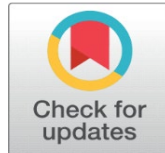
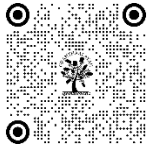


# THE PROTECTION OF ARTISTIC WORK UNDER INDIAN COPYRIGHT LAW

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## ABSTRACT

This research paper examines the legal framework for the protection of artistic works under the Indian Copyright Act, exploring the scope of copyright protection, the challenges faced by artists in enforcing their rights, and the impact of recent amendments and judicial interpretations on the safeguarding of artistic creations in the country. Under the Indian Copyright Act of 1957, which is the primary legislation governing copyright in the country, a wide array of works is eligible for copyright protection, encompassing not only literary and dramatic compositions, but also musical creations and artistic works. However, the application of copyright law to the field of art has been a subject of ongoing scholarly discourse, with concerns raised regarding the potential for content-based laws to have a chilling effect on the publication and dissemination of artistic works, as navigating the legal system should a work be impugned is invariably arduous, with the process itself often serving as a form of punishment, as Lawrence Liang once put it with reference to laws criminalising certain content which could be deemed socially or politically contentious. This paper will delve into the nuances of copyright protection for artistic works in India, examining the evolution of the legal framework, the challenges faced by artists, and the potential impact of recent legislative and judicial developments on the safeguarding of artistic expression in the country.

**Keywords:** Artistic Works, Indian Copyright Law, Content Laws, Censorship, Artistic Expression

## 1. INTRODUCTION

India's copyright law dates back to the Patents and Designs Act of 1872, which has been amended several times over the years to keep up with international legal requirements and the demands of the domestic industry (Mukherjee, 2006) (Mukherjee, 2006). The current Indian Copyright Act was enacted in 1957 and has since been amended to align with the World Copyright Treaty of 1996. (Wing, 2012) Fundamental features of copyright, such as the exclusive privilege granted to authors of artistic works to reproduce and distribute their creations for a limited period, are largely shared across the EU, US, China, and other major jurisdictions (Hutukka, 2023).

India's copyright law provides protection for "original" artistic works, which includes paintings, sculptures, drawings, engravings, and photographs, among other forms of creative expression (Mountford, 2015). However, the law explicitly excludes ideas, procedures, processes, or principles from the scope of copyright protection, even if they are expressed in a tangible form. This is a fundamental aspect of copyright law, as the protection only extends to the creative expression of ideas, not the underlying ideas themselves.

## 2. IMPORTANCE OF COPYRIGHT PROTECTION

Copyright plays a crucial role in promoting creativity and innovation by granting authors and artists the exclusive right to control the use and distribution of their works for a limited period. This incentivizes creators to invest their time and

resources into producing new works, secure in the knowledge that they will be able to commercially exploit their creations and reap the benefits.(Hathcock, 2010)

Copyright law recognizes both the economic and the moral rights of artists. The economic rights allow the copyright holder to derive financial gain from the work, while the moral rights ensure that the creator's reputation and integrity are protected, even after the work has been sold or transferred to a third party.(Towse, 2006)

Copyright protection is essential for safeguarding the interests of artists and promoting a thriving creative economy. Copyright law plays a crucial role in incentivizing artists and creators to invest their time and resources into producing new works, secure in the knowledge that they will be able to commercially exploit their creations and reap the benefits. This, in turn, helps foster a vibrant and sustainable creative sector that contributes significantly to the overall economic and cultural development of the country.

### 3. THE LEGAL FRAMEWORK FOR THE PROTECTION OF ARTISTIC WORK

India's main law governing copyright is the Copyright Act of 1957, which has been amended several times to keep pace with international developments.

#### KEY PROVISIONS RELATED TO ARTISTIC WORKS:

##### SECTION 2(C):

Defines "artistic work" as:

- i. A painting, sculpture, drawing (including maps and charts), engraving, or photograph, whether or not they possess artistic quality.
- ii. A work of architecture.
- iii. Works of artistic craftsmanship.

##### SECTION 13:

States that **copyright subsists** in original artistic works, meaning only original creations are eligible for protection. Copyright applies as soon as the work is created, without needing registration.

##### SECTION 14:

The **economic rights** of the copyright owner for artistic works include:

- i. **Right to Reproduce:** Exclusive right to make copies of the work in any material form, including digital storage.
- ii. **Right to Distribute:** Control over issuing copies of the work to the public, either by sale, rental, or transfer.
- iii. **Right to Communicate:** Exclusive right to publicly display or broadcast the work via any medium, like TV or the internet.
- iv. **Right to Adapt:** Permission to create derivative works or adaptations, such as translations or alterations for different formats.
- v. **Right to Include in Films or Sound Recordings:** Control over incorporating the work into films, music videos, or similar media.

These rights allow the owner to commercially exploit and control the use of their work.

##### SECTION 15:

Addresses artistic works applied to industrial processes. If an artistic work is used for producing articles by industrial means and more than 50 copies are made, copyright protection ends, and the work enters the public domain for that purpose. This ensures that mass-produced items do not remain indefinitely under copyright.

Collectively, these provisions establish a comprehensive legal framework for safeguarding artistic works under Indian copyright law. The framework upholds the rights of creators while also addressing exceptions, particularly when artistic works are utilized in commercial or industrial applications.

#### MORAL RIGHTS

**Section 57** of the Indian Copyright Act, 1957, moral rights of authors are distinct from their economic rights. These rights ensure protection of the author's personal connection to their work. The two key moral rights are:

##### i. **RIGHT OF ATTRIBUTION (PATERNITY RIGHT):**

- a) This right allows the author to claim authorship of their work.

- b) The author can demand recognition for their creation and ensure that their name is properly associated with the work whenever it is used or displayed.

## ii. **RIGHT OF INTEGRITY:**

- a) The author has the right to protect their work from any distortion, mutilation, or modification that would harm their honour or reputation.
- b) If the work is altered in a way that prejudices the author's reputation or dignity, they can take legal action, even if they no longer hold the economic rights to the work.

Moral rights are inalienable, meaning they cannot be transferred or waived, and persist even after the economic rights have been transferred or the copyright term has expired. Moral rights, including the right of attribution and the right of integrity, are perpetual, inalienable, and independent of the economic rights associated with the work. This means that these personal rights remain with the author even if the copyright is transferred or sold to another party. The author can exercise these moral rights to protect their personal and reputational interests connected to the artistic work, regardless of ownership of the economic rights.

## **4. INTERNATIONAL CONVENTIONS AND TREATIES**

### **• BERNE CONVENTION, TRIPS AGREEMENT, AND INDIA'S COMPLIANCE.**

The Berne Convention for the Protection of Literary and Artistic Works is a widely adopted international copyright treaty that establishes a set of minimum standards for copyright protection that must be upheld by member countries. - The TRIPS Agreement, which is an annex to the WTO agreement, also mandates member countries like India to comply with the key provisions of the Berne Convention regarding the protection of artistic works. Accordingly, India's copyright law aligns with these international frameworks, ensuring that artistic works created within the country are granted adequate protection and that the rights of creators are safeguarded in line with global standards (Pistorius, 2006).

### **• ROLE OF WIPO IN PROTECTING ARTISTIC WORKS.**

The World Intellectual Property Organization is the UN agency responsible for overseeing global intellectual property frameworks, including copyright. WIPO provides technical assistance to member states, facilitates international treaties, and promotes harmonization of national copyright laws. India's domestic copyright regime has been significantly shaped by WIPO's initiatives and the multilateral agreements facilitated by the organization, which have established global norms and standards for the protection of artistic works.(Unni, 2015)

WIPO plays a crucial role in setting global norms, harmonizing national laws, and providing technical assistance to member states in implementing effective copyright protection frameworks.(Varma, 2013) (Aguboshim & Ezeasomba, 2019), In summary the Indian copyright law comprehensively safeguards artistic works through provisions that recognize economic and moral rights of creators, align with international treaties and conventions, and enable effective enforcement of these rights.

## **5. REGISTRATION OF COPYRIGHT**

While copyright registration in India is not mandatory, it offers several advantages and benefits to creators of artistic works.

- Registration creates a public record of the copyright, making it easier to establish ownership and prevent unauthorized use.
- In case of a dispute, the registration certificate can serve as prima facie evidence of the validity of the copyright and the particulars recorded in the register.
- Registered works also benefit from enhanced remedies and presumptions under the law, such as the presumption that the registered owner is the actual owner of the copyright.

The registration process involves filing the relevant application form, along with a copy of the work and necessary fees, with the Copyright Office. This creates an official record of the copyright and the strengthens the creator's ability to enforce their rights.

## **6. SCOPE OF COPYRIGHT PROTECTION FOR ARTISTIC WORKS**

### **1. TYPES OF ARTISTIC WORKS PROTECTED**

The copyright Act protects a wide range of artistic works including: Paintings, drawings, sculptures, engravings and photographs - Architectural works- Works of artistic craftsmanship- Illustrations, maps, plans and diagrams- Computer-

generated artistic works. This broad scope ensures that diverse forms of creative artistic expression are granted copyright protection.[\(Zhilskiy et al., 2019\)](#)

## 2. DURATION OF COPYRIGHT PROTECTION

- For most artistic works, the copyright duration is the lifetime of the author plus 60 years after their death. This ensues a reasonable period during which the creator and their descendants can exclusively benefit from the commercial exploitation of the work. For anonymous or pseudonymous artistic works, the copyright lasts for 60 years from the date of first publication.
- Once the copyright term expires, the artistic work enters the public domain. At this stage, the work can be freely used, reproduced, and adapted by anyone without requiring permission from the original creator or their heirs. The extensive duration of copyright protection for artistic works under Indian law ensures that creators and their families can derive economic benefits from their creations for a significant period of time, while also allowing for the eventual entry of these works into the public domain to enrich the cultural landscape.[\(Hand Book of Copyright Law, 1999\)](#)

## 3. ECONOMIC AND MORAL RIGHTS OF ARTISTS

- The copyright law gives artists exclusive economic rights over their works, allowing them to commercially exploit their creations through reproduction, distribution, public display, and adaption. These economic rights can be fully or partially transferred or licensed to third parties, enabling artist to commercialize their works by entering into agreements with publishers, galleries, brands, and other entities.[\(O'Dwyer, 2020\)](#)
- Beyond just economic rights, the Indian Copyright Act also recognizes the moral rights of authors, including the right of paternity (to be credited as the creator) and the right of integrity (to prevent distortion or mutilation of the work). This allows artists to be identified as the creator of a work and protects the original expression of their artistic vision from unauthorized distortion or modification.

## 7. COPYRIGHT INFRINGEMENT IN ARTISTIC WORKS

### i. DEFINITION OF INFRINGEMENT

Copyright infringement occurs when a person reproduces, distributes, displays, or creates derivative versions of an artistic work without the permission of the copyright holder. Copyright infringement in the context of artistic works can take various forms, such as making unauthorized copies of a painting, sculpture or photograph, publicly displaying the work without permission, or creating and distributing adaptations or derivative versions of the original artistic expression without authorization. Copyright infringement is a serious offense under Indian law, and copyright holders can seek a range of civil and criminal remedies against infringers, including injunctions, damages, and seizure of infringing copies.[\(The title is simply: \\*\\*Copyright Office\\*\\*, 2023\)](#)

### ii. REMEDIES FOR INFRINGEMENT

**Civil Remedies:** The Indian Copyright Act provides copyright holders with a robust set of civil remedies that they can pursue against those who infringe upon their artistic works.

#### i. INJUNCTIONS:

**Section 55:** The copyright owner can seek an injunction to restrain the infringer from continuing the infringement.

#### ii. DAMAGES:

**Section 55:** The court may award damages to the copyright owner, which can include actual damages and profits made by the infringer.

#### iii. ACCOUNT OF PROFITS:

**Section 55:** The court may order the infringer to account for profits made through the infringement.

#### iv. DELIVERY UP:

**Section 55:** The infringer may be ordered to deliver up for destruction or disposal any copies of the infringing work in their possession.

**CRIMINAL PENALTIES:** The law also imposes criminal liability for copyright infringement, with potential fines and imprisonment for offenders.

#### i. IMPRISONMENT:

**Section 63:** Infringers can face imprisonment for up to three years for the first offense, which may extend to six years for subsequent offenses.

ii. **FINES:**

**Section 63:** Fines can range from ₹50,000 to ₹2,00,000, or more, depending on the severity of the infringement.

iii. **CONFISCATION:**

**Section 64:** Courts may order the confiscation of infringing copies and instruments used for the infringement.

## 8. LANDMARK CASE LAWS

- **Amarnath Sehgal v. Union of India 2005(30) PTC253(DEL):** This landmark case recognized the moral rights of artists under the Indian Copyright Act, including the right of paternity, which allows artists to be identified as the creator of a work, and the right of integrity, which protects the original expression of an artist's vision.
- **Indian Performing Right Society Ltd. v. Eastern India Motion Pictures Association 1977 2 SCC 820:** This case established that public performance of copyrighted musical works without a license from the copyright owner constitutes infringement, even if no commercial benefit was derived from the performance.
- **Mansoor Haider v. Yashraj Films Pvt. Ltd. and Ors. (2014) 59 PTC 292:** This case clarified that copyright protection under Indian law extends only to the unique and original expression of an idea in an artistic work, and not to the underlying ideas, concepts, or facts themselves.

## 9. FAIR USE AND ARTISTIC WORKS

i. **DOCTRINE OF FAIR USE IN INDIAN LAW** - The Indian Copyright Act recognizes the doctrine of fair use, which allows for limited use of copyrighted works without the permission of the copyright holder for purposes such as private study, research, criticism, review, and news reporting.

Section 52 of the Indian Copyright Act, 1957 outlines exceptions and limitations to copyright protection, particularly for artistic works. Key provisions include:

- a) **Fair Dealing for Criticism or Review:** Artistic works can be used for criticism or review with proper acknowledgment.
- b) **Use for Teaching:** Reproduction of artistic works for educational purposes is allowed, promoting teaching and learning.
- c) **Broadcasting:** Artistic works can be broadcast as part of reporting current events, provided they are used in context.
- d) **Public Display:** Displaying artistic works in public, such as in galleries, is permitted if not for commercial gain.
- e) **Reproduction in Legal Proceedings:** Artistic works can be reproduced in legal contexts for evidence.
- f) **Parody or Satire:** Use of artistic works in parodies or satires is allowed, fostering creative reinterpretation.

These limitations must adhere to the principle of fair dealing, ensuring that the use does not adversely affect the market value of the original work, and proper attribution is generally required.

ii. **APPLICATIONS OF FAIR USE**

Fair use in educational contexts, private study, criticism, and parody. The doctrine of fair use under Indian law is not absolute and must be balanced against the legitimate interests of the copyright holder. (Fiesler et al., 2015) (Prasad & Aggarwal, 2015)

iii. **FAIR USE CASE LAWS**

- **Civic Chandran v. Ammini Amma (1996) 16 PTC 329 (Ker.):** This case recognized that reproducing portions of an artistic work for the purpose of research and criticism, provided it is done in good faith and without commercial intent, can be considered fair use under the Indian Copyright Act.
- **Chancellor, Masters & Scholars of the University of Oxford & Ors. v. Rameshwari Photocopy Services & Ors 2016 SCC OnLine Del 6229:** This landmark case further expanded the scope of fair dealing for educational purposes by allowing certain kinds of photocopying of copyrighted materials for use in educational institutions, striking a balance between the rights of copyright holders and the needs of students and educators to access and reproduce copyrighted works.



## 10. EMERGING CHALLENGES IN THE PROTECTION OF ARTISTIC WORKS

### i. DIGITAL PLATFORMS AND COPYRIGHT INFRINGEMENT

Issues of piracy, unauthorized reproduction, and sharing of works online. The advent of digital platforms and the ease with which content can be shared and distributed online have presented significant challenges in the protection of artistic work (Indrawan et al., 2020). The proliferation of digital platforms has further exacerbated the challenge of safeguarding the intellectual property rights of artists, as the internet and digital technologies have enabled the widespread distribution and unauthorized use of artistic works.

Protection of digital and internet-based art. The increasing prevalence and popularity of digital and internet-based artistic works, such as digital art, virtual reality experiences, and online performances, have raised new legal and technological challenges in terms of their protection under the existing copyright framework. As the landscape of artistic expression continues to evolve, the Indian Copyright Act will need to undergo careful review and adaptation to ensure that it remains responsive to emerging forms of art and the unique challenges they present, thereby upholding the rights and interests of artistic work creators (Chowdhury, 2008).

### ii. NFTS (NON-FUNGIBLE TOKENS) AND COPYRIGHT

The rise of non-fungible tokens has introduced a new paradigm in the ownership and monetization of digital artworks, challenging traditional copyright norms (Lee, 2022). The use of NFTs to represent and trade unique digital assets has significant implications for the protection of digital art, as it introduces new questions around the scope of copyright, the rights of creators, and the challenges of enforcing intellectual property rights in the digital age.

### iii. ROLE OF INTERMEDIARIES

The responsibility of major digital platforms like YouTube, Instagram, and Facebook in preventing copyright infringement on their platforms has become a critical issue. These intermediaries play a significant role in the distribution and sharing of artistic works, and they have a duty to implement robust measures to safeguard the intellectual property rights of creators. This includes proactive content moderation, efficient notice-and-takedown systems, and collaborative efforts with rights holders to identify and remove infringing content. Furthermore, these platforms should also explore innovative solutions, such as content ID systems and licensing agreements, to facilitate the lawful use of copyrighted works and ensure that artists are fairly compensated for the use of their creations (Kim & Kwak, 2021).

## 11. PROTECTION OF TRADITIONAL AND INDIGENOUS ARTISTIC WORKS

### i. LEGAL CHALLENGES

Lack of adequate protection for traditional and indigenous artistic forms. Many traditional and indigenous forms of artistic expression, such as folk art, tribal crafts, and cultural performances, are not adequately protected under the current Indian Copyright Act, which primarily focuses on individual authorship and fixed forms of expression (Anand, 2019) (Kolay, 2016). These traditional artistic works often have a communal and dynamic nature that does not align well with the individualistic and fixed-form principles of copyright law, leading to a significant gap in the legal protection of these invaluable cultural assets. - Potential amendments to the Copyright Act to address the unique challenges of traditional and indigenous artistic works (Saikia, 2015). There have been ongoing discussions and proposals to amend the Indian Copyright Act to better accommodate the protection of traditional and indigenous artistic works, such as the introduction of provisions for communal moral rights, traditional knowledge, and expressions of folklore.

### ii. NEED FOR A SUI GENERIS SYSTEM

Given the inherent limitations of the existing copyright regime in adequately safeguarding traditional and indigenous artistic works, there have been calls for the development of a sui generis system specifically designed to address the unique characteristics and needs of these cultural expressions. Such a system could incorporate elements like community-based ownership, protection of living traditions, and the recognition of collective rights, among other provisions tailored to the preservation and promotion of India's rich artistic heritage.

The increased commercialization and commodification of traditional and indigenous artistic works have raised concerns about the exploitation of these cultural assets and the lack of fair and equitable sharing of benefits with the respective communities. Addressing these challenges requires a thoughtful and nuanced approach that balances the interests of artists, communities, and the broader public, while prioritizing the sustainable development, preservation, and promotion of these invaluable artistic traditions (Diversity of Cultural Expressions, 2022).

## **12. RECOMMENDATIONS AND PROPOSALS FOR LEGAL REFORM**

### **i. STRENGTHENING ENFORCEMENT MECHANISMS**

The enforcement of copyright laws, particularly in the digital realm, has been a significant challenge, with widespread infringement and unauthorized use of artistic works.(Geiger, 2014) Strengthening enforcement mechanisms, such as streamlining the judicial process, enhancing the capacity of enforcement agencies, and fostering greater cooperation between rights holders and intermediaries, could help address this issue and provide more effective protection for artists.

### **ii. AMENDMENTS TO THE COPYRIGHT ACT**

The Indian Copyright Act should be reviewed and amended to address the evolving nature of artistic expression and the unique challenges posed by new technologies. Potential amendments could include: -

- Expanding the scope of moral rights to better protect the integrity and attribution of artistic works, especially in the digital sphere.
- Introducing a comprehensive framework for the collective management of copyrights, ensuring fair and equitable remuneration for artists, particularly in the context of digital distribution and exploitation of their works.
- Incorporating provisions for the protection of traditional and indigenous artistic works, recognizing the communal nature of these cultural expressions and establishing mechanisms for community-based ownership and benefit-sharing.

### **iii. PUBLIC AWARENESS AND ARTIST SUPPORT**

Increased public awareness and a better understanding of copyright laws among artists, creators, and the general public can contribute to a more robust ecosystem for the protection of artistic works. Initiatives to educate and empower artists, particularly those from marginalized communities, about their rights and the available legal mechanisms, can help them assert their intellectual property rights and seek redress for infringement.

## **13. CONCLUSION**

The protection of artistic works under Indian copyright law faces several challenges, including the limitations of the existing legal framework, the complexities of digital distribution and enforcement, and the unique considerations around traditional and indigenous artistic expressions. To address these multifaceted challenges, a comprehensive approach is necessary, encompassing the strengthening of enforcement mechanisms, targeted amendments to the Copyright Act, and the development of a sui generis system specifically designed to safeguard the unique characteristics and preservation, promotion, and equitable distribution of the benefits derived from traditional and indigenous artistic works.

The evolving nature of copyright protection for artistic works, especially in the digital age. Ensuring that the legal framework remains agile and adaptable to accommodate emerging forms of artistic expression and technological advancements. Furthermore, fostering international collaboration and harmonization of copyright laws could help address the cross-border challenges of artistic work protection, particularly in the context of global digital platforms and the preservation of traditional and indigenous cultural expressions.

The protection of artistic works under Indian copyright law is a complex and multifaceted challenge that requires a comprehensive and nuanced approach. To address these challenges, a multifaceted strategy is necessary, including strengthening enforcement mechanisms, amending the Copyright Act to better accommodate evolving artistic expressions and the unique needs of traditional and indigenous artistic works, and promoting greater awareness and empowerment of artists by adopting a holistic and collaborative approach, India can strive to strike a balance between the interests of artists, communities, and the broader public, while ensuring the sustainable development, preservation, and promotion of its rich artistic heritage.

Ultimately, safeguarding the intellectual property rights of artists and the cultural heritage represented by traditional and indigenous artistic expressions is crucial for the sustainable development, preservation, and promotion of India's rich artistic legacy.

## **CONFLICT OF INTERESTS**

None.

## ACKNOWLEDGMENTS

None.

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## **CASE LAWS**

1. Amarnath Sehgal v. Union of India 2005(30) PTC253(DEL)
2. Civic Chandran v. Ammini Amma (1996) 16 PTC 329 (Ker.)
3. Chancellor, Masters & Scholars of the University of Oxford & Ors. v. Rameshwari Photocopy Services & Ors 2016 SCC OnLine Del 6229:
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