
INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

**DESTRUCTION OF PROPERTY: THE CONTRADICTION BETWEEN
MORAL RIGHTS AND THE INDIVIDUAL RIGHT TO PROPERTY**- Apeksha Khemka¹**Abstract**

Strong arguments exist on both sides of the complicated and nuanced debate between moral rights and the right to own property. Authors' rights over their creations, including the rights to integrity, attribution, and the ability to stop their work from being altered or destroyed, are all in the category of moral rights. On the other hand, people's ownership and control over their belongings are guaranteed by the right to property, a statutory right established in all international legal systems and constitutions. When the practice of one right interferes with the exercise of another, an intrinsic conflict between moral rights and property rights occurs. Proponents of moral rights emphasise their significance in protecting the creativity and innovation of individuals. They argue that creators have a strong emotional connection to their work and deserve the right to control its presentation and prevent misuse or abuse. Additionally, they argue that moral rights are as valuable as intellectual property as tangible assets like real estate or structures. Proponents of property rights emphasise the importance of safeguarding a person's fundamental right to be the owner and manager of their belongings. They argue that protecting moral rights can lead to censorship, preventing public building demolition or removing offensive works of art. Furthermore, they contend that individual ownership and control of property propel economic growth in a free market economy, making it indispensable for such an economy. The legal systems of various countries have taken diverse approaches to balancing moral and property rights. The complexities of this debate are further highlighted in cases involving the destruction of property. While moral rights advocates may argue that destruction violates the creator's integrity and connection to their work, property rights advocates

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may emphasise the owner's right to control their property for public purposes or redevelopment. The ongoing debate between moral rights and the right to property underscores the challenges of balancing individual rights and societal interests. Courts will continue to wrestle with these difficult questions as new forms of creative expression and technological advancements take shape, trying to safeguard individual creativity and fundamental property rights.

Keywords: Correct to property, Destruction of work, Integrity, Moral Rights, Violation of rights

Introduction

The destruction of property can happen in many ways but is usually in the form of mutilation, distortion, modification or destruction of property. Here, 'property' can be an individual's building, architecture or any other creative work. According to the explanation of Section 57 of the Copyright Act of 1957, the failure to display a work or to display it to the author's satisfaction will not be deemed a copyright infringement. Concerning the modification, mutilation or distortion of property, the act says that such destruction can only be claimed for damages if it harms the reputation or honour of the author/creator. This affects the moral rights of an author, as when a piece of work is destroyed, it violates their right to property and individual creativity.

According to the law, only if the destruction affects the reputation and honour of an individual can they claim damages for the same, and this is not very correct in the sense that any destruction of any individual's work should be reprimanded. It should not just be restricted to the fact that it affects the reputation because regardless of that, an individual's original work is ultimately affected. Damages for the same should be awarded, and an individual's work should be given importance. This would help protect the interests of the authors and creators in the long run and benefit them in a way that would protect their original work and avoid unnecessary damage to their work without adequate compensation.

The Research Problem

The problem in the law arises when there is a contradiction recognised between Section 57 of the Copyright Act, 1957 and Section 300-A of the Constitution of India in which there is a clash between the moral rights of an author and the constitutional right of property, which is

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guaranteed to every individual. The explanation of Section 57 of the Copyright Act, 1957 says that the failure to display a work or to display it to the satisfaction of the author will not be deemed as a copyright infringement, which is in direct contradiction to an individual's right to property as it deprives the individual their property right. In a hypothetical scenario, when there is a question between the moral rights of an individual and the property rights of another individual, which one should supersede the other? Ideally, the moral rights of an individual should be given protection above anything else as they have crafted an original work with their unique creativity and hard work, and it should not be discredited at any stage. It should be rightfully recognised and given importance over the other property right.

Friedrich Hegel's Personhood Theory

Property, according to Hegel, is a facet of personality. Ownership expands a person's natural freedom outside their body since it is essential to the world. The argument by Hegel that property is an extension of personality has been picked up and developed by several modern philosophers. These views argue that property rights are related to or rely upon human rights such as liberty, identity, and privacy. Hegel provided a fresh viewpoint that any other theorist had never proposed. Hegel's theory is based on the ideas of ownership and property. He looked into private property rights to back up his assertions.

It was observed that property rights protect people's "personhood" or personality interests; this appeared to be especially true for intellectual property rights, which are attached to creative works by humans. The personhood theory of property focuses primarily on the relationship between personality and property. The argument holds that property is lawful because it fosters and even demands the development of individuals. Since the analysis of personhood theory differs slightly from accepted legal and philosophical wisdom, it is occasionally seen as an alternative theory of property.

According to this idea, intellectual property is protected against potential attacks by a utilitarian perspective, which would only acknowledge property contingently since it furthers societal goals of wealth maximisation or usefulness. On the other hand, personality theory presents a moral argument, separate from efficiency considerations, for why a just state must acknowledge intellectual property rights. Furthermore, personality theory seems to deflect criticism of

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intellectual property from those who argue that it is not even a kind of "true" property. Finally, the idea has also been used to support the argument for more robust intellectual property protection than that granted to other kinds of property; one such instance is the "moral" or "Continental" right of artists to their creations.

Hegel's theory of property, predicated on the concept of the person and the formation of self-identity, "is perhaps most directly applicable to the narrower notion of intellectual property." Hegel argues that the creation process was profoundly individualistic since the creator imbued the object with his personality or will. This argument is frequently called the "personality theory" of property. Hegel argues that acquiring property and becoming an owner are essential for existence and important milestones in personal growth. These are reasonable ideas for poor countries seeking to protect their intellectual property rights.

Drawing on the theories of Hegel and Kant, proponents of intellectual property theory contend that the personhood hypothesis regarding property is especially true in the case of intellectual property. They argue that the works created by an artist via mental exertion capture more of the artist's distinct essence of being than those created through daily physical labour. Since an artist's creations are essential to her identity, she should never wholly separate herself from them. As a result, the personhood theory of intellectual property supports the ideas of copyright for creative works and moral rights.

Effect on Creator's Individuality and Creativity

This paradox significantly impacts the uniqueness and inventiveness of an author or artist. The violation of moral rights can severely harm a person's creativity. Authors' rights over their creations are known as moral rights. These rights include the right to integrity, the right to attribution, and the right to stop their work from being altered or destroyed. There may be several detrimental effects for creators if their rights are infringed. Their reputation may suffer, and they may feel undervalued and mistreated.

Additionally, it may discourage them from showing their work to others and cause them to completely give up on their artistic endeavours. In certain situations, moral rights violations can financially affect the authors. For instance, a creator can forfeit possible revenue from sales or

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licensing their work if it is destroyed or altered without their consent. Here are some particular instances of how moral rights violations might impair a person's creativity:

Contempt and Devaluation: A creative may experience feelings of contempt and devaluation if their work is incorrectly credited, misrepresented, or destroyed. For artists, this may be a profoundly traumatic experience that makes it hard to stay motivated and confident.

Reputational harm: A creator's reputation may suffer if their work is linked to unfavourable press or controversy. They may need help to obtain employment and to have their work shown or published as a result.

Absence of power over one's creations: Artists are deeply attached to their work and wish to maintain control over how it is exhibited to the public. They forfeit this control when their work is misattributed, altered, or destroyed. For creators, this may be an extremely distressing experience that makes it hard to let go of their creations.

Concern about expressing one's work: Artists who have experienced the burn of having their creations stolen may grow wary of sharing their artwork. This can hinder their ability to be creative and keep them from realising their full potential.

Relinquishment of creative endeavours: When moral rights are violated, artists may give up entirely on their artistic endeavours. The world has lost something terrible when these people's unique abilities and viewpoints are lost.

Moral rights must be upheld to support a solid and dynamic creative community. We can inspire creators to keep producing and releasing their work to the public by upholding their rights.

Position of Law

The destruction of property may be a complicated and contentious topic, especially when weighing the individual right to property against moral values. The Constitution guarantees the right to own property as a fundamental freedom in India. Nevertheless, laws like the Copyright Act of 1957 are in existence to safeguard moral rights as well.

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In the case of *Amar Nath Sehgal v. Union of India*², a significant sculpture labelled an "Indian national treasure" had been mishandled and even disfigured due to carelessness. Following arduous litigation that lasted more than 20 years, the Court determined that the destruction of artwork impacts an artist's moral right to integrity since the artist's reputation is built on the existence and integrity of their whole body of work. Regarding this, the Court in the Amar Nath Sehgal case took a strong stance on a question that has caused controversy amongst copyright experts worldwide: "Does the destruction of an artwork qualify as a violation of the artist's moral rights of integrity?" To which the Court replied emphatically in the affirmative.

In the case of *Jatin Das v. Union of India*³, The Delhi High Court affirmed the artist's moral rights. It directed Steel of Authority of India, the respondent, to cease altering the artist's well-known piece of art, "Flight of Steel". SAIL invited Plaintiff Jatin Das to produce a welded sculpture in 1995. Das's thirty-foot-tall and thirty-foot-round steel sculpture, "Flight of Steel," was completed in November 1995 and put in place at Bhilai's CEZ Square. Das was shocked to learn in March 2012 that SAIL had taken down, disassembled, and shipped his famous artwork to a zoo. Das said his "moral rights" as the artist had been infringed. He asked for an injunction that would prevent SAIL from damaging the sculpture in the future. SAIL filed a court challenge, claiming that removing the artwork would make building a flyover that would span the CEZ plaza more difficult. After hearing substantial arguments from both sides, the Court thought a committee may be formed to investigate the matter and suggest a fair settlement. A protracted legal battle over seven years concluded when the Court adopted the Committee's recommendations, which asked for the artwork to be relocated to an area where Das was supposed to repair and restore it.

The argument that an author's moral rights supersede the owner of a building's right to demolish or alter it was rejected by the Court in the *Raj Rewal v. Union of India*⁴ case. The artist requested an injunction, but the Court denied it, stating that stopping the building's demolition would impede the property owner's freedom to do with his land and property as they see fit. Since "what cannot be viewed, seen, heard, or felt, cannot be imperfect and cannot affect the honour or reputation of the author," the Court held that an author could not prevent the

²Amar Nath Sehgal v. Union of India, 2005 (30) PTC 253 (DEL).

³Jatin Das v. Union of India, CS (COMM) 559/2018.

⁴Raj Rewal v. Union of India, (2017) 240 DLT 166.

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destruction of a work in its entirety under Section 57's right to prevent "distortion, mutilation, or modification" of its work. The Court adopted the stance that an architect's powers are limited in order to stop the owner of the building from altering the structure and claiming that the architect is the original creator of the altered structure.

The choices made by Amar Nath Sehgal and Raj Rewal are a study of opposites. In contrast to the Amar Nath Sehgal ruling, which heavily relied on global agreements on the preservation of cultural heritage to interpret Section 57, the Raj Rewal court held in broad terms that the destruction of work did not constitute an infringement of the rights under Section 57 and limited the scope of moral rights to those specifically codified under the Copyright Act. A possible approach to resolve this contradiction would be to interpret Raj Rewal narrowly, considering solely his architectural creations and the case's factual matrix. Even in this situation, though, the ruling severely curtails the rights of architects as defined by Section 57, as it maintains that "urban planning" and commercial or technical justifications for altering a structure will take precedence over any opposing arguments an architect may have regarding the preservation of the structure's artistic integrity. This limits the remedies available to an architect or designer under Section 57 to the ability to deny authorship of the altered structure.

It is evident from analysing each of the instances mentioned above that Indian courts seem to hold varying opinions about one of the most controversial questions in copyright law: "Does destruction of an artwork constitute an infringement of the moral rights of the creator"? In Amar Nath Sehgal, the Delhi High Court categorically said "yes" to this question; nevertheless, the Raj Rewal verdict seems to directly oppose the established legal principles the courts have upheld for the previous 20 years. These instances highlight how the law in this field is complicated and dynamic. The courts will consider several aspects while determining whether to maintain moral rights in the event of property devastation. The type of property, the public interest, and the effect of the destruction on the holder of moral rights are some of these considerations.

The Indian judicial system approaches the delicate balance between the right to property and moral rights in a sophisticated manner. In certain instances, the courts have preserved moral rights, even if doing so means limiting the ability to own property. In other instances, the courts have prioritised the property right. The argument between the right to property and moral rights will continue in the upcoming years. The courts must keep debating these intricate problems as

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new technology and creative expression techniques are created. More complex solutions exist to the thorny question of balancing property rights with moral principles. Ultimately, the courts must consider the conflicting interests and decide each case individually. Ultimately, the decision should draw attention to the need for more detailed legislative regulations on the scope of moral rights in creative and architectural creations.

Destruction of Property – A Violation of Moral Right?

The Copyright Act of 1957 safeguards writers' moral rights in India. The rights in question include one's right to integrity, the right to acknowledgement, and the right to stop their work from being altered or destroyed. The Indian Constitution guarantees the right to property as a statutory right. In India, the moral rights vs property rights issue is nuanced, with strong claims on both sides. Moral rights proponents contend that moral rights are necessary to safeguard writers' inventiveness and inventiveness. They contend that writers should have the authority to decide how their works are shown to the public since they have a deep emotional connection to them. They contend that moral entitlements are as valuable as other property types, such as land or buildings, and constitute intellectual property.

The property rights of ownership are protected by statute and should not be arbitrarily disregarded, according to its proponents. They contend that censorship can occasionally result from the defence of moral rights. For instance, if an author can stop their work from being destroyed, this may stop offending art pieces or public structures from being demolished. They contend that an economy based on free markets cannot exist without the freedom to own property. It enables people to own and manage their real estate, which is a significant factor in economic development. The balance between the right to property and moral rights has been approached delicately by the Indian legal system. In certain instances, the courts have preserved moral rights, even if doing so means limiting the ability to own property. In other instances, the courts have prioritised the property right.

The preservation of innovation and creativity depends on moral rights. They give authors the power to decide how the public and guard view their creations against exploitation or abuse. The creative process depends on these rights. They grant artists a feeling of pride and ownership over their creations, which inspires them to keep making. They are likewise considered intellectual

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property since they have the same value as other property types, like land or buildings. Property rights are guaranteed by statute and should not be arbitrarily violated. There are situations when censorship results from the defence of moral rights. For instance, if an artist is entitled to stop dismantling their creations, this might stop offending art pieces from being removed from public spaces or public structures from being demolished. Property rights are fundamental to an economy based on free markets. It enables people to own and manage their property, which is a significant factor in economic development.

The argument between the right to property and moral rights will continue in the upcoming years. The courts must keep debating these intricate problems as new technology and creative expression techniques are created.

Conclusion

Moral rights must be upheld to support a solid and dynamic creative community. We can inspire creators to keep producing and releasing their work to the public by upholding their rights. In conclusion, a significant aspect of Indian copyright law is the moral rights of writers. They guarantee that writers maintain control over how their works are exhibited to the public and safeguard their inventiveness and originality. A crucial right that is not unqualified is the property right. Authors' moral rights may sometimes precede their property rights; case-by-case scrutiny is necessary to determine how much harm to property violates moral rights in India. This analysis must consider each instance's particulars and the opposing interests' relative importance. An individual's character is developed by using, influencing, or coping with outside issues.

The ultimate aims are to establish oneself in a community of morally evolved individuals and to be a mature, moral agent. Hegel argues that having property helps people grow morally and choose their place in society. However, Hegel's philosophy needs to include a clear distinction between the objectives of each person and society as a whole. The rights of individuals are essential even when personal ownership rights are not considered "trump cards" over societal interests. The reason for this aspect of Hegel's theory is that one's ultimate purpose or higher self coincides with the state's goals.

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In summary, the results emphasise the need for more detailed legal standards on the scope of moral obligations in art. Such controversies may be avoided if the government passed a law similar to the Australian one that mandates that building owners communicate with the artist or creator of a work before altering or demolishing it. In addition, in safeguarding ancient and modern cultural treasures, copyright law—which sometimes depends on private action might not even be the answer. Until such legislation is changed, authors and architects appear to be in a precarious situation concerning preserving the authenticity of their creations.



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