

Moral Rights and the Protection of Cultural Heritage:

Amar Nath Sehgal v. Union of India

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Cultural property from developing countries is the focus of a highly lucrative international trade in art. A peculiar negative feature of this trade is its significant illicit dimension, an issue that is consistently raised by experts, but whose true proportions remain unknown.¹ Art and artefacts may be stolen outright from their owners—individuals and museums alike—or they may be exported from their countries of origin in contravention of domestic export restrictions.

The illicit international movement of cultural property contributes to the problematic depletion of cultural patrimony in the art-rich “source” countries of the developing world.² It also creates a danger of damage to the property and even raises the possibility that cultural objects may be destroyed in transit. When the movement of cultural property occurs outside the ambit of legality, these risks intensify.³ An elaborate legal framework for the protection of cultural property consisting of the domestic laws of art-rich countries and two major international conventions⁴ attempts to address these concerns. However, cultural property law has been largely ineffective in stemming the illicit flow of art.

Through the doctrine of authors’ “moral rights,” copyright law may provide an alternative legal approach to the protection of cultural heritage.⁵ Moral rights are a device for protecting the noneconomic interests of creative authors in their work. While copyright generally protects the economic rights of an author, most copyright laws also include moral rights provisions which recognize the personal aspects of creative endeavours.

Moral rights are widely considered to originate in the culture of Western European Romanticism, which idealized the creative individual as a being uniquely invested with the power and mystique of original genius.⁶ The doctrine of moral rights creates a privileged relationship in law between a creative author and his work. Moral rights provide legal protections for a number of key elements in this relationship, including a right to be identified as the author of one’s own work, protection from the association of another author with one’s work, and the prevention of unauthorized distortions of one’s work.

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While moral rights have traditionally been associated with the individualistic cultures of Western Europe, the doctrine has proven to be surprisingly popular in nontraditional jurisdictions. In countries as diverse as India, Russia, and Mali, moral rights have been adopted to serve objectives of cultural policy.⁷ The legislative and judicial approaches to moral rights in these jurisdictions is often highly innovative. Their experiences suggest that moral rights need not be limited in their application to the relationship between an author who matches the romantic conception of individual genius, and a work which falls within established categories of Western art. In particular, the apparent flexibility of moral rights doctrine has interesting implications for cultural patrimony, suggesting that moral rights can make an important contribution to the preservation and protection of cultural heritage throughout the world.

The question of how moral rights can contribute to the status of cultural heritage came before the Indian courts in the 1992 case of *Amar Nath Sehgal v. Union of India*.⁸ In its interim decision, the High Court of Delhi adopted an innovative perspective on the role of moral rights in cultural policy, based on the liberal moral rights provisions of the Indian Copyright Act.⁹ Notably, the case illustrates how the governments of developing countries may be called to account by their own citizens for their attitudes toward cultural patrimony.

The ongoing dispute between Amar Nath Sehgal and the government of India involves the mistreatment and eventual destruction of a celebrated sculpture which the government purchased from its creator. A complaint against the government was filed by the sculptor in the High Court of Delhi. The court granted an interim injunction on behalf of the artist, demanding that the government refrain from further actions which might cause damage to the sculpture.

Amar Nath Sehgal represents an unusual approach to the protection of cultural heritage in developing countries. Breaking from the mainstream legal treatment of cultural property issues, Sehgal's complaint was not based on the Indian law of cultural heritage but focused on moral rights instead. The sculptor alleged that his moral rights as an author under the Indian Copyright Act had been violated by the government's mistreatment of his work.¹⁰

The interim order of the High Court of Delhi includes a concise but comprehensive discussion of the various issues of cultural heritage raised by Sehgal's claim. In particular, the court argued that copyright law can make a valuable contribution to the protection of cultural property through the doctrine of authors' moral rights. However, the Indian government's response to the court order in favour of Sehgal's claim was to introduce amendments to the Indian Copyright Act which restrict the interpretation of its provisions on moral rights and promise to make it more difficult for Indian courts to support claims like Sehgal's in the future.

1 FACTS OF THE CASE

Amar Nath Sehgal is a well-known and highly respected Indian sculptor. In the 1960s the government of India commissioned Sehgal to design a mural sculpture for the decoration of a public building in Delhi.¹¹ Cast in bronze, it was a work of massive scope, representing several years of Sehgal's creative effort. It was to make a substantial contribution to the artist's celebrity, ultimately attaining the status of a modern national treasure of India.

In 1979 the Indian government decided to remove the mural from the place where it was on display. The sculpture was taken to a warehouse. In the process of moving and storage, the mural was badly damaged and some pieces, including the portion of the work where the name of the author was inscribed, simply disappeared.

When he became aware of what had happened, Amar Nath Sehgal notified the government of his objections to the treatment of the sculpture, asking them to deal with it in an appropriate manner. The government did not respond to this request. Sehgal proceeded to file for an injunction to prevent the government from causing further harm to the mural. His claim was based on section 57 of the Indian Copyright Act, setting out the "special rights" of authors, generally known in the common-law world as moral rights.

2 MORAL RIGHTS AND THE PROTECTION OF CULTURAL HERITAGE

The international standard for moral rights protection is established by Article *6bis* of the Berne Convention for the Protection of Literary and Artistic Works.¹² Since its inception in 1886, the Berne Convention has been the primary instrument of international copyright law. The rights created by copyright law are territorial in nature, since authors' rights flow from domestic legislation and are interpreted and enforced by local courts. However, the ease with which artistic and literary works can be communicated across borders has made a degree of international harmonization desirable in the area of copyright. International copyright standards make it possible for authors to control the dissemination of their works outside the borders of their countries of residence and allow them to reap the full economic rewards of public circulation abroad. The Berne Convention attempts to provide a viable basic standard for copyright protection internationally, which the domestic copyright laws of all member countries should reflect.

Article *6bis* requires members of the Berne Union to provide legal recognition for the moral rights of attribution and integrity. The right of attribution allows an

author to assert authorship of his own work. As an extension of this right, an author may also object to the attribution of his work to someone else or seek to prevent someone else's work from being attributed to him.¹³

The author's right of attribution can contribute to the protection of cultural heritage by helping to establish the correct authorship of culturally important works. Authorship is a matter of historical truth. Knowledge about authorship not only identifies the contributions of particular individuals to national culture, but it also makes possible a more comprehensive understanding of the course of cultural development in a country. In addition, accurate attribution can assist efforts to repair or restore damaged cultural works in the most effective and appropriate manner.

The right of integrity set out in Article 6bis provides that an author may "object to any distortion, mutilation or . . . modification" of his work which is deemed to be "prejudicial to his honor or reputation." From the perspective of cultural heritage, the focus of this right on the condition of the work makes it particularly helpful. Indeed, the French term for the integrity right, *le droit au respect de l'oeuvre*, emphasizes the goal of protecting the work.¹⁴

The moral right of integrity allows an author to seek appropriate legal remedies when he feels that his work is threatened with damage. Since works of individual authorship make an important contribution to cultural heritage in most countries, the right of integrity ultimately contributes to the overall integrity of the cultural domain. Moreover, the concept of an integrity right has great flexibility. For example, proposals to extend the right of integrity beyond the protection of individual authors by adapting it to works of joint or anonymous authorship suggest that the potential of this right for the protection of cultural heritage can be greatly enhanced.¹⁵

The moral rights set out in the Berne Convention are particularly powerful because they continue to be vested in the author even after he has relinquished his rights to economic returns from the dissemination of his works. At a minimum, the term for the protection of moral rights must be equivalent to the duration of the author's economic rights and can be exercised after his death by his legal representatives.¹⁶ The Berne Convention also leaves open the possibility that moral rights, in contrast to economic rights, may be protected in perpetuity. For example, moral rights enjoy perpetual protection in France, whose moral rights law is traditionally considered to extend the most comprehensive personal protections in the world to authors.¹⁷

The vindication of moral rights is, however, subject to certain limitations. For example, the possibility of claiming a violation of the right of integrity where the cultural property in dispute has actually been destroyed remains controversial and is generally believed to be beyond the reach of the provisions in Article 6bis. This restriction flows from the Berne Convention requirement that in order to qualify

as a violation of an author's moral right of integrity, the mistreatment of a work must have a negative impact on its author's reputation. When a work is destroyed, it is argued, the issue of changes to the work which can affect the author's reputation no longer arises.¹⁸ Of course, destruction of a work can prejudice an author's reputation by reducing the volume or quality of his creative corpus, but this argument does not appear to be strongly persuasive in international copyright circles.

3 MORAL RIGHTS IN INDIAN LAW

For historical and cultural reasons, the Berne Convention has enjoyed wide recognition and acceptance among developing countries, including India.¹⁹ India has traditionally played a leading role both in promoting copyright law in the developing world and in representing the interests of developing countries in international copyright negotiations.²⁰ As a result, India's copyright law closely follows the principles of Berne—without, however, losing its innovative touch. The Indian Copyright Act is possibly the most sophisticated copyright legislation in a developing country, and it is also among the most highly developed copyright laws in the world.

Section 57 of the Indian Copyright Act provides for the protection of authors' moral rights in India. It is based on the provisions of Article 6*bis* and meets the basic standards for the protection of moral rights set out in the Berne Convention. However, at the time of *Sehgal*, the Indian provisions also extended the basic protections of the Berne Convention in some interesting ways. These innovative features of section 57 lend a unique flavour to authors' rights on the subcontinent and reflect India's distinctive cultural perspective.

In conformity with Article 6*bis*, section 57(1) of the Indian Copyright Act protects authors' rights of attribution. It also provides protection exceeding the basic requirements of the Berne Convention for authors' rights of integrity. Under section 57(1)(a), literary and artistic works are protected from "any distortion, mutilation or other modification." The author need not prove that these actions are prejudicial to his reputation. Rather, any modifications of a work to which the author objects appear to constitute *prima facie* affronts to his reputation.²¹

Specific acts which can damage an author's standing are addressed separately, in section 57(1)(b). In broad terms which transcend the language of Article 6*bis*, this section provides that an author may seek to restrain, or claim damages in relation to, "any other action." This "action" need not be expressly derogatory of the author's work, but the court must determine whether it is "prejudicial to his honour or reputation."

Section 57 does not explicitly indicate the duration of moral rights protection. However, section 57(2) provides for the legal representatives of an author to exer-

cise moral rights on his behalf. Since the need for moral rights to be asserted by persons other than the author can only arise in the event of the author's death, the protection of moral rights in Indian law, by implication, must continue at least until the expiry of the author's economic rights.²² Moreover, the possibility that moral rights are entitled to perpetual protection, a valuable interpretation of the right of integrity in relation to cultural heritage, is not excluded by the language of section 57.²³

4 ORDER OF THE HIGH COURT OF DELHI

In its succinct decision of 29 May 1992, the High Court of Delhi in New Delhi granted Amar Nath Sehgal's request for an *ex parte* interim order to restrain the government of India from causing any further damage to his mural. Justice Jaspal Singh's examination of the issues was informed by section 57 of the Indian Copyright Act. Justice Singh's statement, though brief, goes to the heart of the cultural dilemmas confronting modern India. He insists on a recognition of the growing need to protect India's cultural heritage, including the artists whose "creativity and ingenuity" are among its most valuable cultural resources.²⁴

The decision of the High Court in *Amar Nath Sehgal* clarifies two important points about the extent of moral rights protection in India, particularly with reference to the principles which should guide judicial interpretation of the text of section 57. First, in contrast to international practice, the decision establishes that an author's right of integrity can protect a work from outright destruction under Indian law. This interpretation of the integrity right is made possible by the structure of section 57(1), which prohibits *any* modification of a work to which the author objects, whether or not the treatment of the work directly affects the author's reputation. It is justified by the policy of protecting Indian cultural heritage. As Pravin Anand, legal counsel for Amar Nath Sehgal, points out:

[This] . . . issue is particularly relevant, in the face of a school of thought, which maintains that moral rights cannot prevent the complete destruction of a work. This argument is put forward because, in such a case, there would be no subject-matter left to affect the author's reputation. Hence, [a conclusive ruling on this] issue would, despite the limitations of moral rights, prevent the government from completely destroying works of art.²⁵

Secondly, the statement of the High Court establishes that the government has a duty of care toward works of art which it owns. In particular, the government must approach national cultural heritage with an attitude of respect and, in its treatment of works of art in its possession, it should demonstrate an awareness of their contribution to cultural wealth. As Anand observes, "Apart from moral

rights, this case raised another 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 government.”²⁶

In resolving these two issues, the High Court raised some interesting possibilities for the legal protection of cultural heritage through the doctrine of moral rights. The court sought to establish that the protection of cultural heritage should be a priority for the government and the courts alike. However, in situations where the rights of artists appear to be threatened by government action, the High Court advocates an activist judicial approach to the protection of artists’ works, as well as a sympathetic attitude toward their professional activities and social position.

4.1 DUTIES OF THE GOVERNMENT

In issuing the interim order, the High Court of Delhi explicitly criticized the conduct of the Indian government, both in relation to the mural and toward Amar Nath Sehgal himself. The court pointed out that the government’s failure to respond to Sehgal’s request to protect the mural from further damage was inappropriate. It also noted that at least one official of the Ministry of Human Resource Development suggested that the government should “deal with the artist’s work fairly,” advice which the government unwisely chose not to follow.²⁷

The terms of Justice Singh’s criticism of the Indian government are extremely harsh. He concludes that the government had failed to protect Sehgal’s sculpture owing to the insensitivity of government officials toward artistic creation, and to their lack of awareness of the value of cultural heritage. In a colorful phrase, he observes: “[M]en who can hardly distinguish the heads of Venus from those of Mars cannot be allowed to decide the fate of [the] artists who create our history and heritage.”²⁸

4.2 VALUE OF CULTURAL HERITAGE

The court’s decision emphasizes the contribution of India’s cultural heritage to its national identity. Justice Singh points out that India is “rightly proud of its creativity and ingenuity.”²⁹ He identifies the important social role fulfilled by artists in India, whose creations not only contribute to cultural heritage but play an important role in elucidating Indian history as well. Indeed, the court appears to have a sophisticated understanding of the connection between history and cultural heritage. It seems to advocate the protection of culture both for its own sake and for its broader contribution to historical awareness.

4.3 ROLE OF THE COURTS

Justice Singh suggests that the interests of Indian artists should be rigorously protected by the courts. The “dead eyes and deaf ears” of ignorant bureaucrats may threaten to suppress creative interests.³⁰ In these circumstances, Justice Singh argues

that it is the role of Indian courts to safeguard the rights of artists against bureaucratic power.

The court explicitly favours an expansive interpretation of the moral rights of authors set out in section 57 of the Copyright Act. In situations where the rights of artists are involved, it argues, the courts should be sensitive to the needs of creators and adopt a proactive approach to the cultural interests at stake. Justice Singh affirms: “The cry is ‘*Ils ne passeront pas!*’ and in such a situation[,] Indian courts will always be found dynamic and responsive. Section 57 of the Copyright Act provides the light.”³¹

Justice Singh’s vision of the role of the courts in protecting authors’ rights follows an earlier landmark Indian decision on moral rights by the High Court of Delhi. The case of *Smt. Mannu Bhandari v. Kala Vikas Pictures Pvt. Ltd.*³² involved a claim by a novelist against a production company which, she alleged, had distorted her work in a film adaptation. In its judgment for the author, the High Court openly voiced its determination to protect the individual rights of the author against the coercive power of a mass entertainment industry with considerable financial and political clout.³³ The decision of the High Court in the *Amar Nath Sehgal* case is a product of similar concerns. In particular, the court in *Sehgal* sought to redress the imbalance of power between individual creators and the government in the distinctive context of Indian society.

4.4 THE STATUS OF SEHGAL’S WORK

Finally, it is noteworthy that the court placed great emphasis on Sehgal’s reputation as a sculptor, making particular reference to the importance of the damaged mural for India’s cultural heritage. Justice Singh emphasizes the quality of Sehgal’s work by drawing attention to the appreciation of the sculpture by well-known Indian intellectuals and politicians, including former Indian Prime Minister Jawaharlal Nehru.³⁴

It is an open question whether the court would have committed itself to such a strong position in favour of the artist if the work in question, or its creator, had not been so prominent and well established. The artistic quality of Sehgal’s work appears to be widely accepted in India, effectively relieving the court of the responsibility of making its own artistic judgment—a particularly obscure issue from the perspective of legal analysis. Justice Singh’s order leaves open the interesting question of how courts, in future cases, will undertake the threshold determination of whether an artistic work makes a sufficiently important contribution to cultural heritage to qualify for the extensive legal protections provided by moral rights.

4.5 EFFECTS OF THE RULING

From the statement of the court, it appears that the facts of the case were not in dispute, and that the Indian government was, in effect, found negligent and liable



FIGURE 1. JAWAHARLAL NEHRU SEEING THE BRONZE MURAL WITH THE SCULPTOR AMAR NATH SEHGAL, SEPT. 1962.

for its actions under section 57 of the Copyright Act.³⁵ Unless the terms of the order are explicitly overturned by the court in its final hearing of Sehgal's case—an unlikely prospect—the ultimate ruling is also most likely to be in the sculptor's favour. However, Justice Singh's interpretation of the contribution of the courts to the creation of a regime for the protection of India's cultural heritage based on moral rights was received by the government of India as a danger signal and sparked a counterrevolution in the treatment of moral rights in Indian legislation.

5 REACTION OF THE INDIAN GOVERNMENT

The Indian government has responded to the interim ruling in the *Sehgal* case by proposing a series of amendments to the Copyright Act. These include a major revision of the structure of section 57. Under the new provisions, a legal claim by an author against unauthorized modifications to his work must succeed in estab-

lishing that the treatment of the work has been prejudicial to his honour or reputation.³⁶ The revised section 57 corresponds exactly to Article 6*bis* of the Berne Convention and, in contrast to the earlier provisions, brings the continuing possibility of protecting works from outright destruction into doubt.³⁷

The new section 57 also provides that failure to display a work, or to display it in accordance with the wishes of the author, will not qualify as a violation of the author's moral rights.³⁸ This particular provision seems to respond directly to the circumstances of the *Sehgal* case, where the sculpture was withdrawn from public display in circumstances which would clearly have met with the author's disapproval. As Anand points out: "The natural consequence [of the proposed amendment is] . . . that the [artist] . . . would be unable to prevent his work from being displayed in an environment alien to the one for which it was created. This change has been criticised for being insensitive to the rights of artists by various artists' forums in India."³⁹

The Indian government's reaction to the *Sehgal* case reflects larger concerns about the developing jurisprudence of moral rights in India. The increasingly proactive approach of the Indian judiciary to authors' rights—and, through them, to the protection of India's cultural heritage—suggests that the courts have assumed a central role in developing cultural policy in India. From a public-interest perspective, the activism of the courts, which has the potential both to challenge and to extend governmental authority in the cultural domain, may be welcome. However, the legislative approach of the Indian government may itself be motivated by legitimate policy concerns, including a desire to limit governmental, industrial, and personal liability for the exploitation of creative works. Notably, expansive legal protections for moral rights could have negative effects on the adaptation and translation of literary and artistic works, the development of cultural industries, and government initiatives for the promotion of culture in India—all important factors in the promotion of literacy and public education, issues of critical importance for developing countries.

Nevertheless, the court's concerns about threats to cultural heritage are equally well founded and may ultimately constitute a more farsighted approach to cultural issues in India. Recognizing the power and prestige of government in India, and the special potential of government action for both good and ill in a developing country, the court's emphasis on the duties of government in relation to cultural works calls for a basic adjustment in official policies and attitudes toward culture.

The court's desire to protect individual creative effort also favours the development of individual initiative in the area of culture and thereby encourages the development of an attitude of social respect toward artists. By reinforcing the idea of the creative power of the individual in the eyes of the Indian public, the court is making an important statement about the process of social modernization in India. The continuing relevance of cultural heritage to contemporary India will depend, in part, on the establishment of a viable legal foundation for both the pro-

tection of cultural property and the promotion of Indian cultural development in the unfamiliar context of industrialization.

6 CONCLUSIONS

The Indian case of *Amar Nath Sehgal* suggests that the doctrine of moral rights can make a valuable contribution to the protection of cultural heritage in developing countries. Notably, the application of copyright principles to cultural property issues presents a number of interesting advantages over cultural property law.

First, moral rights doctrine breaks down the traditional legal distinction between cultural property and intellectual property. Property and knowledge can be dealt with as interconnected areas, a view which is more in keeping with traditional views of culture in developing countries than the somewhat arbitrary separation of the two in Western law. Cultural objects in developing countries often embody traditional thought and knowledge. Accordingly, the physical destruction or loss of cultural property may have far-reaching social consequences.⁴⁰

Secondly, through moral rights, the contribution of living authors to the cultural heritage of their countries is recognized. Authors are endowed with a legal responsibility to act in the interests of the cultural heritage, by ensuring that the integrity of their own works is maintained. The rights of attribution and integrity are particularly apposite to the cultural domain. Apart from the interests of individual authors in maintaining their standing and reputation, these moral rights are closely linked to a public interest in the maintenance of historical truth and cultural knowledge. Moral rights also promote the development of a social attitude of respect toward individual creativity. While authors must accept the responsibilities which accompany the privileges of creative work, it is incumbent upon both the public and the state to acknowledge the value of artists' contributions to cultural heritage.

It must be recognized that the emphasis of moral rights doctrine on the responsibilities of individual authors may also restrict the applicability of moral rights to cultural heritage. Depending only on the precise duration of moral rights protection, works of individual authorship inevitably move into a public domain where authors and their representatives will not have the power to vindicate these rights. However, the limitations of individualism in moral rights doctrine may be remedied by the creation of public agencies for the protection of moral rights, such as authors' groups, councils of scholars, or other suitable organizations. Indeed, this has been the approach of some governments in developing countries to valuable cultural works whose authorship is unknown. In copyright parlance, such works are generally termed "folklore," and the government of Tunisia, with the assistance of the World Intellectual Property Organization (WIPO), has pioneered moral rights protection for these kinds of works.⁴¹

Thirdly, the application of copyright law to cultural property arms developing countries with some advantages in the international community. Internationally, copyright law plays a powerful economic role that is widely recognized and accepted by both developing and industrialized countries. With the advent of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) as one of the basic agreements associated with the World Trade Organization (WTO),⁴² copyright principles have also become subject to international enforcement through the dispute-settlement mechanism of the WTO. While the effects of moral rights under the auspices of the WTO are still uncertain—owing primarily to disagreements between the United States and European countries on the appropriate standard of protection for moral rights⁴³—the TRIPs Agreement does, in principle, require member countries to adopt moral rights standards which conform to Article 6*bis* of the Berne Convention.⁴⁴ As the TRIPs system matures, moral rights law may eventually become more fully integrated into the international copyright regime.

The application of moral rights to the protection of cultural heritage in the developing world also presents some practical difficulties. Most important among these is the time delay involved in bringing cases before the courts. For example, the *Amar Nath Sehgal* dispute has been pending for more than twenty years and has still not reached a final resolution. Moral rights litigation, especially over such extended periods of time, is likely to involve the investment of substantial resources, so that it may ultimately be an option only for the wealthiest and most eminent individuals in developing societies.

Paradoxically, however, the practical limitations of moral rights litigation may also present some hidden advantages for courts in dealing with cases involving cultural heritage. The requirements of procedural efficiency may facilitate the difficult determination of cultural value by the courts. They may also encourage favourable rulings which act as strong precedents, broadly influencing the dealings of government and industry with artists.

The strongest drawback to applying moral rights to the protection of cultural heritage may prove to be the response of governments in developing countries to the expansive judicial treatment of moral rights and, more generally, to judicial activism in the area of culture. The aftermath of the *Amar Nath Sehgal* decision suggests that in some ways the Indian government may actually be the most conservative player in the cultural arena. Moral rights have great potential to improve the situation of cultural property in developing countries. However, the successful realization of their potential depends on the good faith of governments toward culture. Governments, in partnership with the courts, must demonstrate their commitment to developing coherent and farsighted cultural policies. Ultimately—as in the cultural domain itself—creativity and innovation will lie at the heart of a successful legal regime for protecting the cultural wealth of developing countries.

NOTES

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1. The value of the illicit trade in cultural property is estimated to be comparable to illicit international dealings in drugs and arms, see Lyndel V. Prott & Patrick J. O'Keefe, *Law and the Cultural Heritage*, vol. 3 *Movement* 40 (Professional Books, Oxford 1984), and Lisa J. Borodkin, The Economics of Antiquities Looting and a Proposed Legal Alternative, 95 *Columbia Law Review* 377, 377 (1995).

2. See Prott & O'Keefe, *id.* at 11–15. The authors cite Bangladesh, Mali, and Western Samoa as countries which have suffered especially severe losses of cultural property. In the case of India, thefts of temple statues appear to be commonplace, *id.* at 41, making reference to the case of *Bumper Corporation v. Union of India*, [1991] 1 *Western Law Reports* 1362 (C.A.) They point out that during the decade from 1978 to 1988 between 800 and 1,000 of these were stolen from the Indian state of Tamil Nadu alone. See also Claudia Caruthers, International Cultural Property: Another Tragedy of the Commons, 7 *Pacific Rim Law and Policy Journal* 143, 158 (1998).

3. Prott & O'Keefe, *id.* at 11–15, 36–51, discuss the specific dangers arising from the illicit nature of trade in cultural property.

4. The two international instruments are the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, 14 November 1970, 10 *Intern. Legal Mats.* 289 (1970), and the Unidroit Convention on the Return of Stolen or Illegally Exported Cultural Objects, 24 June 1995, 34 *Intern. Legal Mats.* 1330 (1995). The UNESCO Convention seeks to prevent museums and other public institutions from acquiring illegally exported cultural objects, by making the return of these objects to their countries of origin compulsory. Repatriation under its terms also requires the payment of “just compensation” by the state which requests the return of the property to its current possessor, provided that the object was purchased in good faith. In contrast, the UNIDROIT Convention emphasizes the return of stolen property, which is made mandatory in some cases. With respect to illegally-exported objects, the UNIDROIT Convention sets out a materiality test which, if satisfied, can lead to the return of property to its country of origin. Under its provisions, a good faith purchaser is entitled to compensation for the loss, but it must be shown that the buyer “exercised due diligence” in acquiring the object.

5. See Sam Ricketson, *The Berne Convention for the Protection of Literary and Artistic Works: 1886–1986* para. 8.93 (Centre for Commercial Law Studies, Queen Mary College, London 1987). He suggests that “‘spiritual,’ ‘non-economic’ and ‘personal’ convey something of the intended meaning.”

6. For a detailed treatment of the historical aspect of moral rights doctrine, see Martha Woodmansee, The Genius and the Copyright: Economic and Legal Conditions of the Emergence of the ‘Author,’ 17 *Eighteenth-Century Studies* 425 (1984).

7. See section 57 of India’s copyright statute, the Copyright Act, 1957, Act 14 of 1957 [hereinafter Copyright Act]; Article 30 of Mali’s copyright law, the Copyright Statute: Ordinance Concerning Literary and Artistic Property (No. 77-46CMLN), July 12, 1977 in Copyright Laws

of the World Supplement 1979-1980 [date of entry into force, July 15, 1977], and *Journal officiel de la République du Mali*, No. 525, of August 1, 1977, for the official French-language text; and Article 15 of Russia's Law on Copyright and Neighbouring Rights, *Zakon ob avtorskom prave i sveznykh pravakh*, *Ved.RF* 1993 No. 32 item 1242; *Rossiiskaya gazeta*, 3 August 1993, as am. by Federal Law of the Russian Federation of 19 July 1995, *Rossiiskaya gazeta*, 26 July 1995.

8. (1992), Suit No. 2074 (Delhi H.C.), (1994) 19 *Industrial Property Law Reports* 160 [hereinafter *Amar Nath Sehgal, Sehgal*].

9. *Supra* note 7.

10. *See* section 57 of the Copyright Act, *id.*

11. The mural adorned the walls of the Vigyan Bhawan, *see* Pravin Anand, The Concept of Moral Rights under Indian Copyright Law, 27 *Copyright World* 35, 36 (1993).

12. Berne Convention for the Protection of Literary and Artistic Works, 9 September 1886, 828 U.N.T.S. 221, online: World Intellectual Property Organization (WIPO) <http://www.wipo.org/eng/iplex/wo_bero_.htm> (date accessed: 4 April 2000) (hereinafter Berne Convention).

13. For a discussion of these three aspects of the right of attribution, *see* Staniforth Ricketson, *The Law of Intellectual Property* para. 15.57 (The Law Book Company, Melbourne 1984) (hereinafter *Intellectual Property*).

14. *Id.*

15. *See* Cathryn A. Berryman, Toward More Universal Protection of Intangible Cultural Property, 1 *Journal of Intellectual Property Law* 293, 306–21 (1994). She explores some of the possibilities for using copyright law, particularly the moral right of integrity, to protect works of cultural property which are not creations of an individual author.

16. Article 7(1) of the Berne Convention provides that the term of copyright protection for authors of literary and artistic works is the lifetime of the author plus fifty years after his death.

17. *See* Ricketson, *supra* note 5, at para. 8.105. French-influenced jurisdictions, such as Senegal, have also introduced perpetual protection for moral rights.

18. *See id.* at para. 8.109. Anand, *supra* note 11, at 36, explains the rationale underlying this view.

19. For a discussion of the history of developing countries' participation in the international copyright system, *see* Ricketson, *id.* at paras. 11.3–11.5. Ricketson emphasizes that many countries which were once European colonies initially became adherents of international copyright law through the participation of their colonial rulers in the Berne Union. But *see* Edward W. Ploman & L. Clark Hamilton, *Copyright: Intellectual Property in the Information Age* 22–25 (Routledge & Kegan Paul, London 1980). They draw on Claude Masouyé's work (1974 and 1977) to provide a list of reasons why copyright, in contrast to other areas of intellectual property law, is widely accepted in the developing world. In addition to economic considerations, Masouyé draws attention to the objectives of "cultural progress" and "national prestige" represented by copyright and points to the appeal which they hold for developing countries.

20. For example, Ricketson, *id.* at para. 11.16, mentions India's leadership in the adoption of the Stockholm Protocol to the Berne Convention, on the special needs of developing countries in relation to copyright.

21. This approach is also characteristic of the French law of moral rights, *see Intellectual Property, supra* note 13, at para. 15.57, n. 53. In contrast, German and Italian law provide that the author

must provide “proof of some identifiable injury” to his honor and reputation before the right of integrity can be invoked.

22. Presumably, if the author were to become legally incapacitated, his descendants would also become responsible for exercising his moral rights.

23. This interpretation of Indian law is supported by S. Ramaiah, India, in *International Copyright Law and Practice* IND-46 (Paul Edward Geller and Melville B. Nimmer eds., Matthew Bender, New York 1988), and Stig Strömholm, *Le droit moral de l'auteur en droit allemand, français et scandinave avec un aperçu de l'évolution internationale: Etude de droit comparé*, t. 1, *Première partie: L'évolution historique et le mouvement international* 420 (P.A. Norstedt & Söners Förlag, Stockholm 1967).

24. *Amar Nath Sehgal*, *supra* note 8, at 161.

25. Anand, *supra* note 11, at 36.

26. *Id.*

27. The official's statement is quoted by Judge Singh; *Amar Nath Sehgal*, *supra* note 8, at 160.

28. *Id.* at 161.

29. *Id.*

30. *Id.*

31. *Id.*

32. (1986), 1987 A.I.R. (Delhi H.C.) 13 (hereinafter *Mannu Bhandari*).

33. The court in *Mannu Bhandari*, *id.* at 18, stated: “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 films.”

34. *Amar Nath Sehgal*, *supra* note 8, at 1.

35. As a result of the delays which are endemic to the Indian legal system, it is apparently not uncommon for Indian courts to make definitive and conclusive statements on contested legal issues in preliminary hearings.

36. Section 20 of the Copyright (Amendment) Act 1994 appears in Parameswaran Narayanan, *Law of Copyright and Industrial Designs*, 2d ed. 612–13 (Eastern Law House, Calcutta 1995). See also Sudhir Ahuja, Latest Amendments to the Indian Copyright Act, 44 *Copyright World* 38, 43 (1994), who emphasizes that the amendments seek to “scale down the remedies available to authors,” especially in relation to the moral right of integrity.

37. See Anand, *supra* note 11, at 36.

38. This aspect of the amendments may be found in the notes to section 57, *see id.* See also Narayanan, *supra* note 36, at 612–13.

39. Anand, *supra* note 11, at 36.

40. See Prott & O'Keefe, *supra* note 1, at 11–15, on the “disadvantages” associated with the international movement of cultural property.

41. See "Tunisia" in Ploman & Hamilton, *supra* note 19, at 129–31.

42. Agreement on Trade-Related Aspects of Intellectual Property Rights, Annex 1C to the WTO Agreement, 15 April 1994, 33 Intern. Legal Mats. 1197 (entered into force 1 January 1995) (hereinafter TRIPs Agreement).

43. For a detailed discussion of conflicts between the United States and Europe over culture, with particular emphasis on the opposition of French and American viewpoints concerning authors' moral rights in film, see Stephen Fraser, Berne, CFTA, NAFTA & GATT: The Implications of Copyright *droit moral* and Cultural Exemptions in International Trade Law, 18 *Hastings Communications & Entertainment Law Journal* 287, 311–20 (1996).

44. Under Article 9.1 of the TRIPs Agreement, members are subject to the requirements of Articles 1–21 of the Berne Convention and the Appendix on Special Provisions Regarding Developing Countries. However, article 9.1 goes on to state, "Members shall not have rights or obligations under this Agreement in respect of the rights conferred under Article 6bis of that Convention or of the rights derived therefrom." The moral rights in Article 6bis of the Berne Convention are therefore not subject to WTO dispute-settlement and enforcement mechanisms.