

***COPYRIGHT AND HUMAN RIGHTS: THERE IMPORTANCE AND RELATIONSHIP WITH REFERENCE TO INDIAN LEGISLATION***

**TABLE OF CONTENT**

**1. Abstract -----[3]**

**2. Introduction -----[3-5]**

    2.1 *What is Copyright*-----[3-5]

    2.2 *What are human rights* -----[5]

**3. Copyright and human rights in Indian context-----[5-8]**

    3.1 *Freedom of speech and expression*-----[6]

    3.2 *Moral Rights*-----[6-7]

    3.3 *Economic Rights* -----[7]

    3.4 *Rights to claim the possession of infringing material* -----[7-8]

    3.5 *Claim share in resale price of a work* -----[8]

    3.6 *Right to take civil and penal action* -----[8]

**4. Conclusion -----[9]**

## **1.ABSTRACT**

Copyright play a crucial role in the innovative fields. Copyright protection has been in existence for more than 150 years. And human rights have been in the roots of the human society for about 805 years or so. Despite there difference in existence they have a very close relationship. This paper attempts to look at the aspects of the study of Copyright and Human Rights. How copyright is related to human rights, which human rights are being protected by Copyright and so on. The main aim of this article is the Copyright way to deal with Human Rights.

Conclusively, the study will discover the basic understanding of the Copyright Act and its relation to the Human Rights.

**Key words:** Copyright, Human Rights, Relationship between Copyright and Human right, Indian Legislation, right to freedom of speech and expression, moral rights, economic right, etc.

## **2.INTRODUCTION**

India is a big country with 135 crores of the population and is popularly known as an Emerging and Developing Country (EDC) with an experience of rapid economic development. In this country, every person is living in a competitive platform, promoting their individual invention. But, in order to promote their inventions, firstly they have to protect that from others. In order to protect their products or inventions from being used by others, they need to have some special rights, including their basic human rights. Thus, a creator or an author can protect their products or inventions by having a privilege right called Copyright. Copyright somehow is related to human rights in various aspects and they both play a very significant role in an author's life.

To understand the relation between Copyright and human rights, firstly it's important to understand the meaning of Copyright and Human Rights.

### **2.1. What Is A COPYRIGHT?**

Copyright is a form of intellectual property right, it gives a right to the creators or authors of any dramatic, artistic, literary, music and any producer of a documentary movie etc. In other words, it is the exclusive rights given by the law to an author or composer to print, publish and to sell the

copies of their original work according to their interest. The two-primary source of having a Copyright is any writing or any innovation. And the purpose of the copyright is to protect that original work of the author or the innovator. This law of Copyright is governed by the *Indian Copyright Act of 1957* and the term “Copyright” is defined in *Section 14* which states

*“copyright means the exclusive right subject to the provisions of the act, to do or to authorize the doing of any act in respect of a work or any substantial part thereof.”<sup>1</sup>*

The Copyright Act gives two types of benefits to the author i.e. *Material* and *Moral benefit*. Material benefit gives the economy or monetary benefits to the author by which they can produce and sell the copies of their original work. And Moral benefit protects moral integrity of the author. Both of which are also protected by human rights in some way or the other. And if any person violates or misuse the right of the author, then it constitutes the infringement of Copyright defined in *Section 51 of the Copyright Act of 1957*.<sup>2</sup>

## **2.2. WHAT ARE HUMAN RIGHTS?**

Human Rights are those rights which every individual must have against the state or other public authority by virtue of his being a ‘*member of the human family*’, irrespective of any other consideration.<sup>3</sup> *Article 1 of the Universal Declaration of Human Rights (UDHR)* states,

*“all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood”<sup>4</sup>*

These rights are based on the mutual respect, treating others fairly and people’s ability to make their own decisions in life. According to the *UDHR*, there are in total 30 human rights a human being can have.<sup>5</sup> Some of these rights are Right to freedom of speech and expression, right to move freely, right to education, right to choose any business or profession, etc.

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<sup>1</sup> Copyright act, 1957 § 14.

<sup>2</sup> Copyright act, 1957 § 51.

<sup>3</sup> D.D. Basu, *Human Rights in Constitutional Law*, (3<sup>rd</sup> ed. 2008).

<sup>4</sup> Nac.today, *all human beings are born free and equal dignity and rights*, Dec. 2005, <https://nac.today/en/a/305408>.

<sup>5</sup> Sharing.org, *Human Rights at 70: Still working to ensure freedom, equality and dignity for all*, Jan. 2020, <https://www.sharing.org/information-centre/articles/universal-declaration-human-rights-70-still-working-ensure-freedom>.

The meaning and importance of Copyright and Human Rights must be cleared in the above explanation, but some questions must have come in our mind like, is there any relation between

Copyright and Human Rights? How Copyright protects Human Rights or Copyright protects all the human rights or some of them? What relation does the Indian legislation have with it? Let's have a look on the relation between Copyright and human rights in the context of India.

### **3.COPYRIGHT AND HUMAN RIGHTS IN INDIAN CONTEXT: A PROFITABLE RELATIONSHIP**

In India, the idea of the right has been well known since the ancient time, the Mahabharat preached,

*Sarve Bhavantu Sukhinah, Sarve Santu Niramayah, Sarve Bhadrani Pashyant Maa Kashachit Dukhbhag Bhaivet.*"<sup>6</sup>

Human is this planet's wisest species and thus it is his responsibility to defend not only his rights but the rights of others as well. Human rights consist of the right to life and liberty, freedom of opinion and expression, freedom from slavery and torture, the right to work and education, and lots of more.<sup>7</sup> According to a Nobel Peace Prize winner and principal drafter of the Universal Declaration of Human Rights (UDHR), René Cassin,

*"human beings can claim rights by the fact of their creation."*<sup>8</sup>

So far as copyrights or author's authority is concerned, they protect the bundle of human rights such as: Freedom of expression, Moral rights, Economic rights etc.

Copyright protection is not per se a human right, but it is a tool which protects the human rights of authors and publishers. Furthermore, Copyright also has two elements that relate to human rights: it has an element linked to someone's personal creativity and identity and it has an economic

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<sup>6</sup> Jai Prakash Yadav, *Copyright or author's authority is the protector of human rights generation to generation*, (Jan 2007).

<sup>7</sup> Willem Doise, *Human rights: common meaning and differences in positioning*, (Dec. 2003).

<sup>8</sup> Krisjanis Buss, *Copyright, and free speech: the human right perspective*, (Dec. 2015).

aspect. Let us examine some of the linkage between copyright and human right stated above in detail.

### **3.1. FREEDOM OF SPEECH AND EXPRESSION-**

Freedom of speech and expression is a recognized human right. Copyright is a legal tool that safeguards the human rights of writers and publishers and their freedom of speech. Freedom of speech does not necessarily mean the right to express a certain opinion. It involves selecting the platform to allow an author to choose, whether to distribute a work through open access licenses on the Internet or through a publisher through a publishing agreement. In the cases of *Francis Coralie Mullin v the administrator union*<sup>9</sup> and *Maneka Gandhi v Union of India*<sup>10</sup>, it was categorically held that, freedom of speech and expression are guaranteed under article 21 of the constitution of India<sup>11</sup> and that, a law depriving this fundamental right would stand test under *article 14, 19 and 21*.<sup>12</sup> Consequently, a copyright infringement is a breach of human rights enumerated in *Articles 14, 19(1)(a) and 21 of the Constitution*.<sup>13</sup>

### **3.2. MORAL RIGHTS-**

Human rights are basically moral principles or norms that describe certain standards of human. These moral rights are expressed in *section 51 and 57 of the 1957 Copyright Act*<sup>14</sup> pursuant to *Article 6bis of the Berne Convention*.<sup>15</sup> Furthermore, *Article 15(1)(c) of the ICESCR*<sup>16</sup> also requires each state party of the Covenant to recognize the right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production. They are the special right of the author or founder which includes both the right to paternity and the right to dignity. Moral rights emanate from the author's investment in labor and capital. It is also considered as a reflection of his personality in some cases. In the case of *Amarnath*

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<sup>9</sup> Francis Coralie Mullin V. The Administrator Union, 1981 AIR 746.

<sup>10</sup> Maneka Gandhi V. Union of India, 1978 AIR 597.

<sup>11</sup> INDIA CONST. Art. 21.

<sup>12</sup> INDIA CONST. Art. 14 *See also* Art. 19 and Art. 21.

<sup>13</sup> *Id.*

<sup>14</sup> Copyright act, 1957 § 51 *See also* § 57.

<sup>15</sup> Senthil Kumar, *Moral Rights under Copyright Law*, Oct. 2016, [www.mondaq.com/India/copyright/537094/moral-rights-under-copyright-law](http://www.mondaq.com/India/copyright/537094/moral-rights-under-copyright-law).

<sup>16</sup> UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 1976, Art. 15, cl. (1) (c).

*Sehgal v. Union of India*,<sup>17</sup> court recognized the moral right of the plaintiff and granted an injunction considering it an important Human right. It protects an author's work from any distortion, mutilation, modification or any other untoward act.

### **3.3. ECONOMIC RIGHTS-**

Copyright is a kind of 'economic right' to be recognized and secured in the form of human rights. *Section 14 of the Indian Copyright act*<sup>18</sup> also protects the Economic rights of the author. *The author's economic rights are the return of labor, and the money invested by him.* These economic rights include, reproduction of the work in various forms, distribution of copies of the work; public performance of the work; broadcasting or other communication of the work to the public; translation of the work into other languages; and adaptation of the work etc. Additionally, even though it is not universal, the copyright laws essentially secure the human rights of writers or creators from generation to generation.<sup>19</sup> Nevertheless, the rights offered by copyright laws enables the author and his next generations to monetarily benefit from the original work. Hence, the author's personality embodies both moral and economic rights. And human rights include these rights as stated in article 27 of the Universal Declaration of Human Rights.<sup>20</sup> And it must be preserved to promote artistic work and increase the creator's economic position.

### **3.4. RIGHT TO CLAIM THE POSSESSION OF THE INFRINGING MATERIAL –**

Berne convention which is considered to be a pioneer in the field of Human rights talks about the protection of the author's material and same goes with the *Article 27 (2) of the Universal Declaration of Human Rights* which solemnly states that:

*" Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author."*<sup>21</sup>

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<sup>17</sup> Amarnath Sehgal V. Union of India, 2005 (30) PTC 253 Del.

<sup>18</sup> *Supra note 1.*

<sup>19</sup> Shodhganga, Copyright and human right under law, <https://shodhganga.inflibnet.ac.in/bitstream/10603/33710/7/chapter7.pdf>.

<sup>20</sup> UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, Art. 27.

<sup>21</sup> *Id.*

The concept of protection of the infringed material can be drawn from it. In Indian Legislation, *Section 51 of the copyright act*<sup>22</sup> ascertain and protects the rights of the copyright owner as well. The protection of copyright of the infringed material is necessary for the preservation of national culture and identity of any kind of material and author. When any kind of scientific, literary or artistic work is created it needs a lot of earnest, work and effort. In certain cases, it may be all that an author has, infringing or claiming the material to be of the infringer without even permission may cost the original author a lot of economic and in the same rare instances' mental loss as well. So, it becomes essentially important to be considered as a human right by the virtue of its principles.

### **3.5. RIGHT TO CLAIM SHARE IN RESALE PRICE OF A WORK-**

*Section 53 of the copyright act*<sup>23</sup> provides that, the author, if he was the first owner of the copyright, of a painting, sculpture, drawing or manuscript of a literary, dramatic or musical work shall have the right to share in the resale price of that original copy. Artists do not live on thin air, for a professional artist the final product might be the only source of earning and so he shall be entitled to decide what he wants to do with this as a part of his human right. This right provided to the artists and authors by the Indian copyright act, is in conjugation with the *article 27(2) of the universal declaration*<sup>24</sup> and can be drawn from *6bis of Berne convention*.<sup>25</sup>

### **3.6. RIGHT TO TAKE CIVIL AND PENAL ACTION –**

*Article 8 of the Universal declaration of Human Rights* states that, everyone has a right to effective remedy in case of violation of their rights.<sup>26</sup> The same can be drawn from the natural justice system and the basic structure of constitution of India. In furtherance to this, *section 62 of the Copyright Act*,<sup>27</sup> talks about the jurisdictions of the court in cases of Copyright infringement. So, it can be stated that, it exclusively guides the individual whose copyright has been infringed to go to the

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<sup>22</sup> Copyright act, 1957 § 51.

<sup>23</sup> Copyright act, 1957 § 53.

<sup>24</sup> *Supra Note 21.*

<sup>25</sup> *Supra note 16.*

<sup>26</sup> UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, Art 8.

<sup>27</sup> Copyright act, 1957 § 62.

proper court to resort proper remedy. Copyright infringements happen very often in India, and so it becomes the responsibility of the state to protect this Human Right of the individual.

These are some of the various Human Rights which is related to the protection of Copyright. There are some other Human rights as well which find its root in Human rights like Right to resort to administrative remedies etc.

#### **4.CONCLUSION**

Indian enactment has the supreme power on account of its equity, decency and rule of law. It ensures the insurance of life, property, and individual freedom. It gives shields against hardship thereof by any individual, body or state. It gives a consistency and lucidity between various framework in Indian legal executive. Much the same as Copyright and Human Rights.

Protection of Copyright in India keeps on being fortified. It is not an easy task to protect Copyright in this big nation alone, but this task could be simplified through human rights. Since human rights are all inclusive, generally significant, and sacred, their privileges must be advanced and secured and its essential obligation of the state to make legitimate enactments to protect them from being disregarded. Copyright can be explained with various human rights like, freedom of speech and expression, moral rights, economic Rights and so on. The freedom of speech and expression is the most significant and admired right in Copyright. With the assistance of this, a creator or an author could easily express his view, thoughts and contemplations upon his inventions. The moral right, economic rights can be protected by copyright. Similarly, other rights like right to choose any business or profession, right to take civil and penal actions, etc. also plays an important role in Copyright as discussed above.

It is the moral duty of every person to protect their individual rights and not to infringe others right. Every creator or author has full right to protect their inventions and books from being misused by others. And this could be possible through general awareness among the people in order to protect this.