

## Gandhi and the Judicial Discourse on Moral Rights

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**Abstract :** The inclusion of Rights of Author (Moral and Personal Rights) resonate the century long battle of rights of authors, composers, performers across developed and developing countries (whether following civil law or common law systems). But, the juxtaposition of author's special, moral, personal rights within the legislative framework of Copyright statutes (Indian Copyright Act, 1957, applicable statutes) underscores the foundational role of the right which goes to the root of the constitutional structure of India and philosophies of political and literary leaders like Mahatma Gandhi and Gurudev Rabindranath Tagore. In the pre-independence era when the concept of moral rights was unknown to both England and India's statutory laws, the strategic deployment method of Gandhi, his ideologies and thoughts scripted the concept of moral rights for authors/composers. The preservation of Rabindric Style (Characteristic Tagore's vocal renditions) by Vishwabharati University (successor in interest for Tagore's literary and musical compositions) prior to the Copyright Amendment of 1999 recognizing Author's Special Rights in line with 6bis of Berne Convention invigorates the fact that the right existed intrinsically prior to the legislative amendment. The paper would in addition to the academic probe carry out an empirical enquiry of the institution's (Navjivan Trust and Vishwa Bharati University's) reasoning on the same. The judicial discourse and transforming constitutional ideals between 1950s till date in India alludes Moral Rights to be an essential legal right which have been reasoned by Indian Courts based on the underlying philosophies in culture, customs, religion wherein composers and literary figures have played key roles in enlightening and encouraging the members of society through their literary, musical and artistic work during pre-independence renaissance of India. The discourses have been influenced by the philosophies reflected in the preamble of the Indian constitution, 'socialist, secular, democratic republic' and laws of other civil law countries. Lastly, the paper would analyze the adjudication process and witness involvement in ascertaining violations of moral rights and further summarize the indigenous and country specific economic thoughts that often chisel decisions on moral rights of authors, composers, performers which sometimes intersect with author's right of privacy and against defamation. The exclusivity contracts or other arrangements between authors, composers and publishing companies not only have an erosive effect on each thread of moral rights but irreparably dents factors that promote creativity. The paper would also be review these arrangements in view of the principles of unjust enrichment, unfair trade practices, anti-competitive behavior and breach of Section 27 (Restrain of Trade) of Indian Contract Act, 1857. The paper will thus lay down the three pillars on which author's rights in India should namely rest, (a) political and judicial discourse evolving principles supporting moral rights of authors; (b) amendment and insertion of Section 57 of the Copyright Act, 1957; (c) overall constitutional framework supporting author's rights.

**Keywords :** copyright, moral rights, performer's rights, personal rights

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