



ART OR PROPERTY? A COMPARATIVE ANALYSIS OF GRAFFITI AND STREET ART COPYRIGHT CONFLICTS IN INDIA AND THE UNITED STATES

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ABSTRACT

With the transformation of time and in the era of rapid development, graffiti and street art have been considered as precious and valuable form of artistic expression, however when it comes to their legal status, even today it remains a matter of debate. The conflict that can be seen between the moral rights of artists and the property rights of owners have become one of the key issues under the copyright law in India. This paper focuses on a comparative analysis on how copyright laws in the United States and India apply to graffiti and street art and how each country navigates the balance between these competing rights. In U.S., the Visual Artists Rights Act 1990 (VARA) provides for a strong protection for artists and their work which is created on private property, in India, the Copyright Act 1957, provides with limited protections for graffiti and street art, leaving the artists' moral rights ambiguous, unclear especially with respect to the street art. The paper recommends legal reforms which includes better protection for graffiti artists' moral rights and precise and clearer definitions to resolve these conflicts where their works are expressed on private property.

Keywords: Graffiti, Street Art, Moral Rights, Vandalism, Visual Arts.

I. Introduction

“If art is to nourish the roots of our culture, society must set the artist free to follow his vision wherever it takes him.”

- John Fitzgerald Kennedy¹

Wall art, in the past was often created in less visible areas of cities, especially in the West, where people lacked accessibility to mainstream platforms where they could express their dissent. This underground form of art in future days became popularly known as graffiti. Graffiti, as we recognize today, had started in New York City in the early 1970s whereby such

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¹ Simon G. Anrink, *John F. Kennedy, The Man and the Presidency*, 105 (1987).

graffiti artwork was a part of a countercultural movement which was often used to advertise for Hip-Hop MCs and promote their music.

In the year 1990, Congress passed the Visual Artists Rights Act 1990 (VARA), and President Bush signed it into law, which for the first time included moral rights to the U.S. Copyright law.² Moral rights are personal rights³ that belong to the creator of a work and are separate and independent from their economic rights.⁴

In India, the concept of art has always been a powerful medium of expression which is deeply engraved in the country's rich culture and heritage. Graffiti and street art have been recognized as a vibrant form of creative expressions which is usually discovered on the walls of cities and towns reflecting social issues, political commentaries and cultural identity of the artists. However, unlike in U.S. there exists no clear legal framework for protecting the rights of graffiti and street artists. Although Section 57 of the Copyright Act 1957, provides moral rights to the authors, but the application to graffiti artworks remains unanswered.

Background and Importance of Graffiti and Street Art

Graffiti⁵ artwork and street art are two common ways to understand and describe the type and pattern of art. Graffiti usually refers to painting names, the pattern and style of letters or words used on walls or other surfaces in cities. The graffiti artwork is often done using a spray paint and it has a focus on writing or tagging names. This includes places like subway trains, railway trains and the surface walls.⁶ Graffiti has a different opinion by different group of people - for some they see it as a problem for cities, while others view it as a form of art. Many people associate graffiti with gangs, community problems and crimes because of which, governments, transit systems, neighborhood groups, and the property owners spend a lot of time and money almost each year trying to stop it.⁷

² Robert J. Sherman, "The Visual Artists Rights Act of 1990: American Artists Burned Again", 17(2) *Cardozo Law Review* 373 (1995).

³ *Ibid.*

⁴ Economic rights, the basis of American copyright law, protect the copyright holder's ability to be compensated for the use of a copyrighted work. For an in-depth discussion of the economic basis of American copyright law.

⁵ The word "graffiti" is derived from the Italian word *graffiare*, which means "to scratch." This is Italian originated word itself comes from the ancient Greek work *grafein*, meaning "to write."

⁶ Writing or painting or drawing on walls has been a form of art for thousands of years. Some of the examples include graffiti in the catacombs of ancient Rome, the ruins of Pompeii, and Greece, as well as Aboriginal rock art in Australia and the ancient cave paintings of Lascaux.

⁷ Marisa A. Gomez, "The Writing on Our Walls: Finding Solutions Through Distinguishing Graffiti Art from Graffiti Vandalism" 26 *University of Michigan Journal of Law Reform* 633 (1993).

Graffiti and street art are crucial and important because they are easy for society to see and enjoy the work of art. It is unlike the traditional concept of art galleries or museums, wherein these artworks are open and displayed in public and the work can be experienced and explored by all, bringing together people from different backgrounds and communities together. But even though graffiti and street art have an artistic and cultural value, this artwork often faces multiple legal issues and challenges, especially with regards to the ownership of the work - who owns the work and how the work is protected by laws of copyright.

From Vandalism to Accepted Artwork

“The words of the prophets are written on subway walls and tenement halls.”

- Paul Simon, *The Sound of Silence*⁸

Graffiti and street art has over the time kept changing. Before these works used to be seen as a vandalism and a waste of public money, however today, these works are respected and admired and even paid for as a form of art by people.⁹ What started as a piece of work on the walls of the city streets, today such can be found in famous art galleries. Street art has become a part of modern art by breaking stereotypical rules and showing the world as a new concept to ponder about what makes art valuable and meaningful.¹⁰

Graffiti and street art is often seen as a work of vandalism when it is conducted without permission taken from the owners of surface walls. This type of artwork expresses frustration among the property owners, challenging laws and property rights. The owners of property may think of damaging their property and lowering its value.¹¹ The legal system and the law enforcement consider these acts as illegal graffiti and works to put an end for further vandalism, but it is the artist who sees it to express their identities and express about the various social issues. Even though the commissioned murals and public art projects are becoming accepted for the improvement of city spaces, however controversial types like the tagging and

⁸ Paul Simon, “Sound of Silence”, Wednesday Morning 3am, Columbia Records, (1964).

⁹ Laura Horowicz, “The Evolution of Street Art: From Vandalism to Contemporary Art Phenomenon”, *Carousel Fine Art*, December 17, 2024, available at: <https://carouselartgroup.com/blog/36-the-evolution-of-street-art-from-vandalism-to/> (last visited on July 18, 2025).

¹⁰ Vanshika Mahana, “The Evolution of Street Art: From Vandalism to Revered Art Form”, available at: <https://wainsy.com/blog/the-evolution-of-street-art-from-vandalism-to-revered-art-form#:~:text=Street%20art%20has%20come%20a,color%20to%20our%20urban%20landscapes> (last visited on July 18, 2025).

¹¹ “The Evolution of Street Art: From Vandalism to Mainstream”, *The Trendy Art*, June 27, 2024, available at: https://thetrendyart.com/blogs/art-blog/the-evolution-of-street-art-from-vandalism-to-mainstream?srltid=AfmBOorRJCtYEEYr4EiyaH6Rr_zODQjEYcGkPtp8QU9oO96uzEkHlaBFM (last visited on July 18, 2025).

unauthorized graffiti still face high opposition as they are connected to vandalism and property damage.¹²

Legal and Ethical Questions Surrounding Ownership and Authorship

When graffiti and street art is removed from surface walls and various other public spaces and is portrayed in art galleries to be sold, such acts often upset and demotivates the artists. The artists feel that taking out the ‘art’ of its original existence changes the message that work was meant to share. Artists also see this as a path for others to make income from their work, even though the art was created for the public to enjoy for free of cost in the streets.¹³

As graffiti and street arts are widely becoming more accepted as genuine forms of art, it raises legal and ethical issues, with respect to whether these artworks should be protected by copyright, even if created on private or the public property without taking permission. Copyright laws in many countries state that the original art is protected automatically, however the unauthorized nature of such graffiti artworks often complicates the situation.

One of the major issues is the conflict between the rights of artists and the property owners, giving property owners important rights that would usually belong only to the artist.¹⁴ Artists have moral rights i.e., the right to be credited for their work and to protect it from being changed, however property owners have the right to control what happens to their own property. For example, should a property owner be allowed to remove the graffiti or mural from their wall, even if it’s considered important art? Although murals are recognized as works of art under the statutory provision of section 2(c) of the Indian Copyright Act, 1957¹⁵ and Section 13 of the 1957 Act¹⁶ also grants copyright protection to murals, however what protection can a graffiti artwork shall avail? On the other hand, should an artist be able to stop someone from altering their artwork if such work was created without permission? All these raise important and critical thought-provoking questions about whether art created without consent should be protected.

Ethically, it is about finding a balance between the dichotomy of artistic freedom and ownership of the property. On one hand where artists want to display and share their creativity,

¹² *Ibid.*

¹³ Enrico Bonadio, “Street Art, Graffiti and Copyright”, in Enrico Bonadio and Lucchi, *Non-Conventional Copyright - Do New and Atypical Works Deserve Protection?* 83-110 (Edward Elgar, 2018).

¹⁴ Brittany M. Elias and Bobby Ghajar, “Street Art: The Everlasting Divide between Graffiti Art and Intellectual Property Protection”, 7 *Landslide* 48 (2015).

¹⁵ Copyright Act, 1957, sec. 2(c) provides the meaning and categorization of “artistic work”.

¹⁶ Copyright Act, 1957, sec. 13 mentions “works in which copyright subsists” where the Act also grants copyright protection to murals, as they fall under the definition given in sec. 2(y) of the Act.

the property owners on the other hand believe they should have control over their own property and solving this issue requires understanding both legal rules and how the society views art and property.

A Comparative Analysis Between the United States and India

This paper examines how the United States and India handle the conflict between the rights of graffiti and street artists and property owners. In United States, the statutory laws like the Visual Artists Rights Act 1990(VARA)¹⁷, have helped recognize the work of graffiti artists as well as given protection to artists by upholding the moral rights of graffiti and street art artists. In contrast to United States, India's legal system, particularly with respect to Copyright Act 1957, which includes the moral rights¹⁸ under Section 57¹⁹, but the provision does not clearly explain how these apply to graffiti and street art. In addition to this, in India, graffiti is often recognized as vandalism making it harder for these artworks to be recognized as art.

Research Objectives and Methodology

The main objective and goal of this paper is to have an outlook at how the rights of graffiti and street artists²⁰ conflicts with the rights of property owners.²¹ The paper will explore how this conflict is handled in the legal framework of the United States and India. The research will aim to understand:

- i. Application of copyright laws in both countries to graffiti and street art and how they balance the conflict of rights between the moral rights of artists vis-à-vis property rights of the owners.
- ii. Examine various case laws and the judicial decisions given in those case laws that highlight the path to resolve these conflicts and how such conflicts are handled and managed.
- iii. To identify the lacunae in the Indian Copyright Act 1957, especially with reference to Section 57 and propose recommendations for addressing these gaps.

¹⁷ Visual Artists Rights Act (VARA) Act, 1990.

¹⁸ India has adopted Moral Rights from sec. 6 bis of the Berne Convention, which it incorporated in its Copyright Act 1957.

¹⁹ Sec. 57 of Copyright Act 1957, mentions "Authors special rights" i.e., it lays down the moral rights of the author.

²⁰ The rights of the graffiti and street art artist which should be credited for their artistic work.

²¹ Property owners are the ones who own the property i.e., the walls or surfaces where the art is created by the graffiti artists.

The methodology used in this research includes analyzing and examining the key statutes like the Indian Copyright Act²², and the Visual Artists Rights Act 1990(VARA)²³. It will also have a review on secondary sources, such as academic articles, legal opinions and case laws. The chapter will take a comparative approach looking at how the culture, law and society have an influence over the artwork of graffiti and street art and are recognized and protected.

The paper through this study aims to include the ongoing conversation about intellectual property and graffiti, offering insights that can be a helpful guide for artists and legal professionals.

II. Theoretical Foundation and Jurisprudence

This paper examines the legal ideologies and philosophical beliefs behind the conflict persisting between the rights of artists and property rights of the surface owners. Understanding these ideologies and concepts, we can analyse and see how the legal systems approach and handle such sensitive issues with graffiti and street art, particularly in resolving the disputes pertaining to artists and owners of the property.

Understanding Moral Rights in Copyright Law

The Tradition of Moral Rights

Droit moral, or moral rights,²⁴ which refers to the special rights that protect the personal connection that exist between an artist and their work, has been the ideology which has evolved from the European beliefs about personality, influenced by the philosophical work of George Wilhelm Friedrich Hegel.²⁵ According to Hegel, intellectual property includes a person's knowledge, skills, and talent which he says "[a]ttainments, eruditions, talents, and so forth, [which] are, of course, owned by free mind and are something internal and not external to it, but even so, by expressing them [the creator] may embody them in something external and alienate them."²⁶ In this way, artistic and literary works continue to reflect upon the personality

²² Copyright Act 1957.

²³ *Supra* note 13.

²⁴ Robert J. Sherman, "The Visual Artists Rights Act of 1990: American Artists Burned Again", 17 *Cardozo Law review* 373, 379 (1995). Although the term "moral rights" is derived from the French phrase *droit moral*, however it do not relate to morality or decency. Instead, the term "moral rights" refers to the personal connection between an artist and their work which is often called as "authors' rights," which has been a part of European legal tradition for a long time.

²⁵ Justin Hughes, "The Philosophy of Intellectual Property", 77 *Georgetown University Law Center and Georgetown Law Journal* 287 (1988).

²⁶ *Id.* at 337-38 (quoting G.W.F Hegel, "Philosophy of Right", (1820), translated with Notes by T M Knox (1942), Oxford University Press, First Published by Clarendon Press (1952))

of the creator, even after the physical work is sold.²⁷ This “ghost image” of the artist’s personality which is present in their work is what motivates the protection of moral rights, ensuring that the artist’s connection to the work is respected.²⁸

The theory of *droit moral* was developed over the last 200 years based on the rulings made by the judicial system of France.²⁹ Moral rights give protection for four important interests of an artist which are: 1.) The right of attribution; 2.) The right of disclosure; 3.) The right of withdrawal; and 4.) The right of integrity.³⁰ The right to attribution means where the artist has the right to be credited and acknowledged for their work.³¹ The right of disclosure means where the artist has the right to decide when and how their work should be made public.³² The right of withdrawal allows the artist to withdraw or remove their work from the public display if they no longer wish to.³³ The right of integrity provides protection to artists from having their work altered, destroyed, or distorted which could harm and affect the artist reputation.³⁴ While moral rights began to develop through the courts and judicial rulings, they have been strongly established by French law.³⁵ This means that although the judicial decisions have helped to shape the philosophy and ideology of moral rights, French laws have made these rights a binding and strong part of the legal system, giving the artist a clear and formal protection.

Moral rights became internationally recognized when the Rome Protocol added Article 6bis to the Berne Convention.³⁶ The protection given by the Berne Convention is not just for visual art but covers all types of artistic creations, regardless of the medium used.³⁷

The Growth of Moral Rights in the United States of America

²⁷ Chintan Amin, “Keep Your Filthy Hands Off My Painting! The Visual Artists Rights Act of 1990 and the Fifth Amendment Takings Clause” 10(2) *Florida Journal of Law* (1995).

²⁸ *Supra* note 21 at 338-40.

²⁹ Raymond Sarraute, “Current Theory on the Moral Right of Authors and Artists Under French Law”, 16(4) *The American Journal of Comparative Law* 465 (1968)

³⁰ *Supra* note 20. The Berne Convention only acknowledges and recognizes two moral rights for artists: the right of attribution (i.e., the right to be credited for the authors’ work) and the right of integrity (i.e., the right to prevent changes to their work that could harm their reputation). However, the right to integrity is limited. It is only applicable to situations where changes to the work “would be prejudicial to [the artist’s] honor or reputation,” which means that the artist can stop alterations that would negatively affect the status and the image of their personality.

³¹ The Berne Convention, art. 6 bis. and *Supra* note 25 at 478.

³² Neil Netanel, “Alienability Restrictions and the Enhancement of Author Autonomy in United States and Continental Copyright Law”, 12 *Cardozo Arts and Ent. Law Journal* 27 (1994). In France, the right to disclosure provides the artist with the power to decide when their work is made public. This means the artist can choose the right time to release their work into the world.

³³ *Supra* note 23.

³⁴ *Ibid.*

³⁵ John Henry Merryman, “The Refrigerator of Bernard Buffet”, 27(5) *Hastings Law Journal* 1023 (1976).

³⁶ Melville Nimmer & David Nimmer, *Nimmer on Copyright*, 8.21A, (1991).

³⁷ *Supra* note 25.

In the United States, artists have been denied of any legal protection traditionally, for moral rights.³⁸ This means that, unlike in some other countries, U.S. law did not initially recognized the personal connection that the artists have to their work, such as the right to be credited (i.e., the attribution) or to prevent changes to their work that might harm their reputation (integrity). This was observed in the New York case of *Crimi v. Rutgers Presbyterian Church*³⁹ in the year 1949.⁴⁰ In this case the plaintiff was hired to paint a large artwork, called a fresco, on the walls of the Rutgers Presbyterian Church in Manhattan.⁴¹ The fresco portrayed an image of Jesus Christ without a shirt, which created a massive controversy and debate among the church community.⁴² After the church painted over the mural, the artist filed a lawsuit claiming to either get compensation or to have the original painting restored.⁴³ The argument made by the artist was that, according to common practices in the world of art, works of high artistic value should not be changed or destroyed.⁴⁴ The artist also argued before the court that even after selling his work, he would still hold a “limited proprietary interest” in it, which means that the artist believed that he had the right to protect his honour and reputation as an artist, including the right to stop the work from being altered or destroyed.⁴⁵ The issue faced by the court was whether selling a work of art completely destroys and removes any rights or interests the artist the artist might still have in it.⁴⁶ The court decided that since the United States does not recognise the moral rights unlike that in Europe, the artist would be bound to give up all the rights pertaining to the painting once he sold it.⁴⁷

Crimi's ruling, which stated that artists lose their rights to their work after selling it, was common in the U.S at the time.⁴⁸ However, with passing years, the courts started to recognize that the main focus of U.S. copyright law, which is to encourage artists by giving them financial benefits, did not match correctly with the fact that artists could not get legal help if their moral rights were violated.⁴⁹ Courts started to give artists compensation for violations of their moral rights using different legal ideas, such as using contract law and tort law, instead of copyright

³⁸ *Supra* note 23.

³⁹ *Crimi v. Rutgers Presbyterian Church*, City of N.Y, 89 N.Y.S.2d 813, (January 29, 1949).

⁴⁰ Thomas A. Shelburne, “When Art Might Constitute a Taking: A Takings Clause Inquiry Under the Visual Artists Rights Act”, 23(4) *Vanderbilt Journal of Entertainment & Technology Law* 919 (2021).

⁴¹ *Supra* note 33.

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

⁴⁶ *Ibid. Supra* note 23.

⁴⁷ *Ibid.*

⁴⁸ *Supra* note 34.

⁴⁹ *Supra* note 23.

law.⁵⁰ It was not until 1976 that a U.S. court acknowledged that artists could take legal action for violations of their moral rights in the case of *Gilliam v. American Broadcasting Companies*.⁵¹ In this case, the members of the famous comedy group “Monty Python” sued the American Broadcasting Companies (ABC). They contended that ABC had violated the integrity of their TV show by editing it heavily, making changes to parts that they considered offensive.⁵² They filed the lawsuit under Section 43(a) of the Lanham Act,⁵³ which protects and safeguards against misleading actions or damages to the reputation of a work.⁵⁴ The court in this case decided that the edited version of the show was very different from the original and it damaged the integrity of “Monty Python’s” work. This was because the comedy group still had a dominant control over the scripts through the copyright law.⁵⁵ The court admitted that the U.S. law, did not officially recognise the rights pertaining to moral rights at that time. However, the court also pointed out that U.S. copyright law could not ignore the damage caused when an artist’s work was altered or misrepresented to the public.⁵⁶ Because of this, the court created a way for artists to secure and protect their moral rights.⁵⁷ The Berne Convention provides protection not just for visual art but for all kinds of artistic works, in any medium. When the U.S. passed the Visual Artistic Rights Act (VARA)⁵⁸, it made sure to follow the rules set out by the Berne Convention.⁵⁹

The Development of Moral Right in India

India, as a member of both the Berne Convention⁶⁰ and the TRIPS⁶¹ Agreement, has updated its Copyright Act,⁶² to meet the requirements and obligations which have been outlined in these international agreements.⁶³ In 1914, India passed its first modern copyright law, which was based on the British Copyright Act of 1911. However, this enactment failed to include any

⁵⁰ *Ibid.*

⁵¹ *Gilliam v. American Broadcasting Companies.*, 538 F.2d 14, 25 (2d Cir. 1976)

⁵² *Ibid.*

⁵³ The Lanham Trademark Act of 1946, Pub. L. No. 78-489, § 43(a), 60 Stat. 441 (codified at 15 U.S.C. sec. 1125(a) (1982)) (protecting trademarks against false representation and false designation of origin). Congress, in enacting sec. 43(a), intended to protect the public from confusion regarding the source of commercial goods and services.

⁵⁴ *Supra* note 45.

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*

⁵⁷ *Supra* note 34.

⁵⁸ *Supra* note 13.

⁵⁹ Michelle Bougdanos, “The Visual Artists Rights Act and Its Application to Graffiti Murals: Whose Wall Is It Anyway?”, 18(3) *NYLS Journal of Human Rights, New York Law School* (2002).

⁶⁰ Berne Convention for the Protection of Literary and Artistic Works, 1886.

⁶¹ Trade Related Aspects of Intellectual Property Rights Agreement (TRIPS), 1995.

⁶² Copyright Act, 1957.

⁶³ Arathi Ashok, “Moral Rights - TRIPS and Beyond: The Indian Slant”, 59 *Journal Copyright Society USA* 697 (2011).

provisions for moral rights. In 1957, India replaced the 1914 Act with the Copyright Act of 1957, which was more detailed and independent laws covering all the aspects of copyright norms. This new law introduced the “Authors Special Rights” under Section 57,⁶⁴ which specifically protected and safeguarded the moral rights of the author. The provision specifically protects both the financial benefits (i.e., the economic rights) and the personal connections (i.e., the moral rights) of creators with exclusive authority to perform and also to allow certain activities with their works, such as reproducing, distributing, or adapting it.⁶⁵ Moral rights under section 57⁶⁶ of the Copyright Act, follows international guidelines and recognises two important rights for authors: 1.) Right to Paternity; and 2.) Right to Integrity. Right to paternity gives the author the right to be acknowledged as the creator of their work. Right to integrity allows the author to prevent any modifications or changes, distortions or harm to their work that could affect their reputation.

The first amendment of Section 57 in 1994, made the application of moral rights more limited. It added the phrase “or other act in relation to the said work which is done before the expiration of the term of copyright”, which meant that the original Section 57 did not specify a time limit for claiming the Author’s Special Rights.⁶⁷ However, in 2012, with a new amendment to Section 57, it restored the original rule, which clarified that moral rights could be claimed during the entire term of copyright, meaning that the period when the work is protected by copyright.⁶⁸ Originally, Section 57 of the Act,⁶⁹ was written very broadly because the phrase “would be prejudicial to his honour or reputation”⁷⁰ was applied only to sub-clause (b) and not sub-clause (a), and the phrase “any other action” in sub-clause (b) suggested the author could

⁶⁴ Originally sec. 57 of the Copyright Act, 1957 provides the “Authors special rights” it states- (1) Independently of the author’s copyright and even after the assignment either wholly or partially of the said copyright, the author of the work shall have the right- (a) To claim the authorship of the work; and (b) To restrain or claim damages in respect of any distortion, mutilation, modification or other act in relation to the said work which is done before the expiration of the term of copyright if such distortion, mutilation, modification or other such acts would be prejudicial to his honour or reputation: Provided that the author shall not have any right to restrain or claim damages in respect of any adaptation of computer programme to which clause (aa) of sub-section (1) of section 52 applies. Explanation- Failure to display the work or display it to the satisfaction of the author shall not be deemed to be an infringement of the rights conferred by this section. (2) The right conferred upon an author of the work under sub-section (1), other than the right to claim authorship of the work, may be exercised by the legal representatives of the author.

⁶⁵ *Supra* note 55. Under sec. 14 of the Copyright Act 1957, gives creators rights such as making copies of their own work, sharing or selling it, showing it to the public, creating new versions and translating it into other languages.

⁶⁶ *Supra* note 56.

⁶⁷ Namrata Luhar, “Moral Rights: Origin, Development, Importance and Challenges”, 4(4) *International Journal of Legal Research and Studies* 12 (2019).

⁶⁸ *Ibid.*

⁶⁹ Copyright Act 1957.

⁷⁰ *Supra* note 59.

take actions beyond seeking damages or injunction. After the amendment effective from May 10, 1995, the author's rights were limited to claiming damages or seeking an order to stop changes, and proof of harm to the author's honour or reputation became necessary for claiming damages.⁷¹

Property Rights and the Doctrine of Ownership

Properties are often used in philosophy to explain different concepts and ideas. One common use of properties is to help solve the "one over many problem." This problem asks how we can understand that different objects share the same qualities. For example many different red things can be called 'red' but what makes them all 'red' if they are individual objects? The "one over many argument" tries to explain how different things can share the same property, like the colour red. The idea has been discussed since the time of Socrates and Plato and continues to be explored even today.⁷² Property rights give people the legal power to control, use, and decide as to what happens to their property. These rights are protected by law in most countries, including India and the United States. The rights for the property owners include the ability to: modify or demolish their property, prevent their property from unauthorized use - including graffiti or street art created without taking permission from the property owners.

In liberal capitalism, when philosophers talk about "property", they often put their focus upon the ideology of "ownership". Ownership means having the ultimate control over something, like land, a house, or a car. It is considered as the strongest legal right one can have over the property.⁷³ However, ownership does not always override every other type of right. While ownership might legally "trump" other property rights, such as a tenant's right to use the property for a limited time, it does not automatically outweigh moral or social claims. This balance portrays that ownership is powerful however, not absolute - it interacts with other values like fairness and social good.⁷⁴ This often leads to a conflict with graffiti artists who create artwork on other people's property without taking permission. The main legal question here is whether property owners should always have the final say, or if the moral rights of artists - such as the rights to protect the artist's artwork - should at times take priority, especially when the artwork is culturally important.

⁷¹ *Ibid.*

⁷² Orilia, Francesco and Michele Paolini Paoletti, "Properties" in Edward N. Zalta (ed.), *The Stanford Encyclopedia of Philosophy* (2022).

⁷³ S. Dodds, *Property*, *Philosophy of, International Encyclopedia of the Social & Behavioral Sciences*, (November 02, 2002)

⁷⁴ *Ibid.*

Jurisprudence Theories Behind the Conflict

Rights in our society are not justified only by laws written in statutes or constitutions. They are also based on moral, ethical, philosophical and social principles that go beyond legal statutes.⁷⁵ The existing conflict that persists between the rights of artists and the property owners culminates from various differing jurisprudential theories which each offers unique perspectives, on creativity, ownership, and societal interest.

Theory of Hegelian Personality

Personality theory which is associated with G.W.F. Hegel, has argued that the artists should have a stronger protection for their intellectual property because of their creativities which are deeply connected to their personal identity, which is far beyond than regular property explains the importance of artists' moral rights which should also be protected.⁷⁶

In the case of graffiti and street art the personality theory is applicable for the artists who have the right - the moral right to protect their work from being distorted or damaged or modified. For example if a graffiti art in the form of mural gains popularity and is recognised as a masterpiece of art, then the artist's personal attachment to the work might overpower and be of more importance to that of the owner of the property to remove or alter such mural.

International Norms: Berne Convention and Author's Moral Rights

More than 40 years after the 'moral rights' was created⁷⁷ and nearly two centuries after European philosophers and legal scholars came together with moral reasons to support the rights of authors, this ideology of 'moral rights' gained recognition,⁷⁸ that the Berne Convention's revision conference which was held in Rome in 1928, officially acknowledged that authors hold moral rights which separate them from their economic rights.⁷⁹ These rights belong solely to the authors which cannot be transferred during their lifetime, and cannot be

⁷⁵ Justin Hughes, "The Philosophy of Intellectual Property", 77 *Geo. L.J.* 287 (1988).

⁷⁶ Jeanne L. Schroeder, "Unnatural Rights: Hegel and Intellectual Property", 60(4) *University of Miami Law Review*, 453 (2006).

⁷⁷ Gustavo Ghidini and Laura Moscati, "Gustavo Ghidini and Laura Moscati" in Susy Frankel, Margaret Chon, Graeme Dinwoodie, Barbara Lauriat and Jens Schovsbo (eds.), *Improving Intellectual Property*, 204-213 (Elgar, 2023).

⁷⁸ In the view of Immanuel Kant, in an article against a book which counterfeited, "Von der Unrechtmäßigkeit des Buhernachdrucks" 5 *Berlinische Monatsschrift* 403 ff (1785)., the work is, on the one hand, a corporeal object, and on the other hand, an immaterial creation where the first profile corresponds to a real right, the second to a personal and inalienable right.

⁷⁹ *Supra* note 78.

assigned to publishers.⁸⁰ Due to this reason, these rights are often called as “personal” rights instead of “moral” rights.⁸¹

Moral right became the key element and important part of the International Berne Convention, which protects the literary and artistic works,⁸² where the U.S. delayed in signing the Berne Convention for years, partly because it disagreed with the concept of moral rights which was included in the treaty.⁸³ In the meantime, some other states stepped in and started with California in 1979, eleven states which created laws to protect the moral rights of visual artists.⁸⁴ Finally in the year 1988 the United States officially agreed to follow the rules of the Berne Convention.⁸⁵ Two years later, in the year 1990, the U.S. Congress added VARA to the Copyright Act as a new law.⁸⁶

In India, Section 52 of the Copyright Act,⁸⁷ aligns with the Berne Convention principle of ‘moral rights’ provisions by offering a broader protection to authors. However, in the case of graffiti and street art, the application of Section 57 is inconsistent due to cultural and legal ambiguities surrounding the concept of graffiti.

III. Legal Framework in the United States of America

In the final hours of the 101st Congress, the United States Senate passed the Judicial Improvements Act of 1990, which allowed for the creation of 85 new federal judge positions.⁸⁸ In this year, Congress added VARA⁸⁹ to the Copyright Act, where the federal law for the first time recognised that artists have moral rights over their works of art.⁹⁰ This law was created to protect the “moral rights” of artists, giving them certain rights over their work is treated even after such work is sold.⁹¹ VARA Act ensures that the artists have the right, for their entire life,

⁸⁰ *Ibid.*

⁸¹ *Ibid.*

⁸² Berne Convention for the Protection of Literary and Artistic Works, art. 6bis, as amended on September 28, 1979. Art. 6bis became part of the Convention in 1928.

⁸³ Amy Adler, “Against Moral Rights”, 97 *California Law Review* 263 (2009).

⁸⁴ William F. Patry, 4 *Patry on Copyright*, § 16:44 (2007).

⁸⁵ *Supra* note 84 and Congress passed the Berne Convention Implementation Act of 1988, Pub. L. No. 100-568, 102 Stat. 2853 (1988) (codified as amended in scattered sections of 17 U.S.C.)

⁸⁶ Visual Artists Rights Act of 1990, 17 U.S.C. § 106A (2000).

⁸⁷ *Supra* note 15.

⁸⁸ Public Law No. 101-650, 104 Stat. 5089 (1990), available at: <https://www.govinfo.gov/content/pkg/STATUTE-104/pdf/STATUTE-104-Pg5089.pdf> (last visited on July 18, 2025).

⁸⁹ Visual Artists Rights Act (“VARA”), Pub. L. No. 101-650, tit. VI, 104 Stat. 5128 (1990) (codified in part in 17 U.S.C. Sections 101, 106A, 107, 113, 301, 411, 412, 501, 506 (1994)).

⁹⁰ The last-minute passing of VARA, without much discussion and as part of a larger important bill, was highly criticised by George C Smith, who was the chief minority counsel for the Senate Judiciary Subcommittee on Technology and the Law.

⁹¹ *Supra* note 36.

to stop anyone from purposely causing destruction, distortion or any other modification of their artwork if such an artwork is considered to have a “recognised stature”.⁹²

VARA grants artists with two important rights i.e., right of attribution and right of integrity.⁹³ The right to attribution is concerned with artists' right to claim the authorship of the work and make sure that no one can falsely claim such work and also the right allows the author to deny being the creator of a work that they did not make.⁹⁴ The right of integrity gives the artist the power to stop or to get compensation if someone intentionally distorts, mutilates, modifies or destructs the work of the artist.⁹⁵ VARA acknowledges that it is important to support artists so they continue creating art, and it further recognises the value of preserving their work after such work is created.⁹⁶ The public's interest in art and culture is justified by the involvement of federal law in what was often seen as a private agreement.⁹⁷ By supporting the idea and concept that the government should also help protect the nation's art and cultural heritage, the law also addressed global concerns about the preserving culture and maintaining its integrity.⁹⁸ In this balancing Act, VARA might lead to a situation where a property owner could have a valid claim under the takings clause of the Fifth Amendment.⁹⁹

VARA ACT, 1990

The United States became a major creator of intellectual property, and by joining the Berne Convention, it could strengthen its role in shaping international intellectual property laws and because of this, the Senate agreed to adopt the Berne Convention.¹⁰⁰ The adoption and implementation of the Berne Convention allowed supporters of moral rights in Congress to push for laws that protect the artists' personal rights over their works.¹⁰¹ When creating VARA, the lawmakers pointed out that “critical factual and legal differences in the way visual arts and audio visual works are created and disseminated have important practical consequences...[and]

⁹² 17 U.S.C. Sec. 106A(a), (d).

⁹³ Cheryl Swack, “Safeguarding Artistic Creation and the Cultural Heritage: A Comparison of Droit Moral between France and the United States”, 22 *COLUM.-VLA J.L. & ARTS* 361 (1998).

⁹⁴ Christopher J. Robinson, “The “Recognized Stature” Standard in the Visual Artists Rights Act”, 68(5) *Fordham Law Review* 1935 (2000).

⁹⁵ *Ibid.*

⁹⁶ Thomas J. Davis Jr., “Fine Art and Moral Rights: The Immoral Triumph of Emotionalism”, 17(2) *Hofstra Law Review* 317 (1989).

⁹⁷ *Supra* note 95.

⁹⁸ John Henry Merryman, “The Public Interest in Cultural Property”, 77(2) *California Law Review* 339 (1989).

⁹⁹ *Supra* note 36.

¹⁰⁰ 17 U.S.C. § 106A (1994). “No Person shall ... be deprived of life, liberty, or property, without due process of law.” U.S. CONST. amendment. V.

¹⁰¹ *Supra* note 23.

have led the Congress to consider the claims of these artists separately.”¹⁰² Unlike the moral rights provision in the Berne Convention, VARA only applies to specific types of visual art that are clearly defined.¹⁰³ This means that VARA protects a limited range of visual art, while the Berne Convention’s moral rights provision is broader and covers more types of creative works. VARA is however, broader than the Berne Convention’s Article 6bis because it not only protects the rights of attribution and integrity¹⁰⁴ but also provides artists of “recognised stature” the right to stop their works from being distorted, mutilated or modified.¹⁰⁵

Although VARA is a law that protects moral rights, it is different from the traditional European approach in two ways: it applies to fewer types of art and it also provides the artists slightly different rights.¹⁰⁶ Under VARA, the “visual art” class is more narrowly defined than is the

¹⁰² *Ibid.* Also *See*, H.R. REP. No. 101-514, H.R. REP. No. 101-514, at 9 (1990). The House Report for the VARA enactment bill cites 11 state statutes that support artists' rights in some way.

¹⁰³ 17 U.S.C. Sections 101, 106A (1994). The Act limits the rights conferred by 17 U.S.C. § 106A to "visual art" as defined by 17 U.S.C. Section 101. "Visual art" is defined as: (1) a painting, drawing, print, or sculpture, existing in a single copy, in a limited edition of 200 copies or fewer that are signed and consecutively numbered by the author, or, in the case of a sculpture, in multiple cast, carved, or fabricated sculptures of 200 or fewer that are consecutively numbered by the author and bear the signature or other identifying mark of the author; or (2) a still photographic image produced for exhibition purposes only, existing in a single copy that is signed by the author, or in a limited edition of 200 copies or fewer that are signed and consecutively numbered by the author.

¹⁰⁴ The rights to be credited for a work and to prevent harmful changes to it.

¹⁰⁵ Sec. 106A. The traditional moral rights doctrine does not recognize the right to prevent the destruction of a work. Also *see Supra* note 23.

¹⁰⁶ Sec. 106A which states (Rights of certain authors to attribution and integrity) of VARA states:

(a) RIGHTS OF ATTRIBUTION AND INTEGRITY.

- Subject to sec. 107 and independent of the exclusive rights provided in section 106, the author of a work of visual art- (1) shall have the right- (A) to claim authorship of that work, and (B) to prevent the use of his or her name as the author of any work of visual art which he or she did not create; (2) shall have the right to prevent the use of his or her name as the author of the work of visual art in the event of a distortion, mutilation, or other modification of the work which would be prejudicial to his or her honor or reputation; and (3) subject to the limitations set forth in section 113(d), shall have the right - (A) to prevent any intentional distortion, mutilation, or other modification of that work which would be prejudicial to his or her honor or reputation, and any intentional distortion, mutilation, or modification of that work is a violation of that right, and (B) to prevent any destruction of a work of recognized stature, and any intentional or grossly negligent destruction of that work is a violation of that right.

(b) SCOPE AND EXERCISE OF RIGHTS.

- Only the author of a work of visual art has the rights conferred by subsection (a) in that work, whether or not the author is the copyright owner. The authors of a joint work of visual art are co-owners of the rights conferred by subsection (a) in that work.

(c) EXCEPTIONS.

- (1) The modification of a work of visual art which is a result of the passage of time or the inherent nature of the materials is not a distortion, mutilation, or other modification described in subsection (a)(3)(A).

(2) The modification of a work of visual art which is the result of conservation, or of the public presentation, including lighting and placement, of the work is not a destruction, distortion, mutilation, or other modification described in subsection (a)(3) unless the modification is caused by gross negligence.

(3) The rights described in paragraphs (1) and (2) of subsection (a) shall not apply to any reproduction, depiction, portrayal, or other use of a work in, upon, or in any connection with any item described in subparagraph (A) or (B) of the definition of "work of visual art" in section 101, and any such

traditional copyright category of “pictorial, graphic and sculptural works”.¹⁰⁷ This means that VARA protects a smaller range of artworks compared to the broader category of works under regular copyright law. It also includes certain types of paintings, drawings, prints, sculptures and still photographs that are made specifically for exhibition purposes.¹⁰⁸ This means these artworks must be created to be shown in galleries or other public spaces. This definition does not include works like maps, diagrams, charts, or news photographs.¹⁰⁹ Congress has therefore created a specific group of artworks that it believes need more protection than what is provided by the traditional copyright law.¹¹⁰

Rights given by the Visual Artists Rights Act

Section 106A(a) of VARA Act, offers protection if someone violates an artists' right to be credited for their work. It ensures that the creator of a visual artwork is recognized as the author.¹¹¹ The section states that an author of a visual work can claim authorship of their work,

reproduction, depiction, portrayal, or other use of a work is not a destruction, distortion, mutilation, or other modification described in paragraph (3) of subsection (a).

(d) DURATION OF RIGHTS.

- (1) With respect to works of visual art created on or after the effective date set forth in section 610(a) of the Visual Artists Rights Act of 1990, the rights conferred by subsection (a) shall endure for a term consisting of the life of the author.

(2) With respect to works of visual art created before the effective date set forth in section 610(a) of the Visual Artists Rights Act of 1990, but title to which has not, as of such effective date, been transferred from the author, the rights conferred by subsection (a) shall be coextensive with, and shall expire at the same time as, the rights conferred by section 106.

(3) In the case of a joint work prepared by two or more authors, the rights conferred by subsection (a) shall endure for a term consisting of the life of the last surviving author. (4) All terms of the rights conferred by subsection (a) run to the end of the calendar year in which they would otherwise expire.

(e) TRANSFER AND WAIVER.

- (1) The rights conferred by subsection (a) may not be transferred, but those rights may be waived if the author expressly agrees to such waiver in a written instrument signed by the author. Such instrument shall specifically identify the work, and uses of that work, to which the waiver applies, and the waiver shall apply only to the work and uses so identified. In the case of a joint work prepared by two or more authors, a waiver of rights under this paragraph made by one such author waives such rights for all such authors.

(2) Ownership of the rights conferred by subsection (a) with respect to a work of visual art is distinct from ownership of any copy of that work, or of a copyright or any exclusive right under a copyright in that work. Transfer of ownership of any copy of a work of visual art, or of a copyright or any exclusive right under a copyright, shall not constitute a waiver of the rights conferred by subsection (a). Except as may otherwise be agreed by the author in a written instrument signed by the author, a waiver of the rights conferred by subsection (a) with respect to a work of visual art shall not constitute a transfer of ownership of any copy of that work, or of ownership of a copyright or of any exclusive right under a copyright in that work.

17 U.S.C. § 106A and supra note 23.

¹⁰⁷ 17 U.S.C. § 101

¹⁰⁸ *Ibid.*

¹⁰⁹ *Ibid.* 17 U.S.C. Sec. 101(A)(i). The rationale for such a narrow subclass is that works, such as maps and news photographs, are works made for hire and do not possess the same "personality" characteristics that paintings and exhibition photographs do.

¹¹⁰ *Supra* note 23.

¹¹¹ *Supra* note 55.

prevent others from using their name as the creator of any artwork they did not make and prevent the author's name from being used on their own artwork if it has been distorted, mutilated or modified in a way that could harm their honor or reputation.¹¹² This ensures the artist's connection to their work is respected.

Integrity

The right to integrity allows the creator of a visual artwork to stop others from intentionally distorting, mutilating or modifying their work in any way that could harm their dignity or reputation.¹¹³ The idea is based on Hegel's philosophy, which says that artists' work reflects their personality and identity. Each piece of art carries a part of the artist's professional and personal self.¹¹⁴ This aligns with the Berne Convention, which protects the moral rights of artists.¹¹⁵

Works of 'Recognised Stature'

VARA protects works of "recognised stature" from being destroyed.¹¹⁶ It goes beyond the traditional moral rights by protecting artworks from being destroyed. Many countries that follow Berne Convention do not support this kind of protection because they believe that if the artwork no longer exists, it cannot impact the artist's honor or reputation.¹¹⁷ Although VARA limits what the owner of an artwork can do with it, but it allows exceptions for harmless actions that would not typically cause harm or require legal action.¹¹⁸

Analysis of *Cohen v. G&M Realty*

The Artists Rights and Claims under VARA

When Cohen and his fellow plaintiffs filed their lawsuit against Wolkoff, it was the first time a court had to decide if the work of an outdoor aerosol artist, which is often temporary in nature, should be given protection by the law.¹¹⁹ To achieve success on their VARA claims and to stop

¹¹² 17 U.S.C. Sec. 106A(a) (2002). Under this section, an author of a visual work "shall have the right to claim authorship of that work, and to prevent the use of his or her name as the author of any work of visual art which he or she did not create, and shall have the right to prevent the use of his or her name as the author of the work... in the event of a distortion, mutilation, or other modification of the work which would be prejudicial to his or her honor or reputation."

¹¹³ 17U.S.C. Section 106A(a)(1)(3)(A-B) (2002).

¹¹⁴ *Supra* note 23.

¹¹⁵ *Ibid.*

¹¹⁶ 17 U.S.C. Sec. 106A. Although the House Report is silent, it may be assumed that the "recognized stature" standard, like the damage to "honor or reputation" standard, should be proved by expert testimony.

¹¹⁷ H.R. REP. No. 101-514, *Supra* note 23.

¹¹⁸ *Supra* note 23.

¹¹⁹ *Cohen v. G&M Realty L.P.*, 988 F. Supp. 2d 212, 214 E.D.N.Y. (2013).

their artwork from being destroyed, the plaintiffs had to prove four things: (1) the work was a visual art piece, (2) the art was well-known or respected, (3) the art was being or would be destroyed, and (4) the art was eligible for copyright protection.¹²⁰ The court first determined that graffiti, as an artwork, falls within the parameters of “visual art.” This was an important decision, as it established that graffiti could be protected under the law in the same way as any other forms of visual art, like paintings or sculptures. The following key issue was the demolition of the warehouse complex, which housed a large collection of graffiti artworks known as 5Pointz. The court acknowledged that the demolition would result in the destruction of all the artwork within the building, making this a critical point in the case.

However, the central question that the court had to address was whether the graffiti at 5Pointz could be considered to have “recognised stature.”¹²¹

The Defence taken by Wolkoff

VARA protects and secures certain types of artwork, including those that are part of or attached to a building. This means that if an artist creates a work of art that becomes a permanent part of a building, such as a mural or sculpture, the artist’s rights to that artwork are still protected under VARA.¹²² In such circumstances where a work of an art is part of a building, the owner of the building needs to get written permission from the artist before taking any action that could harm or remove the artwork. This ensures the artist’s rights are respected and that they agree to any changes or removal of their work.¹²³

In this case, Wolkoff, the building owner, did not get written permission from the artists before removing the artwork. However, the defendants argued that there was a different kind of exception to this rule where Wolkoff said that he had always clearly intimidated the artist of his plan to eventually tear down the buildings, which could imply that the artists were aware of this possibility.¹²⁴

The Analysis made by the Court under VARA

The decision in this case depended upon whether the artwork at 5Pointz, created by the seventeen artists involved, was considered to have “recognised stature”.¹²⁵ This would determine if each artwork deserved protection under VARA and if this protection could stop

¹²⁰ Amy Wang, “Graffiti and the Visual Artists Rights Act”, 11 *Wash J.L. Tech. & Arts* 141 (2015).

¹²¹ *Ibid.*

¹²² *Ibid.* Cohen, 988 F. Supp. 2d at 215 (citing 17 U.S.C.A Section 113d(1)(A) (West 2015)).

¹²³ *Ibid.*

¹²⁴ *Supra* note 121.

¹²⁵ *Ibid.*

the building from being demolished. To analyse, the court applied the interpretation which was given by the U.S. District Court of the Southern District of New York in *Carte v. Helmsley-Spear, Inc.*¹²⁶

In the *Carter* case, the court held that the sculpture in the lobby of a commercial building was considered to be a work of “recognised stature” because the court was convinced by the expert testimony that highlighted the sculpture’s strong reputation. Experts described it as “an incredible phenomenon,” praised its imaginative qualities, and mentioned that an art society which wanted to conduct a tour of the artwork.¹²⁷

The court used the similar approach given to the *Carter* case in this case to determine if the work of *Cohen* at 5Pointz were “recognised stature.” This meant that the court looked at whether the graffiti artworks were considered important and well-known, just like the work in *Carter*. Daniel Simmons Jr., who was an expert witness for the plaintiffs, agreed with the other expert Mastrion, and discussed the high quality of the artwork of 5Pointz, mentioning things like design, colour, shape, form, symmetry and innovation. Simmons believed that losing 5Pointz would cause harm to New York City, as the artwork had become a significant part of the city’s landscape and should be preserved if possible.¹²⁸

From the defendant’s point of view, while the artwork at the 5Pointz was “beautiful,” they contended that it did not have “recognised stature”. They brought in Erin Thompson who was an art history professor, to testify with a more limited view of “recognition” and “stature.” Thompson agreed that aerosol art could gain the recognition of recognised stature, citing the famous artist Banksy, whose works are well-known globally. However, Thompson argued that just because people visited 5Pointz to see the artwork did not mean it fulfilled the requirements for VARA recognition.¹²⁹

The district court in this case ultimately agreed with Thompson and explained that it did not have the authority to preserve 5Pointz as a tourist attraction, as the power to do so belonged to the City. While the court acknowledged the “breadth and visual impact” of 5Pointz and wished it could preserve the artwork, the court decided not to grant VARA protection to the works at 5Pointz.¹³⁰ The court further added that the plaintiffs had created their own difficulties by

¹²⁶ 861 F. Supp. 303 S.D.N.Y. (1994). The court of appeals did not address what constitutes a work of “recognized stature” but found that the artwork was indeed of recognized stature because it was not precluded as a work made for hire exception.

¹²⁷ *Supra* note 121.

¹²⁸ *Ibid.*

¹²⁹ *Ibid.*

¹³⁰ *Ibid.*

continuing to paint even after the City Planning Commission approved the demolition. The court further explained that the plaintiff's artwork could live on in the other forms, which would still be protected under the traditional copyright law. These works could be marketed to the public, even to people who had never visited 5Pointz. By refusing to grant VARA protection to the 5Pointz artists, the court confirmed in this case that graffiti artists can still avail access to copyright protections.¹³¹

IV. Legal Framework in India

This section of the paper explains how Indian law protects graffiti and street art under the provisions of Copyright Act 1957 with relevant case laws and examines the existing legal challenges and lacunae of balancing artists' rights with the property rights of owners of the surface or building.

Legal Analysis of Copyright Act, 1957

In India, copyright applies to all original literary and artistic works.¹³² The Indian Copyright Act of 1957 defines "literary work" in Section 2(o), however the definition is vague. It mentions examples like computer programs, tables and databases. Section 2(c) provides a complete list of "artistic works," which includes paintings, sculptures, drawings (like diagrams, maps, charts, or plans), engravings, photographs, architectural works and various other forms of artistic craftsmanship.¹³³ Graffiti and street art often include both pictures and non-stylised text along with artistically designed text.¹³⁴ However, the Act does not explicitly mention public artforms like graffiti or street art which creates an ambiguity about whether graffiti qualifies as an "artistic work," especially if such an art work is created without the consent of the property owner.

Section 57: Moral Rights of Artists

¹³¹ *Ibid.*

¹³² This is by virtue of Section 13(1)(a) of the 1957 Copyright Act, which is subject to the other provisions of both the Section as a whole and the rest of the statute. The other clause in Section 13 relevant to street art and graffiti reads: '13(2) Copyright shall not subsist in any work specified in sub-section (1), other than a work to which the provisions of section 40 or section 41 [which deal with international copyright] apply, unless, – (i) in the case of a published work, the work is first published in India, or where the work is first published outside India, the author is at the date of such publication, or in a case where the author was dead at that date, was at the time of his death, a citizen of India; (ii) in the case of an unpublished work other than a work of architecture the author is at the date of the making of the work a citizen of India or domiciled in India; and (iii) in the case of work of architecture the work is located in India. Explanation. In the case of a work of joint authorship, the conditions conferring copyright specified in this sub-section shall be satisfied by all the authors of the work.'

¹³³ Nandita Saikia, "Street Art, Graffiti, and Indian Copyright Law" in E. Bonadio (ed.), *The Cambridge Handbook of Copyright in Street Art and Graffiti*, 272 (Cambridge: Cambridge University Press, 2019).

¹³⁴ *Ibid.*

The Copyright Act of 1957 provides artists with two 'special rights' or moral rights: the right of paternity and the right to integrity.¹³⁵ Before 1994, the Copyright Act had given a lifelong protection to the right of integrity which is similar to the perpetual protection currently as the right of attribution. Also, the right of integrity was not connected to whether the author's reputation was affected.¹³⁶ Section 57 originally, did not require any changes to a work to harm the author's reputation for the author to take action. This made Section 57 provide stronger protection than the Berne Convention.¹³⁷ For example, Indian law could protect artwork from being completely destroyed, which the Berne Convention's moral rights rules usually do not cover.¹³⁸ The right of integrity mentioned under Section 57(1)(b)¹³⁹ of the Act, protects an artist's work from being distorted, mutilated and modified in any way that harms the artist's honor or reputation. The right is separate from, and not affected by, how long the copyright on the work lasts.¹⁴⁰ To violate the integrity right, two things must happen: first, the work must be treated in a way that harms it - which is called as the "derogatory treatment", and second, it must harm the artist's honor or reputation.¹⁴¹ The Delhi High Court in *Raj Rewal v. Union of India*,¹⁴² has made a distinction between "reputation"¹⁴³ and "honor".¹⁴⁴

In the case of *Amarnath Sehgal*,¹⁴⁵ Delhi High Court suggested that an Indian court might be open to recognise the rights that are not explicitly mentioned in the law, going beyond what the statutes prescribe.¹⁴⁶ The court referred to India's international law and stated that Section 57 of the Copyright Act 1957, should be broadly interpreted. The court said that destroying a work of an art is the most severe form of 'mutilation' because it reduces the artist's creative body of work and harms their reputation, which can be legally challenged under this section. However, this interpretation has had little practical impact outside academic discussion and

¹³⁵ Sec. 57 of the Copyright Act 1957 which is based on art. 6(bis) of the Berne Convention for the Protection of Literary and Artistic Works (Paris Text 1971).

¹³⁶ Mrinalini Kochupillai, "Moral Rights Under Copyright Laws: A Peep into Policy - 3", *Spicy IP*, January 13, 2008, available at: <https://spicyip.com/2008/01/moral-rights-under-copyright-laws-peep.html> (last visited on July 18, 2025).

¹³⁷ *Ibid.*

¹³⁸ *Ibid.*

¹³⁹ *Supra* note 60. Sec. 57 states 'Authors Special Rights'.

¹⁴⁰ Karishma Karthik, "Why Moral Rights are Dead Serious: Preserving the Posthumous Moral Right of Integrity - Part I", *Spicy IP*, May 3, 2023, available at: <https://spicyip.com/2023/05/why-moral-rights-are-dead-serious-preserving-the-posthumous-moral-right-of-integrity-part-i.html> (last visited on July 18, 2025).

¹⁴¹ *Ibid.* The uses the terms "honor" and "reputation" separately, meaning they are meant to be seen as two different concepts that both need protection.

¹⁴² *Raj Rewal v. Union of India & Ors.* AIR 2019 Del 911.

¹⁴³ Reputation refers to how others view the artist based on their professional work.

¹⁴⁴ Honor relates to the artist's personal integrity as a person.

¹⁴⁵ *Amarnath Sehgal v. Union of India*, Delhi High Court, India, 2005 (3) PTC 253 (Del).

¹⁴⁶ *Supra* note 129.

traditional art, like street art and graffiti, which has not been benefited from it.¹⁴⁷ The court said that when it comes to protecting an artist's work, if the work is considered an important part of the nation's cultural heritage, the artist's work could include actions to protect the works integrity, especially if it is seen as a modern national treasure.¹⁴⁸

In *Raj Rewal s*¹⁴⁹ the Delhi High Court found that even if a work is created legally, there may still be no moral right to stop it from being destroyed as right to property is a fundamental right in the Constitution, and it cannot be taken away by using copyright law. Copyright law does not allow property owners to lose their property, even if moral rights are claimed against demolishing a building. If an artwork is placed on a property without the owner's permission, the owner has no copyright over that artwork. The copyright of the artwork and the property owner's rights over the physical surface can exist separately without affecting each other.¹⁵⁰

When graffiti or street art is destroyed without care, there are no clear legal tools to stop such actions, especially if the works were created illegally or by unknown or lesser-known artists. The only transparent way to challenge such destruction is if the art was created legally under a contract that could specifically prohibit its destruction. In such cases, the artist could sue for breach of contract or ask for specific legal protection. However, even if the art was created legally, it can still be difficult to use moral rights to prohibit its destruction because for a moral right claim to succeed, the artist must prove that destroying the work harms their honor or reputation.

V. Conclusion and Suggestions

Graffiti and street art in India face multiple challenges due to a lack of legal recognition and protections under the legal statutes. The Indian Copyright Act 1957, does not explicitly include graffiti or street art as "artistic works," leaving their copyright status ambiguous, especially when they are created without prior permission from the property owners.

Most graffiti work is considered vandalism under the property laws, as it is often created without taking prior consent from the property owners, which makes it difficult for artists to claim legal protection for their work. Even though Section 57 of the Act grants 'special rights' or moral rights to authors, it is difficult for graffiti artists to access and apply these rights to

¹⁴⁷ *Supra* note 129.

¹⁴⁸ *Supra* note 145.

¹⁴⁹ *Supra* note 138.

¹⁵⁰ *Supra* note 129.

protect their work because courts tend to prioritize property owners' rights over the rights of artists.

In India, cultural perception often views graffiti artwork as an act of defacement rather than as a legitimate and legal form of artistic expression which creates a negative impact upon the recognition of graffiti artists and protection of 'graffiti' as an art. The ephemeral nature of graffiti and street art is also an issue where their artwork is often removed easily, making it very difficult for the artists to ascertain their rights. The lack of legal mechanisms to solve the disputes between property owners and artists further adds to the problem.

India can take inspiration from the VARA Act 1990 to better implement graffiti and street art. By amending the Copyright Act 1957, to provide recognition to graffiti and street art as valid artistic works eligible for copyright protection, clarifying how the application of moral rights is prescribed under Section 57 of the Act. Campaigns based on public education could transform the perception of society with respect to graffiti from vandalism to art, while creating separate street art zones could encourage and motivate artists to create artistic work in a legal and collaborative work.

Overall, the lacunae in India's legal framework, combined with weak enforcement of the existing moral rights and limited cultural recognition, make it difficult for graffiti and street artists to protect their work or gain proper recognition for their creativity.

The pragmatic study has examined how copyright laws in the United States and India provide protection to graffiti and street art where the Visual Artistic Rights Act (VARA) 1990, in the United States offers a transparent protection for artists' even if their work is displayed on private property. However, in India, there are no specific laws for graffiti or street art, which creates a legal vacuum and lacunae for the artists.

To balance artistic freedom and property rights, India must recognise graffiti and street art as a legitimate form of creative expression and create laws that encourage cooperation between artists and property owners. These laws should not only protect the rights and interest of the artists but also property or surface owners' interest by providing clear legal guidelines for graffiti and street art which will help to preserve creative art, prevent damage to such art and create a more inclusive cultural environment. Recognising the value of graffiti and street art will further help ensure artists' creative work is protected and its contributions are also valued in the society, promoting a fair balance between the freedom of the artists and property rights in India.