especially in a scenario where there is a demolition of such a building. Having understood economic rights under section 14 and moral rights under section 57, we will now start our discussion on exceptions to copyright. In the next session, we will take a look at fair use.

Thank you for joining me. See you all in the next session. Thank you.