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FREEDOM AND COPYRIGHT LAW: Examining from the Perspective of Human Rights

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FREEDOM AND COPYRIGHT LAW: Examining from the Perspective of Human Rights

*Raman Mittal**

[Abstract: *This paper explores how copyright law, which protects human expression, contributes to the constitutional goal of protecting and guaranteeing freedom of expression. The paper looks through the three generations of human rights and finds out how freedom of expression is progressively protected particularly under the Universal Declaration of Human Rights (UDHR) and how copyright law helps realising these ideals. At the same time, the paper explores how UDHR is supporting and nurturing the philosophy of copyright.*]

Keywords: *human expression, right to freedom, fundamental rights, freedom as formal ground, responsibility, dynamics of freedom etc.*

I

Introduction

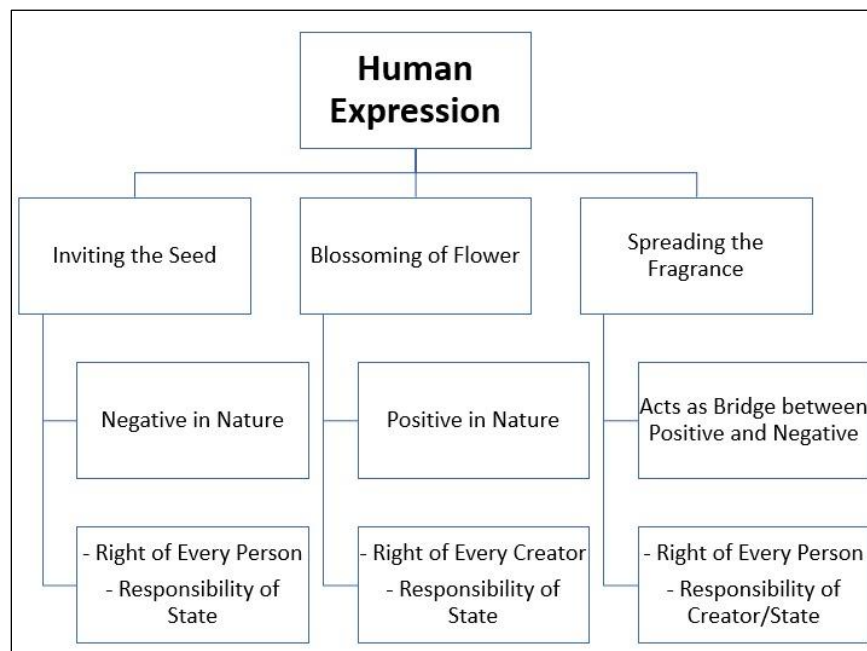
Freedom has three aspects, first is 'freedom from', second is 'freedom for' and third is 'freedom about'. 'Freedom from' is the negative aspect of freedom where freedom is sought from all kinds of physical and psychological prisons that could put fetters on man. The idea is expounded by Isaiah Berlin in his essay on *Two Concepts of Liberty*.¹ Then the positive aspect of freedom is 'freedom for' which assures man the freedom to create, to sing his song and to dance his dance, to paint his painting, i.e., freedom to express himself. In this sense, freedom in positive connotation signifies the idea of "self-realisation" what Isaiah Berlin calls, "positive liberty".² The third aspect of freedom is 'freedom about', which means the right of the members of the society to participate in the cultural life of the community. Freedom is complete only when these three stages of freedom are realised, and this paper evaluates how

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¹ See generally Isaiah Berlin, TWO CONCEPTS OF LIBERTY: AN INAUGURAL LECTURE DELIVERED BEFORE THE UNIVERSITY OF OXFORD ON 31 OCTOBER 1958 (1958).

² Isaiah Berlin, *Id.*

copyright law achieves this goal vis-à-vis freedom of expression. The paper builds upon the analogy of seed-flower-fragrance, while discussing the three stages of freedom of expression and its protection.



II

Freedom as Formal Ground

The first generation of human rights³ tries to free the man from physical bondage. It is true that for thousands of years, man has been sold in the marketplace just the way we buy and sell commodities or cattle today. The institution of slavery has existed all over the world in the yesterdays of humanity. Slaves were not given any of the human rights including the right to express themselves as they were considered sub-human.

The first generation of human rights includes 'freedom of expression', which seeks to prepare the ground, so that the seed of human expression could be invited. Unless man achieves the first stage, he cannot express himself. How could we dance when

³ The first generation of human rights is also sometimes described as blue rights. They include, among other things, the right to life, equality before the law, freedom of speech, freedom of religion, property rights, the right to a fair trial, and voting rights, etc.

our feet were in fetters; how could we paint when our hands were in chains; how could our creative expression be born, unless we were permitted to experience life in all its colours? What is hidden in the seed may not be immediately discernible, but a seed is certainly agog with possibilities. Therefore, the first generation of human rights guarantees 'freedom from' various maladies that have put man in fetters that restrict his potential from sprouting. The fetters of man were ably depicted in the provocative words of Jean Jacques Rousseau who wrote, "Man is born free and everywhere he is in chains".⁴ The first-generation human rights deal fundamentally with man's liberty and his participation in political life. These human rights are essentially civil and political in nature and seek negatively to protect the individual from excesses of the state. Article 19 of the Universal Declaration of Human Rights is enumerative of the right to freedom of expression:⁵

"Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers".

Freedom of expression aims at protecting a person's right to expression from illegitimate restriction and encroachments. The Constitution of India also guarantees that "all citizens shall have the right to freedom of speech and expression".⁶

Aspects of Freedom: Positive and Negative

The freedom of expression which forms a part of civil and political rights⁷ is essential for the flowering of human expression, however, it is only the negative part. Its orientation is negative because it engages itself in achieving 'freedom from' something. However, 'freedom for' is positive in nature. It requires some positive action on part of the individual who cherishes the freedom to create. Freedom from only provides an opportunity; it is not the goal in itself. Unless you have a positive goal, your freedom from is meaningless".⁸

The positive aspect of freedom is the freedom to create, freedom to be, freedom to express, to sing our song, to dance our dance—the stage of creativity—the stage of

⁴ See generally Jean Jacques Rousseau, THE SOCIAL CONTRACT (1763).

⁵ Art. 19, Universal Declaration of Human Rights, 1948.

⁶ Art. 19(1)(a), Constitution of India.

⁷ Civil and political rights are a class of rights that seek to protect one's freedom from infringement by the state and private individuals. They ensure one's entitlement to participate in the civil and political life of society. Civil rights generally include right to life, and safety; protection from discrimination on grounds such as sex, race, colour, political affiliation, ethnicity, religion, and disability; and individual rights such as privacy and the freedom of thought, speech, expression, religion, assembly, and movement.

⁸ Osho, *Infra* note 11 at 111, 114.

'freedom for'. Osho has said: "Man, as he is, is not enough. He can be more; he can be so much more... Freedom in itself has no meaning, unless it is freedom for something, something creative — freedom to sculpt, freedom to dance, freedom to create music, poetry, painting. If you have a certain kind of talent that has not been allowed to develop because of your fetters — you could not compose music because your hands were in chains, you could not dance because your feet were in chains. You have a talent to be a dancer, then be a dancer — then your freedom is complete, the circle is complete".⁹ Osho said, "Freedom is only an opportunity for you. It is not in itself the goal".¹⁰ He further states:¹¹

"When you prepare the ground for a garden, you take away the weeds, the unnecessary growth of wild plants, and their roots — the negative part. But just taking away the weeds, the wild plants and their roots, and cleaning the ground is not enough to make a garden. It is necessary, but not enough. You will have to plant roses also; that will be the positive part. You will have to plant beautiful flowers, beautiful trees. The negative part is only a preparation for something positive to happen".

Responsibility Dynamics of Freedom

What is contained in the first generation of human rights is the right of every human and at the same time it is the responsibility of the state to ensure this right. Rabindranath Tagore has written a poem titled 'Two Birds' in which he tells the story of two birds—one lives in a golden cage and the other is free.¹² They live in their different worlds but on a particular dawn, ordained by fate, the twain met and a dialogue between them ensues. As they talk, the free bird extends an invitation to the bird in the cage to come along with him to explore the woods and the open skies. But the caged bird refuses and instead invites the free bird into the cage which could be a comfortable home for the both of them. But the free bird refuses to live in chains saying that the holt is not for him. The free bird extolls the thrill of flying in wild abandon while the caged bird praises the advantages of living in the safety of the enclosure. The free bird wants to meet the thundering clouds while the caged bird questions where then he will find a place to perch. The wonderful poem is relatable to the first generation of human rights, which are essentially negative in character, where the caged bird is made aware of, the potentials of his wings, the possibility of expression, and the latent creativity that lies hidden in his being.

⁹ *Id.*, at 26, 113.

¹⁰ Osho, FREEDOM: THE COURAGE TO BE YOURSELF 116 (2004).

¹¹ *Id.*, at 112.

¹² Rabindranath Tagore, *Dui Pakhi* available at: <https://www.poemhunter.com/poem/dui-pakhi-two-birds-translation-from-rabindranath-tagore/> (last visited Jul. 10, 2024).

III

Creativity: An Urge of Freedom

At the first stage, every human being is only a seed, and he does not know what potential and what possibilities he is carrying within himself. It is good to be out of prison and the first generation of human rights helps us achieve that, but what is this freedom for? In the second generation of human rights, the freedom of expression blooms into creativity. These rights seek to create the right conditions, so that the flower of human creativity could blossom and the potentiality of a human being can also be actualised. The second stage is the stage of 'freedom for'. This is a call for creativity. In order to realize to this stage, we have to become a creator. We have to find some creativity that fulfils and makes use of our freedom; otherwise, the freedom remains empty and futile. At this stage we bring our potentials to actuality. Osho speaks about this freedom in the following words:¹³

“Freedom for is creativity. You have a certain vision that you would like to materialize and you want freedom for it. Freedom from is always from the past, and freedom for is always for the future... It will give you wings... Freedom from, at the most, can take away your handcuffs. It is not necessarily beneficial — and the whole of history is proof of it. ... freedom from is never total”.

The Universal Declaration of Human Rights is enumerative of the following right:¹⁴

“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”.

All the intellectual property laws are tuned towards helping human beings realize this stage of freedom. Bereft of these laws, human creativity may still be possible but not profitable; it may still happen as a passion but not as a profession; it may still occur at the individual level, but it may not materialize as a result of collective human endeavour. Therefore, human creativity is promoted and protected by intellectual property laws which indeed have a necessary human rights measurement. Copyright is one of the various forms of intellectual property rights.¹⁵ Copyright law helps an author to freely express himself without the fear of any misappropriation of his work. It gives authors a guarantee of protection should anyone violate such rights. It gives the right to the author to prevent others from copying his expression without his permission. Reproduction, distribution,

¹³ Osho, *Supra* note 11 at 87, 102.

¹⁴ Art. 27(2), Universal Declaration of Human Rights, 1948.

¹⁵ The others being Patent, Trade Mark, Industrial Design, Trade Secret, Plant Variety and Integrated Circuits.

performance, and communication to the public, translation and adaptation are the exclusive rights of the owner of copyright.¹⁶

Copyright, in its sweep and span, covers all kinds of human expressions. For the purposes of protection, copyright law classifies all kinds of human expressions in six distinct categories, viz. literary, dramatic, musical, and artistic works together with cinematographic films and sound recordings.¹⁷ The protection, however, comes with certain conditions; the first and foremost being 'originality'. That means a work must be original for it to be protected by copyright.¹⁸ Apart from economic rights mentioned above, copyright also includes 'moral rights' which grant the author of a copyrighted work the rights of paternity and integrity. The right of paternity gives the right to an author of a creative expression to be identified as the author of his work. The right of integrity permits an author to restrain and claim damages for any distortion, mutilation, modification, or other act done to his creative expression if that distortion, mutilation, modification, or such other act would be prejudicial to his honour or reputation.¹⁹ The Universal Declaration of Human Rights specifically refers to moral rights.²⁰ The justification for the creation of copyright manifests in two ways; first, it is justified in terms of the author's natural right to reap economic rewards from his creative expression and second, copyright is justified based on it being advantageous to the society as a whole by guaranteeing incentives for people to be creative. Copyright law thus takes into account the interests of the individual creator as well as the society.

Has protection of a work under copyright law got any bearing on freedom of expression? Once a work is protected by copyright, it cannot be copied, distributed, communicated, adapted, or translated without the permission of the owner of copyright. This protection is not inimical to freedom of expression. A person is restricted only from using the expression of another, but the protection does not affect or restrict his own original expression.²¹ The second aspect is that copyright law only restricts the expression and leaves aside the ideas.²² That means ideas are free and anyone is permitted to use a pre-existing idea. In other words, idea underlying a work need not be original and are always free of copyright.

¹⁶ See S. 14, Copyright Act, 1957.

¹⁷ See S. 13, Copyright Act, 1957.

¹⁸ Originality is the seminal requirement for protection of a copyright work. A work is considered original if it originates from the author and sufficient time, effort and skill have been used in the process of creation of the work.

¹⁹ S. 57, Copyright Act, 1957.

²⁰ See Art. 27, Universal Declaration of Human Rights, 1948.

²¹ See *University of London Press v. University Tutorial Press*, [1916] 2 Ch. 601.

²² See *Donoghue v. Allied Newspapers Ltd.*, (1937) 3 All ER 503; *Najma Heptulla v. Orient Longmann Ltd. and Ors.* (AIR 1989) Del. 6.

It is the responsibility of the state to ensure a conducive environment so that creativity in the society is encouraged. The state does so by making laws such as copyright law so that human expression is protected, and the author of the expression could live by making his resultant creative works available to the public. Correspondingly, everyone has this right to express himself and be creative by finding some ways in which he could fulfil his freedom. Bereft of a creative expression, freedom remains empty. Though it is the right of every individual to express himself, however, it requires tremendous courage on the part of the individual to be expressive—a courage to move away from the bondage of the past.

IV

The Song of Freedom

In a distant inn
Away from the din
Lived a parrot in a cage
With its sweet song it used to engage

As the cage would hang
The same song of freedom the bird always sang
Once a traveller came to stay
And the bird sang at the end of the day

A freedom fighter the traveller himself had been
Prison life he had personally seen
In carceration freedom was always his only goal
And the longing of his soul

As the echo of the melody spread in the skies
Tears started flowing from his eyes
The song moved him to the core
He decided to help the bird for sure

At night he tried to free the bird
But the bird was not stirred
Rather it held the bars of the prison fast
The traveller had to use force at last

During the struggle all along
The bird was reciting the same old song
With great difficulty he pulled the bird out
And released it in the sky to wander about

Happy that the bird to its freedom he had lead
Peacefully the traveller then went to bed
But as the dawn was broken
With the same song he was woken

Back the parrot had turned
To the same cage it had returned
It had now bolted the cage from inside
As the song of freedom again it sang with pride

As a gift it cannot be given
By your very soul it must be driven
It is not enough to yearn
Freedom we have to earn

Courage it requires huge
It is not a coward's refuge
Only when we love the dangers of the open sky
Can we soar ever so high²³

V

Freedom as Responsibility

Of what avail is the blossoming of the flower of human creativity if the society is prevented from savouring its fragrance. The Universal Declaration of Human Rights states:²⁴

“Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits”.

The third dimension of freedom is freedom about—it is the dimension of responsibility—of sharing. Without realization of this responsibility, the human rights' discourse remains childish, immature and incomplete. This stage corresponds with the third generation of human rights. In Sanskrit, there are two words which signify 'freedom'; one is '*swatantrata*' and other one is '*swachhandata*'. While both the words mean freedom, '*swachhandata*' conveys the idea of freedom

²³ Raman Mittal, THE RHYTHM OF LAW 110 (2023).

²⁴ Art. 27(1), Universal Declaration of Human Rights, 1948. Article 15 of the UN Covenant of Economic, Social and Cultural Rights also talks about the same and states: “The States Parties to the present Covenant recognize the right of everyone: (a) To take part in cultural life; (b) To enjoy the benefits of scientific progress and its applications; (c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author”.

sans all responsibility. *Swachhandata* is childish while *swatantrata* is maturity. As per Osho:

“Freedom is possible only when you are so integrated that you can accept the responsibility of being free. The more responsible you become, the freer you become; or, the freer you become, the more you take responsibility... You can have freedom. But the cost is to accept responsibility in its totality”.²⁵

Therefore, the freedom we are talking about is not *swachhandata*; it is a tremendous discipline; it is a promise to share and an undertaking to make available. If a man were alone on the planet, then absolute freedom would have been possible, but he is not alone. Therefore, a web of rights and responsibilities always criss-crosses in society. Responsibility gives consciousness to freedom. Freedom derives its complete meaning only when responsibility is implicit in it.

Freedom of Expression and Copyright Law

The owner of copyright can at times refuse to share his creative expression and can also use copyright law as a tool to stifle the creation of derivative or transformative works like criticism or parodies, thereby adversely affecting the right to freedom of expression of others. When a copyright owner acts to restrict access to his works, it can potentially come in conflict with other human rights of others, such as the right to education, access to information, participation in culture or freedom of expression. Therefore, copyright law seeks to draw a balance by including within its fold the rights of the users of copyrighted works and the responsibilities of the owner of copyright. Copyright law grants exclusive rights to the owner of copyright in a work. However, while granting these rights and to create a balance, copyright law has created certain limitations and exceptions to the exclusive rights granted to owners.²⁶ This doctrine of limitations and exceptions has developed over the years as courts have tried to balance the rights of copyright owners with the interests of society in permitting copying in certain limited circumstances. In the absence of these exceptions and limitations, the copyright system would stifle the very

²⁵ Osho, *Supra* note 11 at 107, 29, 30-31; (As per Osho, “This is my experience: the day I took complete responsibility for myself, I found the doors of freedom opening to me. They go together... Just to give freedom is not enough; it is not only not enough, it is dangerous. It may reduce man to animality in the name of freedom”).

²⁶ More than forty countries with over one-third of the world’s population have fair use or fair dealing provisions in their copyright laws. These countries are in all regions of the world and at all levels of development. See Jonathan Band and Jonathan Gerafi, *The Fair Use/Fair Dealing Handbook*, 2015, POLICYBANDWIDTH available at: <http://infojustice.org/wp-content/uploads/2015/03/fair-use-handbook-march-2015.pdf> (last visited Jul. 10, 2024).

creativity that it was meant to foster. The copyright system will be fair only when the exclusive rights granted to the owners are subjected to these exceptions.²⁷

Two kinds of such limitations and exceptions are discussed below, viz. fair dealing and compulsory licenses. 'Fair dealing' conveys the limitations and exceptions that comprise an enumerated set of defences against an action for infringement of copyright. Such fair dealing allows for the use of a copyrighted work without any requirement of obtaining permission from the owner of copyright.²⁸ Further, there is no requirement to either pay any fees to the owner of copyright or give any notice of usage before or after such use.²⁹

The fair dealing exceptions under the Copyright Act, 1957 are listed in a way that makes them specific to work, the use of work, the purpose for which the work is to be used, the person who uses the work, the quantity to be reproduced, the reason for which the work is copied and the medium of reproduction of work. Certain limitations and exceptions mandate that the user does not earn from such use, and in some cases the owner of copyright can opt out of them by a notice.³⁰ The Delhi High Court in the landmark Delhi University Photocopying case³¹ clarified that the fairness is to be determined only by the provisions contained in section 52 of the Copyright Act.³²

The other exception or limitation is the provision for compulsory licenses under the Copyright Act. Accordingly, any person may make a complaint regarding an Indian work, during its term of copyright, which has been published or performed in public and apply for compulsory license if the work has been withheld from the public.³³ In case of an unpublished Indian work whose author is dead or unknown or untraceable or whose owner cannot be found, any person may apply for issuance of

²⁷ Raman Mittal, *Intellectual Property Duties: Exhumation, Exploration and Examination* in Raman Mittal and Kshitij Kumar Singh (eds.), *RELEVANCE OF DUTIES IN THE CONTEMPORARY WORLD: WITH SPECIAL EMPHASIS ON GANDHIAN THOUGHT* 334 (2022).

²⁸ S. 52, Copyright Act, 1957.

²⁹ However, in certain cases, there is a requirement of acknowledging such use. See, S. 52(1)(y)(Proviso), Copyright Act, 1957: "Provided that the provisions of sub-clause (ii) of clause (a), sub-clause (i) of clause (b) and clauses (d), (f), (g), (m) and (p) shall not apply as respects any act unless that act is accompanied by an acknowledgment— (i) identifying the work by its title or other description; and (ii) unless the work is anonymous or the author of the work has previously agreed or required that no acknowledgment of his name should be made, also identifying the author.

³⁰ S. 52, Copyright Act, 1957.

³¹ *The Chancellor, Masters & Scholars of The University of Oxford & Ors v. Rameshwari Photocopy Services & Anr.*, 2017 (69) PTC 123 (Del).

³² The Delhi High Court found that preparing academic course packs (namely, compilation of photocopies of parts of books recommended in the syllabus), and distributing them to students does not violate copyright under Copyright Act, 1957.

³³ S. 31(1), Copyright Act, 1957.

a compulsory license to publish such work or a translation thereof in any language.³⁴ In case of an unpublished Indian work whose author is dead, the Central Government may, if it considers that the publication of the work is desirable in the national interest, require the heirs, executors or legal representatives of the author to publish such work.³⁵ Any person may apply for a license to produce and publish a translation of a literary or dramatic work in any language after a period of seven years from the first publication of the work.³⁶ Any person may apply for a license to produce and publish a translation, in printed or analogous forms of reproduction, of a literary or dramatic work, other than an Indian work, in any language in general use in India if such translation is required for the purposes of teaching, scholarship or research.³⁷ Any person working for the benefit of persons with disability on a profit basis can obtain a compulsory licence to publish any copyrighted work for the benefit of such disabled persons.³⁸ The provision is designed to facilitate the issuance of compulsory license for the conversion of work in any format for the use of the disabled persons.³⁹

The Berne Convention⁴⁰ enjoins the member countries to follow a three-step test for legislating exceptions and limitations in their respective laws. It states, "It shall be a matter for legislation in the countries of the Union to permit the reproduction of such works in certain special cases, provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author."⁴¹ This test in international copyright law examines the legitimacy and fairness of limitations and exceptions under national copyright systems. While the limitations and exceptions keep a check on the scope of rights, the three-step test keeps a check on the limitations and exceptions—trying to maintain the balance between rights and responsibilities under copyright law.⁴² Further, in order to strike this balance between rights of the owner of copyright and the rights of the consumers of copyrighted works, the economic rights granted by copyright are time limited rights. That means after a certain period the owner of copyright loses economic control over his works and they pass into public domain permitting everyone to a free access to such works.⁴³ The first freedom is 'freedom from'—a freedom from all the bondages of the past which is negative in its

³⁴ S. 31A(1), Copyright Act, 1957.

³⁵ S. 31A(6), Copyright Act, 1957.

³⁶ S. 32(1), Copyright Act, 1957.

³⁷ S. 32(1A), Copyright Act, 1957.

³⁸ S. 31B(1), Copyright Act, 1957. This provision is applicable in cases where S. 52(1)(zb), which grants similar rights under different situations, does not apply.

³⁹ Raman Mittal, *Supra* note 28 at 340 (2022).

⁴⁰ Berne Convention for the Protection of Literary and Artistic Works, 1886.

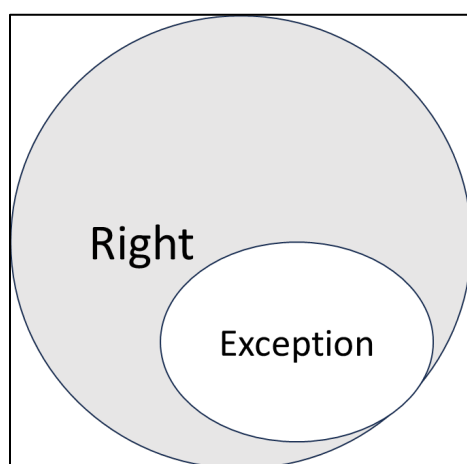
⁴¹ Art. 9.2, *Id.*

⁴² Raman Mittal, *Supra* note 28 at 336 (2022).

⁴³ See Ss. 22 to 29, Copyright Act, 1957.

orientation. The second freedom, i.e., 'freedom for' is an invitation to be creative which is positive in nature. The third freedom is neither 'from' nor 'for'; it is 'about'. It acts as a bridge between the first and the second.

As stated above, the exceptions to copyright seek to ensure that the bridge between the first and the second is not obstructed. The framers of Universal Declaration of Human Rights, in their wisdom, drafted Article 27 in two parts and the part that enjoins the owner to share comes before his right to own. This sequence is indeed meaningful. Even looking from the 'right' and 'exception' relational standpoint it makes sense. Exception is often depicted as crafted from within right in the following manner.



However, if we seek to colour both the segments, what do we find? In the beginning, there was only white background. Then some territory we ventured to colour which depicts right. Then out of that coloured portion we crafted an exception which again is depicted in white colour, which matches with the colour of that domain when there was no right and exception. In other words, the colour of the exception matches with the colour of the background which was there before right was created. We can, therefore, conclude that exception existed before right. In their wisdom the framers of Universal Declaration of Human Rights while finalising Article 27 mentioned exception in sub section 1 and then proceeded to mention right in sub section 2. This sequence is demonstrative of deep understanding and recognition of the importance of exceptions within the overall scheme of copyright law.

Copyright Exceptions: A Duty towards Inclusion

Does exclusivity granted under copyright law come in conflict with the right of the public to use copyrighted works? An analysis of the theory of exclusivity of rights shows how from the right to exclude follows the duty to include. The rights granted

by copyright are exclusive⁴⁴ in nature and exclusivity forms the conceptual basis for the ownership of copyright. That means without the permission of the copyright owner no one is permitted to use his property. Exclusivity of rights is popularly understood to mean that the owner of copyright has the right to restrain all others from the use and enjoyment of the property so protected. However, appreciating the grant of exclusivity only as a right to exclude others covers only half the spectrum of copyright; the other half being the possibility or the capacity to include others. This capacity of permitting others in the exploitation and utilisation of copyright is the corresponding duty of the copyright owner. Therefore, while one side of the coin of exclusivity represents the right to exclude all others; the other side embodies the duty to include others.⁴⁵

The limitations and exceptions to the exclusive rights of the owners of copyright can be perceived as correlative duties to such rights. What is sought to be achieved by these limitations and exceptions are certain goals with regard to access, convenience, freedom to create, institutional availability, criticism, comment, news reporting, promotion of teaching and learning, research, etc. These are socially laudable purposes.⁴⁶ It has also been opined that such limitations and exceptions are in fact, the 'rights of the public'.⁴⁷ The owner of copyright, therefore, has a duty to make his work available to the public at prices that are affordable and reasonable. There are provisions for the grant of compulsory licenses in case the copyright owner fails to perform his duties. Therefore, a failure on the part of copyright owner to perform his duties triggers a duty of the state to step in and take over such duties of the copyright owner. These duties command the state to grant compulsory licenses in various situations some of which are described above. In these situations, the state becomes a watchdog of public interest—for it is under a duty to grant compulsory license to a person who would best serve the public interest.⁴⁸

⁴⁴ An exclusive right is a non-tangible prerogative guaranteed by law to a person to perform an action or acquire a benefit and to permit or deny all others the right to perform the same action or to acquire the same benefit. Adam Smith described it as desirable monopolies. See Adam Smith, *LECTURES ON JURISPRUDENCE* 83 (R.L. Meek, D.D. Raphael & P.G. Stein (eds.), 1896, 1978). Thomas Jefferson viewed both copyrights and patents as dangerous government "monopolies" that should be strictly limited, if they were to be granted at all. See *Letter to James Madison* (Aug. 28, 1789) in Andrew A. Lipscomb (ed.), *THE WRITINGS OF THOMAS JEFFERSON* 444, 451 (1904).

⁴⁵ Raman Mittal, *Supra* note 28 at 331 (2022).

⁴⁶ See *Universal City Studios v. Sony Corp. of America*, 659 F 3d 963 (971-72) (9th Cir 1981) at 479.

⁴⁷ See *The Chancellor, Masters & Scholars of The University of Oxford & Ors v. Rameshwari Photocopy Services & Anr.*, 2017 (69) PTC 123 (Del) para. 25.

⁴⁸ Raman Mittal, *Supra* note 28 at 340 (2022).

VI

Conclusion

To be human is our potential—a potential that we have to realize. That is not something which is a 'given' phenomenon. The whole human rights movement is aimed to realize the potential of humanity. Bereft of that realization a man is not truly human—indeed he looks like a human in flesh but not necessarily his spirit. Out of all the human rights the first and foremost is freedom. It is the ultimate value, because only in freedom can a man blossom and realise his full potential. Man can attain the highest possibility in freedom alone. No wonder '*moksh*' has been described as the highest realisation of man in Hindu scriptures; even the highest heaven pales into insignificance in comparison to '*moksh*'. Freedom, as a human right, manifests itself in various ways and freedom of expression is the foremost value amongst all human freedoms.

Freedom has three aspects: first, 'freedom from', second, 'freedom for', and third, 'freedom about'. The first challenge is to attain freedom from various kinds of bondages man is imprisoned in. This is the negative aspect of freedom. To realize the first stage man often needs help and various human rights organizations work towards this goal. The second challenge of 'freedom for' is responded to by the copyright law in facilitating and protecting all forms of human expressions. The third challenge of 'freedom about' which is the dimension of sharing is thus verily an essential part of overall copyright philosophy. Copyright law is designed to assure sharing of protected works - as indeed it must answer to the constitutional and human rights goals of ensuring access.

After mapping copyright law with the three generations of human rights, it is found that copyright law stands the test of the whole spectrum of human rights movement. However, there could also be a negative effect of copyright on freedom of expression in certain situations. After having rights, the owner of copyright may decide not to share his creativity with the world. Owning and sharing are two sides of the same coin. They must go hand in hand. One is inconceivable without the existence of the other. Certain practices of the owner of copyright can often come in conflict with such sharing. For this reason, copyright law must have adequate safeguards that could aid those who are denied access to copyrighted works. The very essence of copyright is rooted in a balance between the individual rights of the owner and the broader societal interest.