

Moral Rights in Developing Countries: The Example of India—Part II

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The moral rights seek to protect the non-commercial interests of authors and artists in their work. This paper deals with moral rights in developing countries. It is in two parts. The Part I of the paper, which appeared in the previous issue, covered copyright policy in India, traditional approaches to moral rights in India and moral rights in Indian Copyright Act. Present part deals with judicial development and interpretation of moral rights. It discusses the major cases decided by Indian courts on moral rights.

In upholding moral rights protections, Indian courts have been the champions of individual creative efforts and non-commercial artistic endeavour. In their judgements, the focus has been to interpret and develop moral rights doctrine in the Indian context.

The Indian courts have decided three major cases on moral rights: *Mannu Bhandari v Kala Vikas Pictures* (1987)¹, dealing with the film adaptation of a novel; *Amar Nath Sehgal v Union of India* (1992)², concerning the mistreatment of a sculpture by the Indian government; and *Statart Software v Karan Khanna*, a case about improvements to a program for computer software³. These three decisions have been reported and discussed as landmark

decisions on moral rights by both international observers and Indian scholars⁴.

In these judgements, the courts attempted to interpret and develop moral rights doctrine in the Indian context, based on the framework for moral rights protection set out in Section 57. In all three cases, the courts' application of Section 57 revealed the potential for comprehensiveness and extensive reach in Indian moral rights legislation. Interestingly, all three decisions have also led the Indian government respond by enacting major amendments to the text of Section 57.

These three cases appear to be broadly representative of Indian national trends on moral rights issues. However, it is worth noting that all three cases are North

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Indian cases, and indeed, two out of the three cases were actually decided by the High Court of Delhi. A question arises concerning the extent to which they generally reflect Indian trends. Have moral rights been considered to any great extent by judges in other parts in India, notably, by South Indian courts? This question is especially interesting when we consider the growth of the information technology industry in South India, lending the name of India's 'Silicon Valley' first to Bangalore and later, to Hyderabad.

The following discussion will be limited to the conclusions, which can reasonably be drawn from an examination of these leading cases⁵. In addition, the analysis will briefly consider the implications of two more cases on moral rights which have been less widely publicized, although they reflect some important aspects of Indian moral rights jurisprudence. These are *Ved Prakash v Manoj Pocket Books* (1990)⁶ and *Garapati Prasada Rao v Parnandi Saroja* (1992)⁷.

Mannu Bhandari: Inalienability of Moral Rights

In many ways, *Mannu Bhandari* is the seminal Indian case on moral rights. It deals with the right of integrity, arguably the most powerful of all the moral rights established in Indian and international copyright law.

Mannu Bhandari is a well-known Indian author of novels in the Hindi language. Kala Vikas Pictures, a production company, purchased the rights to make a film adaptation of one of her

novels, entitled, in Hindi, *Aap Ka Bunty*⁸. In the agreement between Bhandari and Kala Vikas, the novelist agreed to allow the director and screenwriter of the film to make changes deemed appropriate and necessary for the production of a 'successful' film⁹. Bhandari, however, would still be credited as the author of the original novel.

As production of the film progressed, Bhandari became dissatisfied with the quality of the adaptation. She objected to the film's title, which was changed to 'The Flow of Time,' the portrayal of the characters, the dialogue, and changes to the ending of the film¹⁰. She brought a complaint against Kala Vikas, alleging that these modifications amounted to a violation of her moral right of integrity under Section 57 of the Copyright Act. Bhandari and Kala Vikas eventually settled their dispute. However, in view of the 'complete lack of precedent in the area,' they requested the High Court of Delhi to release its decision to guide future disputes in this area¹¹.

The High Court supported Bhandari's claim¹². In doing so, it considered the extent to which author's moral rights may be waived under Indian law, the meaning of 'modifications' under Section 57 of the Copyright Act, and the social context which lends author's moral rights their importance in India.

Inalienability

In the contract between producer and author for the making of the film, Mannu Bhandari had agreed to allow certain 'modifications' to her novel in the interest of creating a 'successful' film adaptation.

The High Court found that Bhandari's contractual consent to some modification of her work did not deprive her of the moral rights protection in Section 57. Rather, the terms of the contract for the assignment of copyright had to be read in conjunction with the provisions of Section 57. As a result, an author's moral rights in Indian law may override the provisions of the contract in much the same way that a number of legislative or public policy concerns may predominate over contractual terms. In effect, the court suggests that moral rights are generally inalienable under the Copyright Act. As Ramaiah points out:

... the author's special rights as provided in Section 57 of the Copyright Act may override the terms of contract of assignment of copyright. To put it differently, the contract of assignment of copyright has to be read subject to the provisions of Section 57, and the terms of contract cannot negate the special rights and remedies granted by Section 57¹³.

Modifications

At the same time, the High Court appeared to recognize that making moral rights completely inalienable could pose serious obstacles to the adaptation of literary and artistic works, by substantially increasing the risks borne by the creator or producer of the derivative work¹⁴. The High Court went on to consider the meaning of 'modifications' under Section 57(1)(a), and whether the definition of this term could help to establish an appropriate balance between the interests of the author and the

producer. The court sought to determine the extent of modifications to an original work, which would be allowed under the Copyright Act. It observed that the term, 'modifications,' should be read *ejusdem generis* with the expressions, 'distortion' and 'mutilation' which also appear in Section 57(1)(a) of the Copyright Act¹⁵. However, the 'modification' need not be obviously or unquestionably 'negative' to infringe the author's moral right. Rather, 'necessary' modifications to an original work would be allowed under Section 57¹⁶. As Anand points out:

Thus, in this case, even though the author had permitted the film producer under a written agreement to make modifications, the court held that there was a breach of Section 57 as the extent of the modifications was more than necessary for converting the novel into a film version or for making the film a successful venture¹⁷.

Social Context

The High Court's decision represents an interesting attempt to reconcile the interests of the original author and the person who undertakes a creative adaptation of her work. This aspect of the *Mannu Bhandari* case is particularly significant in the Indian context, where adaptations have a special social and cultural importance. Adaptations of literary and artistic works not only allow knowledge to cross language and 'cultural' barriers, but film, in particular, allows knowledge and ideas to transcend the barrier of illiteracy, as well.

At the same time, the court faced the challenge of balancing the interests of a

film production company against those of an individual author. Its establishment of a high threshold, which must be met in the making of adaptations, favours authors in a context where, as a group, they are relatively weak, both economically and socially. Moreover, the court recognized that there is an important connection between the integrity of an author's work and the maintenance of her reputation. In the case of popular film adaptations of creative works, there may be, *prima facie*, an implication that modifications to a work are likely to damage the author's reputation. The court's approach suggests that, even where modifications are qualified by the requirement of prejudice, as in the case of the current Section 57, Indian authors may have extensive moral rights protection in relation to film adaptations. Dine refers to these considerations as 'the unique conditions of the Indian film business bearing upon...[the issue of] damage to the author's reputation.'¹⁸ The court says:

It is widely believed that there are investments and collections of crores of rupees in a successful Hindi movie and the heroes and heroines are paid fabulous amounts for their services. If the complaint of the author (of mutilation and distortion of the novel) is correct the lay public and her admirers are likely to conclude that she has fallen prey to big money in the film world and has consented to such mutilation and distortions. The apprehension of the author cannot be dismissed as imaginary. It is reasonable. Her admirers are likely to

doubt her sincerity and commitment and she is likely to be placed in the category of cheap screenplay writers of the common run [of] Bombay Hindi films¹⁹.

Amar Nath Sehgal: Duties of the Government²⁰

The case of *Amar Nath Sehgal* extends the moral right of integrity in two interesting ways. Sehgal, a respected Indian sculptor, created a mural cast in bronze to decorate a public building²¹. The mural was an extraordinary piece of work, massive in scale and scope, and represented several years of Sehgal's imagination and creative effort²². It eventually came to be considered as a national treasure of India.

In 1979, the government of India dismantled the mural and placed it in storage. Due to carelessness and neglect in moving and storage, Sehgal's works suffered serious damage. Some parts of the mural were lost, including the piece where the sculptor had put his name²³. Sehgal brought a suit against the government before the High Court of Delhi. The sculptor asked the court for an injunction to prevent the government from causing further harm to the mural. The court granted the injunction.

Right to Prevent Destruction

The *Sehgal* decision established that, in Indian law, the moral right of integrity can protect an artistic work from outright destruction. This diverges from the dominant strand of international thinking on moral rights, which holds that the right of integrity can only protect a work from

being mistreated while it remains in existence; it cannot intervene to prevent a work from being destroyed²⁴. In the Indian context, the moral right of integrity can, at the very least, prevent the government from destroying works of cultural importance²⁵.

State's Duty of Care

The judgment of the High Court also established the important principle of a governmental duty of care towards artworks in its possession. This finding is especially significant in the context of a developing country like India, where the government represents a concentration of power and national resources. Where the powers of government are extensive, it is important to recognize the potential for both good and harm in government action²⁶. In countries like India, the judiciary can play an important role in defining the extent and nature of governmental power. As Anand observes:

[T]his case raised . . . [an] important issue, namely, the right of every citizen to see that works of art which belong to the government, being national wealth, are treated with respect and not destroyed by the government²⁷.

Sehgal and Amendments to the Copyright Act

Some twenty years after the damage to the mural occurred, in 1992, an interim injunction in the *Sehgal* matter was issued by the Delhi High Court. Interestingly, subsequent amendments to Section 57 of the Copyright Act appear to have been a direct reaction to the findings of the court in *Sehgal*, and if a similar case were to

arise in India today, the court would have great difficulty in reaching the same conclusions.

While the events in *Sehgal* clearly infringed both the moral rights of attribution and integrity set out in Section 57, Sehgal was obviously concerned with the mistreatment of his sculpture, rather than the government's failure to attribute the sculpture to him by allowing the part bearing his name to be removed. On the basis of revisions to Section 57, Sehgal, if his case were to be considered now, would have to show that the damage to the mural would be prejudicial to his honour and reputation. Most likely, Sehgal could not protest the partial or total destruction of the work by the government as a violation of his moral right of integrity²⁸. Moreover, under the new legislation, Sehgal could not object to the government's failure to display the work, or to display it properly, as a violation of his right of integrity²⁹.

The *Sehgal* case demonstrates how these amendments are a step backwards for the protection of moral rights in India, especially in relation to the integrity of artistic works. The state has an interest in protecting national culture for the benefit of the public. However, the amendments to Section 57 represent a shortsighted view of the government and public interest in artistic works.

The Indian government's approach to the right of integrity allows it to side step the economic and ethical consequences of a serious commitment to preserving cultural heritage. It may also reflect a general desire to limit the government's potential responsibility towards cultural

property. For example, the government might face great liability if foreign cultural property, which comes into India and is vulnerable, to harm becomes damaged. Ideally, the interest of a state in protecting the integrity of cultural works should be at least as great as an author's interest in protecting his own reputation³⁰. Unfortunately, the direct benefits to the state administration, or to the public from the protection of cultural works, are not as easily quantifiable as the material and non-material benefits to an individual author or artist.

Statart: Moral Rights in Computer Software

The *Statart* case raised an interesting and difficult issue of moral rights in relation to improvements to a computer software program. To date, it appears to be the only case in the world to give this issue serious consideration³¹. The program in question, which enabled users to create personalized letters by dictation³², was owned by Statart, an Indian software company. The dispute arose when Statart attempted to market an improved version of the program. Two former employees claimed that Statart's improvements to the program infringed their moral right of integrity, and that they were also entitled to be credited for their role in creating the program, in relation to the new version.

Like *Mannu Bhandari*, the *Statart* case was eventually settled. However, the parties' submissions in court raised some interesting issues concerning the extent of moral rights protection which would be available to designers of computer

software. Statart argued that the former employees should not be able to object to improvements to the program, but only to negative modifications. Otherwise, the computer industry would be compelled to bear the risk that any improvements to software might face obstacles from employees who were involved in developments at an earlier stage of the process.

Not surprisingly, given the importance of the software industry to India, the Indian government appears to have taken these concerns very seriously. Its modifications to the Copyright Act specify that authors of computer programs will most likely not be entitled to moral rights protection under Section 57, in the case of lawful adaptations of their programs³³. Not only is the computer industry a growing concern in India, but it is also closely dependent on the continuing ability to adapt earlier technologies, a reality which is well-recognized by United States industry experts and legislators in this field.

By restricting moral rights in computer software, Indian legislators may well have succeeded in preserving a degree of purity in the Indian application of moral rights doctrine. Moral rights are supposed to protect the special relationship between creative authors and their works. The Indian approach to moral rights in computer software may imply a qualitative difference between the rights of authors in artistic and technological works. However, the interaction of new technology and artistic creativity makes this issue far more complex than it appears at first sight, and it has yet to

receive detailed attention, in either international or Indian scholarship³⁴.

Moreover, the split between art and technology in a developing country such as India inevitably implies a distinction between national works, and works which are imported from industrialized countries. By restricting moral rights protections specifically to the authors of creative works, this legislative change supports the dual objectives of promoting creative endeavours at the national level, while attempting to maintain a greater degree of freedom and access in relation to international technological innovation.

The Indian ambivalence towards moral rights protection for computer programs parallels trends in the industrialized world. The implications of moral rights doctrine for copyright in software has become a serious pragmatic and conceptual issue in countries, which are on the leading edge of computer innovation. The potential incompatibility between concepts of authorship inherent in moral rights and the realities of creativity in the technological context threaten the validity of Western copyright concepts at their core. It will be interesting to see whether the relative specialization of moral rights in India proves to be a viable approach to the rights of authors as the Indian technology sector grows in scale and importance, or if it creates new kinds of confusion.

Other Cases

A brief consideration of two other moral rights cases contributes to a more complete picture of the status of moral rights in Indian jurisprudence. The case

of *Ved Prakash* involved an author who had consented to produce a certain number of novels over a five-year period for a publisher. When the author ceased to supply the novels, the publisher hired another writer to write the novels, which continued to be marketed under the original author's name. The author complained that his reputation was being damaged by the association of his name with poor-quality work. In deciding the case, the High Court of Delhi established that Section 57 encompasses both the "positive" and "negative" aspects of the right of attribution, effectively allowing the author to object to the false attribution of his name to work, which was not his³⁵.

Another case, *Garapati*, addressed the issue of evidence in moral rights cases. *Garapati* established that an author might have to provide evidence to support his allegations of distortions or modifications³⁶.

Moral Rights and Development

Section 57 of the Indian Copyright Act of 1957 drew its inspiration from Article 6bis of the Berne Convention to establish a system of moral rights that was based on internationally-recognized principles. However, the Indian legislation was broader in scope and open to more flexible interpretation than Article 6bis. The greater reach of Section 57 reflected Indian cultural values and traditions, and it was also a response to Indian concerns about cultural heritage and cultural development, particularly in the early years of Indian independence.

Over the past decade, India has seen the development of a significant

jurisprudence on moral rights issues. Indian courts have demonstrated a willingness to extend moral rights protection for Indian authors of literary and artistic works, while maintaining a degree of specialization in their thinking on moral rights. In particular, Indian courts are not likely to favour the application of expanded moral rights protection to computer software³⁷. This judicial trend is mirrored by Indian legislative amendments to Sections 57 and 52 of the Copyright Act, streamlining moral rights in software.

The approach of the Indian courts to moral rights is indicative of the growing sophistication of Indian legal methods in the copyright field. Indian judges have shown themselves to be remarkably advanced in the development of an analytical approach to moral rights doctrine, legislation, and precedent, and there has been a general recognition among the Indian judiciary of the need for a comprehensive body of Indian precedent in this area. Equally important, however, are the efforts of Indian judges to take broader policy considerations into account, especially in relation to cultural concerns. Moral rights cases have seen Indian courts attempting to balance the economic power of cultural industries and the political power of government against the weaker bargaining position of the individual author of a literary or artistic work. These efforts reflect the larger and more complex challenge of balancing the forces affecting India's international economic competitiveness against the localized and smaller-scale interests of individual creators. At the same time, it is

the status of the individual author before Indian courts, which will demonstrate both the cultural sensitivity of Indian leaders, and the extent of India's political sophistication and modernity.

Fundamentally, Indian courts must help to navigate India's transition from a 'traditional' to an industrial society, by weighing the preservation of cultural heritage and the maintenance of cultural standards against the economic drive to commercialize and commodify Indian culture, whether for domestic or international audiences. In addressing these issues, Indian judges have routinely put themselves forward as champions of culture. In doing so, they have favoured the interests of the author, and substantially expanded legal protection for moral rights.

The Indian legislature has responded to these trends by seeking to limit the scope of moral rights protection under Section 57 of the Copyright Act. It has attempted to remove the features of Section 57 which exceeded the standard of protection set by Article 6*bis*, and which were, in certain ways, uniquely important in the Indian context. Currently, the text of Section 57 meets minimum Berne requirements³⁸.

The policy concerns, which may have motivated the changes to Section 57, include the literary and artistic translation adaptation, the encouragement of cultural industries, which may make increasingly important contributions to the Indian economy and society, and a desire to limit government and industry liability in the exploitation of works. More generally, the Indian legislature must have been

concerned about the expansion of risks associated with the use of literary and artistic work. These issues reflect an intense need for access to knowledge that is typical of all developing countries, as well as an Indian cultural tradition, which emphasizes the social utility of artistic and literary work, rather than direct gains to the author from his efforts, whether economic or 'moral.'

Conclusion: The Future of Moral Rights in India

Indian copyright must achieve a delicate and subtle balance of interests. The development of moral rights protection in India, and of copyright principles overall, depends on the maintenance of great flexibility, in order to accommodate the ever-shifting social equilibrium of a developing society in the cultural sphere. Judge-made law may offer one of the most flexible and adaptive mechanisms for the development of moral rights. However, the limits of the Indian court system, including the costs and delays of litigation, only serve to emphasize the need for a legislative framework that adequately protects the moral interests of creators³⁹.

Indian lawmakers face an understandable temptation to restrict moral rights. However, their intervention may diminish the potentially important role of moral rights in the promotion of creative and intellectual activity in the Subcontinent. Rather than attempting to limit the role of moral rights in accordance with the international practice, legislative change in India should seek to explore the potential

contribution of moral rights to cultural development. In particular, copyright reform should take into consideration the unique features of the Indian cultural tradition, as well as India's cultural aspirations for the future.

Some questions that Indian experts may want to address in relation to moral rights include, who should be responsible for litigating moral rights claims, and what types of works moral rights should protect. For example, moral rights can be asserted by professional associations on behalf of their members, or cultural associations representing the public. Moral rights can be extended to protect community, group, or other types of 'corporate' creation. They can be extended to inanimate objects, or the protection of anonymous works of folklore⁴⁰. These considerations are especially significant in view of the general rigidity of the new international copyright regime under TRIPS, a situation from which the area of moral rights remains, effectively, exempt.

While the Indian legislature should develop new principles in dealing with special industries like information technology, it is also important to maintain a sufficiently broad framework for moral rights protection in relation to artistic and literary works for the promotion of cultural activities. Moreover, government in modern India has always aspired to a central role in the development of social values, and legislative provisions on moral rights should reflect the importance of protecting Indian cultural heritage. Here, Indian legislators will find themselves

confronting the classic dilemma of copyright law – how to find an appropriate balance between protection and use. Both the past and future of culture will depend on the maintenance of artistic and intellectual integrity. It is equally important to encourage an attitude of social respect towards those individuals and groups who are engaged in the cultural and intellectual development of knowledge.

The importance of protecting the creative drive of individuals, and of creating conditions which favour its expression, may be criticized as an excessive emphasis of a single creative model – that of individual authorship – which is perhaps not dominant in the Indian tradition. However, encouragement of individual creativity is a close corollary of modernization. Whatever the role of copyright may be in the industrialized countries, in developing countries, the protection of authors' economic and moral interests is likely to stabilize the position of creators in conditions of general poverty and uncertainty. In India's case, the diversity of Indian culture, and the great esteem in which Indians hold works of the intellect and the spirit, can certainly provide a basis for the protection of individual creativity. Arguably, India has more to gain than to lose from pursuing this area of potential growth. The drive and ambition of India's artists and intellectuals is undeniable, and is potentially one of the most important forces underlying the country's drive to modernize. The words of an Indian

national poet express the aspirations of India's creators:

'What has been shall yet be.' Her music will yet be recognized as the most marvellous in the world; her literature, her painting and her sculpture will yet be a revelation of beauty and immortality to the wondering nations; her life and acts will yet be ennobling examples for a grateful humanity⁴¹.

It is the unique challenge of Indian lawmakers to give life to this dream through a conscientious approach to cultural policy. Copyright law, and moral rights in particular, can make an important contribution to these efforts.

References and Notes

- 1 n 14
- 2 (1992) Suit No 2074 (Delhi HC)
- 3 This case is cited in Anand (n 32) 35-36
- 4 For example, see Anand (n 32); see also Dine J, "Authors' moral rights in non-European nations: International agreements, economics, Mannu Bhandari, and the Dead Sea Scrolls," *Michigan Journal of International Law*, 545, 16 1995, for an example of an American scholar's writing on Indian law
- 5 It is quite difficult to stay abreast of moral rights developments in India from outside the country, leading to many pitfalls for international scholars who are interested in Indian legal issues. For example, consider Dine's treatment of Indian copyright law and his discussion of the *Mannu Bhandari* case: Dine (n 56) 582, n 111 cites Section 57 to a 1989 source, and goes on to state: "Although the copyright law has since been amended, the moral rights provision has not changed....the law was amended in May 1994 to provide stronger protection for computer software." However, as discussed above, Section 57 was modified extensively by Section 20 of the *Copyright (Amendment) Act 1994*, the same provision which introduced software-related

- changes: *see* Narayanan (n 48) 612-13 for a reproduction of the section, and of the amended Section 57
- 6 (1990) Suit No 1869 also discussed by Anand (n 32) 34-35
- 7 (1992) AIR at 233 (AP 230), this case is from the South Indian state of Andhra Pradesh, and it is cited in Narayanan (n 48) para 7.10
- 8 *See* Dine (n 56) n 17: he translates the title into English as, 'Your Bunty', where Bunty is the name of the main character in the novel
- 9 *See* Dine (n 56) 561: he quotes the clause in the contract as allowing 'certain modifications in [her] novel for the film version, in discussion with [her,] to make it suitable for a successful film'
- 10 These grounds for the author's dissatisfaction with a film are identified by Dine, who also provides a detailed description of what these changes involved: Dine (n 56) n 144
- 11 Dine (n 56) provides details of the settlement: the film producers agreed to remove all references to Bhandari and her novel from the film, and from advertising for the film. Bhandari's copyright in her novel was also released to her. In return, Bhandari would not object to release of the film, or 'claim any right or interest' in the film
- 12 *See* Dine (n 56): in fact, Bhandari was unsuccessful at trial, where the judge found that, 'a bad film reflects poorly only on the filmmakers', and not on the original author of the work. Interestingly, the holding of the trial court in Bhandari's case was explicitly rejected by the High Court, which found that distortions in a work of adaptation can also offend the original author's moral rights: *see* Ramaiah (n 11) IND-46. Clearly, the High Court viewed the nature of the relationship between an original work and an adaptation somewhat differently from the trial court, and saw the adaptation as being, in essence, a reproduction of the original work, rather than a new creative work in its own right
- 13 Ramaiah (n 11)
- 14 *See* Dine (n 56) 577-82 for a discussion of some aspects of the 'important cost- and risk-shifting function' of moral rights. He observes (at 582) that moral rights have the effect of 'reducing or preventing users of copyrighted materials from externalizing the costs of violating the integrity of the work or failing to credit the author'
- 15 Anand (n 32) 36 observes: "[T]he court stated that the expression, 'other modification,' must read *ejusdem generis* with the words, 'distortion and mutilation'"
- 16 *See* Narayanan (n 48) para 7.10, n 12, n 13. The court interpreted s 57(1)(a) to mean that an intellectual work is 'inviolable'
- 17 Anand (n 32) 37. *See also* Dine (n 56) 564: 'The court appears to have made moral rights inalienable, while placing outside the prohibition on modifications such changes as are necessary to make the transition to a different medium'
- 18 Dine (n 56) 565. The Indian popular film industry is not only the largest in the world, but it also relies on formulaic film-making for its success, based on popular music, the exploitation of current trends in fashion, conventional values and a blatant appeal to the viewers' sentiments. Harsher critics, including the present author, will not hesitate to point out that Indian popular films and Indian art films come from different worlds. The meaning of quality, of course, is fundamentally different in each
- 19 *Mannu Bhandari* (n 14) 18; quoted in Dine, *ibid*
- 20 The *Amar Nath Sehgal* case receives a detailed treatment in Sundara Rajan MT, 'Moral Rights and the Protection of Cultural Heritage: *Amar Nath Sehgal v Union of India*,' *International Journal of Cultural Property*, 10(1) 2001, 79-94; available online: <http://www3.oup.co.uk/intjcp/current/100079.sgm.abs.html>
- 21 *See* Anand (n 32) 36: the sculpture decorated the walls of the Vigyan Bhavan
- 22 Anand (n 32) 36 describes it as being 140 feet long and 40 feet high
- 23 Anand (n 32) 36
- 24 *See* Ricketson (n 32) para 8.109. Anand (n 32) 36 points out that the rationale underlying this view is that, where work is destroyed, 'there would be no subject-matter left to affect the author's reputation'

- 25 Anand (n 32) 36
- 26 Frazier points out the power of governments, and their ability, not only to generate cultural developments, but even to define what is and is not art. Following Frazier's line of argument, it is equally true that governments may influence social attitudes towards art. *See* Frazier JA, 'On moral rights, artist-centered legislation, and the role of the State in art worlds: Notes on building a sociology of copyright law,' *Tulane Law Review*, **70**, 1995, 313, 330-54.
- 27 Anand (n 32) 36
- 28 Sehgal actually claimed a violation of the moral right of integrity on both grounds: see Anand (n 32) 36. The court's findings clearly implied that the outright destruction of a work could also be considered prejudicial to the creator's honour and reputation
- 29 *The Copyright Act, 1957 along with the Copyright Rules, 1958 together with International Copyright Order, 1999*, Bare Act with Short Notes (Universal Law Publishing New Delhi 2002) Section 57 (1), Explanation
- 30 This point is emphasized by Berryman C A, 'Toward more universal protection of intangible cultural property,' *Journal of Intellectual Property Law*, **1**, 1994, 293, 300.
- 31 *See* discussion of the issues involved in moral rights information technology in Sundara Rajan M T, "Moral Rights in Information Technology: A New Kind of 'Personal Right'?" (Paper read to the BILETA 2003 Conference, Greenwich Maritime University, London; pending publication.)
- 32 *See* Anand (n 32) 35: the program was called 'My Script,' and it 'converted a dictated letter into the user's own handwritten letter;' Section 20 of the *Copyright (Amendment) Act 1994*, *supra* note 50 provides that, under the new s 57, 'the author shall not have any right to restraint or claim damages in respect of any adaptation of the computer program to which clause (aa) of sub-section (1) of Section 52 applies.' Clause (aa) was added to Section 52 to allow copies or adaptations of computer programs to be made for certain purposes: *see* Section 17 of the *Copyright (Amendment) Act 1994*, *ibid.*; *see also* Narayanan (n 48) para 7.10. It is interesting that the Indian legislature has not excluded moral rights in computer software outright: implications of the legislative formula that has been adopted are discussed in Sundara Rajan (n 84)
- 33 Sundara Rajan (n 84)
- 34 For a detailed discussion of the facts of the case, *see* Anand (n 32) 34-35
- 35 The case is mentioned by Narayanan (n 48) para 7.10 in his discussion of moral rights under Indian law
- 36 Although the *Statart* case was settled outside court, this author agrees with Anand's view that moral rights in software have effectively been curtailed by the appearance of the case, and subsequent amendments to the Copyright Act
- 37 *See* Anand (n 32) 36: modifications to the integrity right are, of course, most significant in this regard
- 38 Interestingly, while the Indian Constitution provides that copyright falls within the exclusive legislative jurisdiction of the Indian Parliament, it does not provide an entrenched, constitutional basis for copyright protection: *see* Indian Constitution, Art 246(1). On the other hand, freedom of speech and expression is protected as a Fundamental Right in the Indian Constitution Art. 19(1)(a). This situation provides an interesting parallel to the US approach to copyright: for a close examination of the interplay between the First Amendment rights to free speech and the 'marketplace of ideas,' which copyright in the American framework is intended to promote, *see* Fraser S, 'Berne, CFTA, NAFTA & GATT: The implications of copyright *Droit moral* and cultural exemptions in international trade law,' *Hastings Communications & Entertainment Law Journal*, **18**, 1996, 287, 297-304. Unlike the American Constitution, however, the Indian Constitution does not address the role of copyright in promoting the development of the "arts and sciences"
- 39 In this regard, *see* the interesting cultural property dispute between the government of India and a Canadian oil company over title to a South Indian bronze, originally made to serve as an object of worship. The British

court allowed legal standing to the statue:
*Bumper Corporation v Commissioner of
Police of the Metropolis*, [1991] 1 WLR 1362
(CA)

40 Subramania Bharati C, 'Rasa – The key-word
of Indian culture' in *Agni and Other Poems
and Translations & Essays and Other Prose
Fragments* (A Natarajan, Madras) 1980