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**A CRITICAL ANALYSIS OF ARTISTIC WORK  
OF M. F. HUSSAIN AND COPYRIGHT LAW IN  
INDIA, IN THE LIGHT OF SUPREME COURT  
JUDGEMENTS**

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## **ABBREVIATIONS USED**

[1] Art - Article

[2] Sec - Section

[3] Vs - Versus

[4] IPC - Indian Penal Code

[5] DMCA

[6] CRCA

[7] US - United States

[8] DVD - Digital Video Disc

[9] CEO - Chief Executive Officer

[10] VCD - Video Compact Disc

[11] SC - Supreme Court

[12] IP - Intellectual Property

[13] TRIPS - Trade Related Aspect of Intellectual Property Rights

[14] & - And

[15] WCT - World Intellectual Property

[16] WPPT - The WIPO Performance and Phonograms Treaty.

## **ABSTRACT**

In this article, the origin and development of the Copyright law in India is discussed, along with the Salient features of the latest Copyright Amendment Act 2012. Moreover, it highlights the artistic work of the famous painter Maqbool Fida Hussain, along with several controversies of his paintings and the decision of Apex Court in several cases relating to the protection of original work of the creator.

## **INTRODUCTION**

At first the Intellectual Property came into existence and got recognition in the form of Copyright, which is one of the seven components which together forms intellectual property as provided under TRIPS Agreement. The main purpose of Copyright law is to encourage the creation of original, novel and genuine works by the composers, artists and authors by rewarding them by protecting their works for certain period so that they can reproduce the intellect in various forms for the benefit of people in the society.<sup>1</sup>

In Fact the doctrine of '*ubi jus ibi remedium*' which means where there is right, there is a remedy , is well-known principle is applicable in case of copyright law issues too. While in order to protect the general interests of public, certain relaxations have been provided while completing their works. Some of the exemptions which are provided includes the following and are the uses of the work -

- a) for the purpose using or getting guidance while doing research or private study,
- b) for the purpose of criticism or review,
- c) for the purpose of reporting present events taking place.
- d) performance by an amateur club or society if the performance is given to a non-paying audience, and the making.

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<sup>1</sup> DR.MK.BHANDARI,LAW RELATING TO INTELLECTUAL PROPERTY RIGHTS,PG -28,(FIFTH EDITION,2019)

The Copyright Act, 1957 is enacted in order to protect the original literary, dramatic, musical and artistic works and cinematograph films and sound recordings from unauthorized and arbitrary uses of it by others without the consent of owner. Unlike the case with patents, protection of copyright is conferred only in the expressions and not the ideas and hence there is no existence copyright in an idea. Copyright protection does not apply in case of titles or names, short word combinations, slogans, short phrases, methods, plots or factual information. In order to get the protection of copyright a work on which the copyright is claimed must be original and not to be copied from anywhere.<sup>2</sup>

### **DEVELOPMENT AND ORIGIN OF COPYRIGHT LAW IN INDIA**

The first statute regulating copyright issues in India came during the period of British Rule in 1847, which was passed by Governor-General of India- In -Council on 15th December 1847. After that, the first law which enacted after modification of the British Copyright Act 1911 and was considered effective while governing the issues arises in the copyright matter was Copyright Act,1914. Followed by another Act viz. Copyright Act 1957, which was the comprehensive law on copyright enacted by the Indian Parliament. After that Copyright Act, 1957 was further amended number of times as follows -

Copyright (Amendment) Act,1983

Copyright (Amendment )Act,1984

Copyright (Amendment) Act,1992

Copyright (Amendment) Act,1994

Copyright (Amendment) Act,1999

Copyright (Amendment) Act,2012<sup>3</sup>

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<sup>2</sup>

<sup>3</sup> Supra note 1, Pg- 29- 30

## **SALIENT FEATURES OF COPYRIGHT (AMENDMENT) ACT, 2012**

The Indian Copyright Act, 1957 was amended number of times with several insertions, addition as well as repeal of many provisions up to 2012.

The Copyright (Amendment) Act,2012 was made in order to harmonise the earlier comprehensive Copyright Act,1957 with WCT & WPPT. The recent amendment included includes the following-

- (a) Amendment has been made relating to the various rights conferred to works of artists, cinematography films and sound recording.
- (b) WCT and WPPT related several amendments to confer new rights of Copyright.
- (c) Author friendly amendments on mode of assignment to rights.
- (d) Author friendly amendments on mode of assignment and licenses to streamline business practices.
- (e) Certain reformation has been made relating to Copyright Board and certain other minor amendments.
- (f) Amendment has been made in order to facilitate access to and avail to works further sub-classified into following -
  - (1) Providing compulsory licenses
  - (2) Providing of statutory licenses.
  - (3) Administration of Copyright Societies.
  - (4) Access and avail of copyrighted works by the disabled person.
  - (5) Relinquishment made regarding certain copyright.
- (g) Changes made of Copyright Board as well as other small amendments.<sup>4</sup>

### **DEFINITION OF COPYRIGHT**

Section 14 of the Indian Copyright Act, 1957 has given a comprehensive definition of Copyright as follows – Copyright - Copyright refers the exclusive rights conferred as per the provisions of

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<sup>4</sup> Id pg-31

the Indian Copyright Act, 1957, to do or authorise the doing of any of the following acts in respect of a work or any substantial part thereof <sup>5</sup>

**(a) In the case of a literary, dramatic, or musical work, not being a computer programme-**

(i) to reproduce the literary, dramatic or musical works of the creator in any material form including the storing of it, in any medium by electronic means,

(ii) to issue any number of copies of the literary, dramatic or musical works to the public in general but not the copies which are already in circulation,

(iii) to perform the work in public, or communicate the matter relating to work in front of public,

(iv) to make any production of cinematograph film or sound recording in respect of the work.

(v) to make the translation of the work in any language for the people.

(vi) to make any adaptation of the literary, dramatic, artistic work, or

(vii) to do, in relation to a translation or an adaptation of the work, any of the acts specified in relation to the work in sub-clauses (I) and (VI).

**(b) In the case of a computer programme -**

(i) to perform any of the tasks as provided in clause (a) or,

(ii) to sell the work or give on commercial rental but that doesn't apply in case of computer programming where the programmes itself is not the essential object if the rental.

**(c) In the case of an artistic work -**

(i) to reproduce the work in any material form including depiction in three dimensions of two dimensional work or in two dimensions of a three dimensional work,

(ii) to sell or give on hire, or offer for sale or hire, any copy of the computer programmes, regardless of whether such copy has been sold or given on hire on earlier occasions.

(iii) to communicate the work to the public.

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<sup>5</sup> DR.MK.BHANDARI,LAW RELATING TO INTELLECTUAL PROPERTY RIGHTS,PG -38,(FIFTH EDITION,2019)

- (iv) to issue copies of the work to the public not being copies already in circulation,
- (v) to indicate the work in any cinematographer film,
- (vi) to make any adaptation of the work, or
- (vii) to do in relation to an adaptation of the work any of the acts specified in relation to the work in sub-clauses I to iv.

**(d) In the case of a cinematograph film -**

- (i) to make a copy of the film, including a photograph of any image forming part thereof,
- (ii) to sell or give on hire, or offer for sale or hire, any copy of the film, regardless of whether such copy has been sold or given on hire on earlier occasions,
- (iii) to tell or let other know relating to cinematography films to the public.

**(e) In case of a sound recording -**

- (i) to make any other sound recording embodying it.
- (ii) to sell or give on hire, or offer for such sale or hire, any copy of the sound recording in spite of the fact that whether such copy has been sold or given on hire on earlier occasions, or
- (iii) to tell or let other know relating to sound recording to the public.<sup>6</sup>

## **CHARACTERISTICS OF COPYRIGHT**

Essential Characteristics of Copyright are -

- (i) Creation of statute
- (ii) Existence of multiple rights
- (iii) The creation must be original
- (iv) Copyright protection exists in expression of ideas and not the idea itself.<sup>7</sup>

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<sup>6</sup> Id pg -39-40

<sup>7</sup> Ibid

## **TERMS OF COPYRIGHT FOR DIFFERENT CATEGORIES OF WORK**

Section 22 to 29 - Different terms have been fixed for different categories of work like -

- 1) **For any published literary, dramatic, musical, and artistic work (other than a photograph)**- Under Section 22, the period of duration of Copyright exists in the work are of sixty years from the starting of the calendar year next following the year in which author of original work dies, Moreover the Copyright in the work shall exist up to during the life span of author along with more 60 years after his death.
- 2) **Anonymous and pseudonymous work** - As per Sec 23, an anonymous work is that works, where the creator of the work is not known to the public or its identity, is hidden, but in case of pseudonymous work, the individuality is revealed but made in a fictitious name, and it shall exist for a period of 60 years, moreover the term shall extend to the life time of author plus 60 years.
- 3) **Posthumous work** - As provided under Section 24, when the original task is published after the death of owner or creator is considered as posthumous work and duration of Copyright in such case shall be 60 years from the date of publication after death.
- 4) **Photographs** - As per Section 25, photograph is defined under Section 2(3) as that involves a photolithograph and any work which produced by a process similar to photography but does not include any part of cinematograph film.
- 5) **Cinematograph films** - As per Section 26, the duration of Copyright conferred is up to 60 years from the publication/releasing of film. Earlier the term of Cinematograph films as initially fixed was 25 years which was increased up to 50 years in the Amendment Act 1992, it was further raised as 60 years.
- 6) **Sound recording** - Under Section 27, the duration of sound recording is specified as 60 years from the publication of sound recording.

- 7) **Government works** - As per Section 28, the Copyright in respect of government work retains up to 60 years from its publication.
- 8) **Works of public undertakings** - As provided under Section 28-A, the duration of Copyright will be 60 years from publication of the work of public undertakings.
- 9) **Works if International Organizations** - Under Section 29, the works of international organizations is given which have been explained in Section 41 where the Copyright shall subsist until 60 years from the publication of work.<sup>8</sup>

**Caterpillar Inc v Kailash Nichani**,<sup>9</sup> the plaintiff here is a foreign company, and the business of the company was well established within branches in various places including Delhi, with the help of its Indian distributors and collaborators. The plaintiff urged in the Court for granting of order like the relief of ad-interim injunction so to prevent the infringement of its copyright or the violation of the right of the original creator by the defendant, though the defendant was dealing in different goods. The Delhi High Court held that it was not required to depict that the business in Delhi being carried on by the plaintiff should necessarily be in respect of footwear and articles of clothing as well. It is enough if the business was being carried on by the plaintiff in Delhi and further that there was certain violation of copyright of the plaintiff relating to certain goods, as the goods were being sold by the defendant in Delhi. The court further held that section 62 of the Copyright Act 1957 makes an obvious and significant departure from the rules formed that the choice of jurisdiction should primarily be governed by the requirements of the defendant. The legislature has made new provision which laying down completely opposite rules than the one set out in section 20 CPC. The aim of it is to expose or to let everyone aware of the transgressor with inconvenience rather than compelling the sufferer to chase after the former.

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<sup>8</sup> Id pg- 61-62

<sup>9</sup> 2002 IIAD Delhi 894, 97 (2002) DLT 304, 2002

In **Lachhman Das Behari Lal v Padam Trading Co**<sup>10</sup>, in this case Delhi High Court found that the plaintiff which is a firm established at New Delhi, and the suit which was filed by it in the Delhi courts is maintainable and is not to be rejected as per Order 7 Rule 11 of CPC which was pleaded by the other party and further observed that the plea relating to the desire of territorial jurisdiction is not covered by Order 7 rule 11 of CPC. The court held that as this court has no territorial jurisdiction, provided the plaint presented by the plaintiff cannot be rejected and can be returned for presentation to the court of competent jurisdiction.

Following are common practices and procedure made relating to the role of Copyright Office for the purpose of examination and registration of artistic works and the process of examination of work applications, documentation of ownership, moreover it provides guidelines on the process of the identification of work of authorship, subject matter of which copyright protection can be conferred.<sup>11</sup>

### **ARTISTIC WORK**

The original artistic work of creator which is novel and genuine is capable of being applied for registration into the Register of Copyrights, in such case it doesn't matter, whether the work have existence of any artistic quality. The definition of Artistic Work as provided under Section 2 of the Copyright Act, includes A work which is comprehensive and descriptive in nature. Perhaps the Copyright shall be conferred in any original and creative, unique artistic work including paintings, sculptures, graphics, cartoons, etchings, lithographs, photography, drawings, plans, maps, diagrams, charts, buildings, models of buildings, moulds and casts for sculptures.<sup>12</sup>

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<sup>10</sup> AIR 1977 Delhi 200, ILR 1977 Delhi 327

<sup>11</sup>[https://www.google.com/url?sa=t&source=web&rct=j&url=http://copyright.gov.in/Documents/Manuals/Artistic\\_Manual.pdf&ved=2ahUKEwiXnNHNgubpAhVn4jgGHSDsCEcQFjAAegQIAhAB&usg=AOvVaw0cr41Sd1aIjNB1xi\\_McErE](https://www.google.com/url?sa=t&source=web&rct=j&url=http://copyright.gov.in/Documents/Manuals/Artistic_Manual.pdf&ved=2ahUKEwiXnNHNgubpAhVn4jgGHSDsCEcQFjAAegQIAhAB&usg=AOvVaw0cr41Sd1aIjNB1xi_McErE)

<sup>12</sup>[https://www.google.com/url?sa=t&source=web&rct=j&url=http://copyright.gov.in/Documents/Manuals/Artistic\\_Manual.pdf&ved=2ahUKEwiXnNHNgubpAhVn4jgGHSDsCEcQFjAAegQIAhAB&usg=AOvVaw0cr41Sd1aIjNB1xi\\_McErE](https://www.google.com/url?sa=t&source=web&rct=j&url=http://copyright.gov.in/Documents/Manuals/Artistic_Manual.pdf&ved=2ahUKEwiXnNHNgubpAhVn4jgGHSDsCEcQFjAAegQIAhAB&usg=AOvVaw0cr41Sd1aIjNB1xi_McErE)

### **Definition Of Artistic Work**

Artistic work refers any work including a painting, a sculpture, a drawing a diagram, map, chart or plan, an engraving or a photograph, whether or not any such work possesses artistic quality; apart from that any work of architecture and any other work of artistic craftsmanship as mentioned as per the Section of 2(c) of the Copyright Act.

### **WORK OF ARCHITECTURE**

As per Sec 2(c) “Work of architecture” refers doing any artistic work on the building or making any structure design, or making model for forming a building or structure. In addition to this, as per Section 13 (2) (iii), while completing any work of architecture, the work shall be located in any part of India. Section 13(5) states that in case of any task involves architectural, the copyright shall conferred only in the artistic character and design and will not applied in the further process or methods of construction.

### **PHOTOGRAPH**

The term Photograph involves the photo-lithograph, as well as a work produced by any method which is similar to photography but does not consists of any part of a cinematograph film as mentioned under Section 2 (s) of the Copyright Act.<sup>13</sup>

### **ENGRAVINGS**

The term Engravings consists of several works like etchings, lithographs, wood-cuts, prints and other works of the same nature, but does not include photographs as mentioned under Sec 2 (i) of the Copyright Act.

### **WORK OF SCULPTURE**

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<sup>13</sup> Ibid

“Work of Sculpture” involves any moulds as given under Sec 2 (za) of the Copyright Act. Such works are utilized for the purpose of goods or services. Moreover any work which are able to delineate graphically, and is capable of differentiating the goods or services of one undertaking from those of the goods or services of another undertaking shall be taken into account with the object of registration of work capable of being used in relation to goods or services such as brand symbols, labels logos, packagings, cartoons etc.

Artistic Work which are inclined or applied for getting copyright registration and are capable of being registered as a design under the provisions of the Designs Act, 2000. As per Section 2(d) of the Designs Act 2000, design refers as only the gestures including the shape, configuration, pattern, ornament or composition of lines or colours applicable to any article of two dimensional or three dimensional nature or in both forms, by any industrial methods or means, which may be either manual, mechanical or chemical, separate or combined, and in the finished article appeal to and are judged solely by the eye; but does not include any mode or principle of construction or anything which is in substance a mere mechanical device, and does not include any trade mark as defined in clause (v) of sub-section (1) of section 2 of the Trade and Merchandise Marks Act, 1958 or property mark as defined in section 479 of the Indian Penal Code or any artistic work as defined in clause (c) of section 2 of the Copyright Act, 1957.

**An Industrial Design** includes any work including the designs for forming ornamental or aesthetic aspect. That can be in different forms like two-dimensional or a three dimensional drawing of any article, such works, should be in contravention to the provisions as provided under Section 15 of the Copyright Act 1957<sup>14</sup>

## **COPYRIGHTABLE SUBJECT MATTER**

### **1. Works Which Are Not Used Or Capable Of Being In Regards To Goods Or Service**

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<sup>14</sup> Ibid

The works which are not used or able to used for the goods or services involves the following that are not restricted to paintings, photograph, sculpture, drawing, sketches, maps, charts etc.

## **2. Works Which Can Be Used Or Capable Of Using It With Regards To Goods Or Services.**

Works which can be used or capable of using it with regards to goods or services are not limited to labels, symbols, marks or logos, associated with a brand or a business.

## **3. How Do We Distinguish Between Artistic Works Which Can Of Being Used With Regards To The Goods Or Services And Artistic Works Which Are Not Capable Of Being Used In Relation To Goods Or Services?**

Those artistic works which have capable to changed into Trade Marks in certain cases or such marks are connected with any brand identity represented by a business, are given protection under trademarks law, are considered as the artistic works which can be used with regards to goods or services, moreover for the purpose of completion of the Copyright registration submission of Search Certificate issued by the Trade Mark Registry is required as per under Sec 45 of the Copyright Act 1957. These includes the brand logos, labels, packaging, designs applied with regards to goods or services, cartoons & figurative drawings applicable in relation to goods or services, and henceforth. Remaining works may be considered or regarded as the Artistic works which are not able to used in relation to goods or services.

## **4. If A Photo Appears On The Artistic Work**

If a photo of an individual is found on the Artistic work, the applicant claiming protection is required to present a No Objection Certificate from the individual concerned. In case the applicant states that the photo of a person found on the Artistic work is fictitious or purchased or downloaded, he is required to produce an affidavit stating that consent, a purchase agreement between the parties.<sup>15</sup>

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<sup>15</sup> Ibid

## **5. Cartoons And Animation Characters.**

Cartoons and animated characters are mostly used in business or a brand, these can be used as goods and can be sold for getting monetary profits, or can be utilized in an animated game, or as mascots in events and brand promotion.

## **6. Board/Card Games**

Board Games/ Card games are registered under Artistic and the Literary category as it consists of the Artistic as well as Literary features. Moreover, they cannot be given protection in its entirety. A board game author may apply for the registration of graphics & pictures in the board game in the Artistic category, and the characteristics of the protagonists and the instructions/rules of the game under literary category. Board games and Card games can be provided protection of Copyright under artistic work to the extent of the Artistic characteristics involved in the work. Apart from that any similar kind of works which are appearing to be different/separate work may be regarded as multiple works and in such situations the applicant shall be required to apply for registration separately.<sup>16</sup>

The Search Certificate are considered as compulsory for registration of board/card games under artistic category as they may be utilized with any other brand whose logo or label appears on the work for commercial purposes.

## **7. Artistic Work Comprising Of Government Logos, Labels, Symbols Or Emblems**

For the purpose of registering of any artistic work consists of, in full, or in part, any government logo, label or symbol, may be ineligible for getting registration under copyright until the applicant

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<sup>16</sup> Ibid

produces a No Objection Certificate from the concerned authority or department and make it clear how the work is a creation of author's own skill and labour.<sup>17</sup>

## **8. Certificates**

For claiming the protection of copyright in any work, it is required to be created by the application of labour, skill and judgment of the author. Copyright protection can't be conferred in certificates as Certificates are only recordable documentation and doesn't contain any original Artistic skill or labor and doesnot express the uniqueness of the author's creativity.<sup>18</sup>

## **10. A Photograph Or A Portrait Of A Person**

Copyright protection can be provided where the application for registration of a Photograph or a portrait of a person is made by anyone along with a No objection certificate of the individual whose picture appears on the work along with the applications. But in case of portraits of public figure, no Objection Certificate is not needed if the portrait is descent and not obscene in nature.

## **11. Collage**

An original collage can be copyrighted and hence The applicant claiming the copyright is at first required to submit a No Objection Certificate from those individuals who are appearing in the collage if any.

## **12. Language Of The Artistic Work Not Mentioned With Respect To Column 6 Of The Statement Of Particulars**

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<sup>17</sup>[https://www.google.com/url?sa=t&source=web&rct=j&url=http://copyright.gov.in/Documents/Manuals/Artistic\\_Manual.pdf&ved=2ahUKEwiXnNHNgubpAhVn4jgGHSDsCEcQFjAAegQIAhAB&usg=AOvVaw0cr41Sd1aIjNB1xi McErE](https://www.google.com/url?sa=t&source=web&rct=j&url=http://copyright.gov.in/Documents/Manuals/Artistic_Manual.pdf&ved=2ahUKEwiXnNHNgubpAhVn4jgGHSDsCEcQFjAAegQIAhAB&usg=AOvVaw0cr41Sd1aIjNB1xi McErE)

<sup>18</sup> Ibid

While filing up the Statement of Particulars, provided under Column 6, specific language of the work, is a compulsory section. the applicant is required to mention all the languages used which are apparently with regard to artistic works. In cases where no language is appeared on the work, the person applying for that shall mention the language in which the title of the work is depicted.<sup>19</sup>

### **13. Artistic Works Capable Of Being Registered Under Designs Act 2000.**

For any work which is regarded as design work as mentioned under Section 2(d) of the Designs Act, 2000 and is capable of being registered under Section 10 of the Designs Act, but instead of applying for design protection applied for registration of copyright under Artistic category, may be allowed for registration but after presenting an affidavit where he have to mention that the work is not applied for registration other than that under the provisions of Designs Act and it has not been reproduced more than 50 times by the applicant.

### **14. Architectural Drawings**

An architectural drawing is a drawn expression of the Architect's original thoughts, expressed using technical signs, symbols, and graphical representations together to form an instruction to build a structure. In entirety, architectural drawings or plans are copyrightable subject matter.

### **15. Photographs of Stage Arrangements**

Photographs of the Stage Arrangement can be provided copyright protection under the artistic work. Moreover every photographic work should be considered as individual and applications are required to be filed separately for each work.

### **16. Compilation of Artistic Works**

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<sup>19</sup> Ibid

For claiming the protection of Artistic Work , every work is required to be filed separately along with separate independent application providing the fulfillment of registration prerequisites as there is existence of law and regulations for registering the compilation of Artistic Works.

### **17. Title of the Work**

**Krishika Lulla v. Shyam Vithalrao Devkatta**<sup>20</sup>, the Apex Court held that the title of works are not entitled to receive Copyright protection.

### **18. Maps**

Maps may include cartographic representations of area, such as terrestrial maps and atlases, marine charts, celestial maps and such three-dimensional works as globes and relief models and such Geographical Maps can be given Copyright protection, but before that applicant shall be required to furnish a No Objection Certificate from the source of creation or the Survey of India.<sup>21</sup>

### **19. Pamphlets & Posters**

Copyright protection is also conferred on the original Posters and Pamphlets of artistic as well as literary characteristics. They are given copyright protection as per artistic category sand upto the extent of the Artistic content of the work. The literary content in the Posters and Pamphlets shall be separately protected under literary category.

### **20. Sculptures & Moldings**

Any Sculptures, moldings which are three dimensional in nature can be given copyright protection under the Act . Moreover for feasibility photographs or images of such sculptures are considered

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<sup>20</sup> (2016) 2 SCC 521.

<sup>21</sup> Ibid

as original works. The person seeking the protection under legislation is required to mention in the application that he/she is seeking protection for the Sculpture or 3 dimensional models.<sup>22</sup>

## **21. Painting**

Painting is considered as the artistic work and it does not matter whether the work contains any artistic quality or not, as per Section 2 (c) (i) and Section 13 (1) (a). For claiming the protection of the painting, the work is required to original and not a mere copy of another painting. The painting without a surface is not painting and it should a existed on a surface of some kind.

## **22. Drawing**

A drawing involves works like the diagram, map, chart or plan as provided under the meaning of artistic.work under Sec 2 (c) (i) and moreover if the works are new & original it can claim for copyright protection as an artistic work in spite of any artistic quality.<sup>23</sup>

## **ARTISTIC WORKS OF MAQBOOL FIDA HUSSAIN**

Indian famous painter, Maqbool Fida Husain had made great contributions with his brightly colored artistic works which includes horses, urban landscapes, the Bollywood actress Madhuri Dixit etc. While completing his artistic work, he used to apply the style of Cubism and and his certain works became a subject of censorship in India. Maqbool Fida Husain was born on September 17, 1915, in Pandharpur, India, to a secular Muslim family, where he learned calligraphy before coming to Mumbai and where he used to make several cinema posters by painting and designing toys. Husain visited for the first time to Europe where he found opportunity to see the works of Pablo Picasso, Paul Klee, and Henri Matisse in 1953. Later on in 2006, Husain was forced to go into exile, the reason behind that was that a large number of lawsuits were filed against him by the Indian government for his defamatory acts against the Hindu culture. While

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<sup>22</sup> Ibid

<sup>23</sup> Ibid

later on the rest of life he was in between Qatar and the United Kingdom. Currently, his works are stored as collections in the Art Museum of the Los Angeles, the National Gallery of Modern Art in Mumbai, and the National Museum of Islamic Art in Doha among others.

Several legal measures were provided in order to handle difficulties that may affect artwork so that it can protect the public morality. The laws seldom respect the fact that art has a unique ontology that does not easily fit the working of general legal mechanisms designed and utilised for censorship purpose. The impact of arts is wide in the society, since colonial period as it changes the many ideologies in a society and issue has raised the debate in the moral realm however, it is crucial for development.

Art maestro Maqbool Fida Hussain renowned and called as MF Hussain is respected as the Pablo Picasso of India. His number of works came a subject of controversy too moreover, he is considered as one of the most internationally recognised and famous Indian artists of 21st century. His artworks related to several subjects like mythology to social issues. Apart from that his career commenced by painting cinema posters.

## **SEVERAL DECIDED WORKS OF M.F.HUSSAIN<sup>24</sup>**

### **BATTLE OF GANGA AND YAMUNA**

The artwork was based on Hindu mythology formed a strong bonding between Ganga and Yamuna and it shows the existence of battle between right and wrong. The oil painting on which made in canvas from the Mahabharata series is one of his most fecunt paintings which was completed in 1971 and then this artwork was placed in auction, where the price of the work was raised up to one crore.

### **MOTHER TERESA**

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<sup>24</sup> <https://www.google.com/amp/s/www.outlookindia.com/website/amp/paying-tribute-to-the-pablo-picasso-of-india-mf-husain-on-his-birthday/316664>

Hussain was overwhelmed by the dedication of Mother Teresa towards the welfare of the society and then from 1980, he painted large number great canvas of Mother Teresa He was highly motivated and appreciated life and work of her and then he made a number of faceless painting where depiction of her inner beauty was made by him.<sup>25</sup>

### **THE SIXTH SEAL**

This artwork of Hussain was purchased in 2011 during his death time and auctioned at 3.3 crores in Indian Rupees. This painting of the Sixth Seal shows man, woman, animals and birds and one of his finest work in the present contemporary world.

### **TRIBUTE TO HASHMI**

This painting shows and depicts about the attack on the theatre artist Safdar Hashmi and in 2008 sold at a whopping price of Rs 4.4 crores at an auction that occurred in Kolkata.

### **BHARATMATA**

This artwork was considered as one of his controversial paintings which he had claimed that he never gave such title to the artwork. Raja Ravi Varma, one of the famous Indian Painter said, The importance of recovering the customs and the institutions of the past thus is by inaugurating the archaeological approach to art. Hussain had contributed in the field of Indian mythology and epics, and controversies. Rupika Chawla, who was the Painter of Colonial India, points out that Ravi Carla was sensitive towards the princes and dewans and thus he made his contribution by painting, showing their pivotal role, for that he became more popular, who is well known for his portraits. His vision credits in making him a remarkable artist, he founded a printing press in Mumbai in 1894 that churned out inexpensive oleographs of his paintings. God descended from the temple stone and made itself comfortable in small homes in dingy huts.

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<sup>25</sup> <https://www.google.com/amp/s/www.outlookindia.com/website/amp/paying-tribute-to-the-pablo-picasso-of-india-mf-husain-on-his-birthday/316664>

He was charged for his several portraits on the ground that his paintings were obscene as it was hurting public morality, religious and cultural sentiments of people, and charge was made by Bombay High Court. Moreover, due to his several paintings he was considered as rebel, perhaps he fought for what he believed in his art. Later on all the charges against him was dismissed by the Court and that explained that art cannot be suppressed in any way, Maqbool Fida Husain took Indian art to the global stage, but his paintings became controversial due to certain depiction on Hindu deities.<sup>26</sup>

In leading case of **Maqbool Fida Husain v. Raj Kumar Pandey**<sup>27</sup> M.F.Hussain, artist sold the painting titled Bharat Mata where he showed India in the form of a nude woman to a private collector in 2004; then when in 2006 the painting was offered for sale in online charity auction for earthquake victims, several protests were made against the painting. The Apex Court of India consolidated and transferred the case to Delhi Trial Court, then the lower court issued summons for his appearance before Court to him for commission of offences under section 292 IPC, which is punishable act due to obscene materials, section 294 IPC, and that punishes obscene acts and songs and section 298 of IPC, which punishes expression intending to hurt religious sentiments. Moreover, he was charged under Sec 500 IPC, which punishes an individual for defamatory acts and under the provisions of Prevention of Insults to National Honour Act and the Emblems and Names (Prevention of Improper Use) Act because in his artwork showed Ashoka Chakra, which is the symbol and the center part of Indian national flag and national emblem, in an objectionable and offensive manner. Then the painter filed the revision petition challenging the lower court order. Then in this case the court held that the painting is not considered as obscene material as provided under Sec 292 IPC and its not displaying any lascivious content, moreover does not appeal to the greater interest and has no evil intention to deprave and corrupt persons who are likely to see it. Its artistic expression can't be suppressed or stuck down as it overrides any obscenity that may arise due to the nudity depicted therein.

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<sup>26</sup> <https://www.google.com/amp/s/www.outlookindia.com/website/amp/paying-tribute-to-the-pablo-picasso-of-india-mf-husain-on-his-birthday/316664>

<sup>27</sup> 2008 CrLJ 4107

Part III of the Indian Constitution deals with the basic right that is Fundamental Rights which provides provisions for protection of certain rights regarding freedom of speech, freedom to movement, freedom of assembly, freedom of association etc under Art 19, in the case to states the reason behind the decision the wide sphere of the law regulating and governing the matter of obscenity and the artistic freedom within the huge scope of Art 19 of the Indian Constitution which was taken into account by the court in the case of **Chaplinsky v. New Hampshire**<sup>28</sup>, wherein the Court acknowledged the legality of “obscenity” as an exclusion to absolute freedom guaranteed by the American Constitution.

The concept of obscenity as provided under Indian Penal Code 1860, has developed and evolved from the English Law and while evaluating the meaning of obscenity Apex Court of India in **Ranjit D. Udeshi v. State of Maharashtra**<sup>29</sup>, uniformly taken the test laid down by the English Court in Hicklins Case Supra reiterated that the term obscenity is not related to mere written contents only but at the same time, considering with nudity in art and literature is not per se evidence of obscenity.

While considering an obscenity, a painting is at first required to be taken to be considered at a whole and evaluation regarding the art should be fine out then separately in order to find if any offensive content and obscenity so decided that it is likely to deprave and corrupt those whose minds are open to influences of this sort. In case, there is a combination of art and indecent content in a artwork, then artwork at first should be given importance and priority and must so preponderate as to throw the obscenity out into the shadow and at last may be overlooked.

In **S. Rangarajan’s case**<sup>30</sup>, the Supreme Court of India stated that freedom of expression as provided under Art 19(1)(A) of Indian Constitution cannot be held to fine paid in lieu of Corporal punishment or in other word ransom, by an intolerant group of people. The freedom as provided under Art 19(1) (A) can be restricted on reasonable grounds as provided under Article 19(2) of the Constitution and the restriction provided must be justified as per the law.

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<sup>28</sup> 315 U.S. 568 (1942)

<sup>29</sup> 1965 AIR 881, 1965 SCR (1) 65

<sup>30</sup> 1989 SCR (2) 204, 1989 SCC (2) 574.

### **Rogers vs. Koons<sup>31</sup>**

In this case Rogers took a photograph of a couple holding a line of puppies in a row and sold it for using it in the commercially available greeting cards and other similar items. Internationally, popular artist Jeff Koons during the process of creating a show on the banality of everyday items, ran across Rodgers' photograph and applied it to form statues based on the picture.

Jeff Koons then made huge profits by selling several structures. Upon discovering the copy, Rodgers sued Koons for copyright. After that Rogers filed a case against Koons, where he stated that he made use of the image in legal manner.

Later on, the court found there is the existence of quite similarities between the 2 images and that anyone would be enabled to understand that copying of the image has been made. The Court rejected the defendant Jeff Koon's defense under the argument that he could make and able to use a generic source in order to make the same statement instead of copying Rogers' work. Koons was bound to pay compensation to Rogers. This is one of those famous cases that encompassed a larger issue in the art world, the issue of appropriation art. Neither of these issues was entirely answered by the case, of course, but it has also become a reference used in many cases afterward.

### **Modern Dog Design vs. Target Corporation<sup>32</sup>**

In this case, Modern Dog Design, which is a Seattle design firm used a group or number of pictures of dogs in their compendium which is formed by Chronicle Books in 2008. An allegation was made against Disney/Target, that it has used the designs made by the firm for using it in a T-Shirt produced by Disney Target for sale, and then in 2011 filed a suit against Disney/Target. The Court has not decided the case but Modern Dog has been campaigning online pretty heavily b publicity and funds to help with its legal fees over the issue.

Modern Dog was later on bound to sell their studio in order to adjust or to provide the money for the litigation, so it's leading into a very difficult situation for them. The Apple company sued the

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<sup>31</sup> 960 F. 2d 301 (2d Cir. 1992),

<sup>32</sup> 2:11-cv-01816

iOS virtualization vendor Corellium on the allegations of trafficking under the Digital Millennium Copyright Act (DMCA) in the US.

A case filed in the US District Court for the Southern District of Florida made after the iPhone maker initially sued Corellium on the allegation of copyright infringement in August, stating that the company's virtualisation of iOS was violating Apple's ownership of the code. Apple's company stated that complaint alleges that Corellium's business is completely based on commercializing the of the copyrighted operating system and applications that are used in Apple's iPhone, iPad, and other devices of Apple Company. Moreover the Corellium copies many things like the code, the graphical user interface, the icons all of it, ultimately it provides its users with the tools to do the same. As per the complaint made by Apple, the product Corellium offers is a "virtual" form of Apple mobile hardware products, which are easily avail to anyone using internet facility. Specifically, Corellium serves up what it touts as a perfect digital facsimile of a broad range of Apple's market-leading devices recreating with fastidious attention to detail not just the way the operating system and applications appear visually to bona fide purchasers, but also the underlying computer code. In a statement after the filing, Corellium stated that they are completely disappointed by Apple's persistent demonisation of jailbreaking. Jailbreaking an iPhone lets people to customize their iOS devices and run unsupported apps.

### **INFRINGEMENT OF COPYRIGHT OF MOVIE BAND BAAJA BAARAT**

Moreover, Delhi High Court held in Yash Raj Films' Band Baaja Baaraat which was released in 2010 and there Ranveer Singh and Anushka Sharma were the Actors was blatantly copied by Telugu filmmaker in the Telugu movie Jabardasth which lead to the infringement of the copyright of the Bollywood flick, The court at last order the Telugu Film Maker not to release the movie in any format, including DVDs, VCDs, Blu-ray discs and television and thus stopped further infringing the original work of the owner. Justice Manmohan stated that in that case, the defendant had violated the copyright of the original film maker by infringing the fundamental, essential and distinctive features as well as forms and expression of the plaintiff's film Band Baja Baaraat.<sup>33</sup>

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<sup>33</sup> <https://www.ndtv.com/entertainment/telugu-remake-of-band-baaja-baaraat-barred-by-high-court-for-copyright-infringement-2074086>

### **Allen v. Cooper<sup>34</sup>**

In this case in 2015, Frederick Allen a videographer sued the state of North Carolina after it discarded his proposal to avoid using his footage of the Queen Anne's Revenge Blackbeard's flagship that ran aground in North Carolina in 1718. Moreover, Allen was having right to do so. But after the Eleventh Amendment, it gave states broad protection from being sued in federal court, a 1990 statute called the Copyright Remedy Clarification Act with the purpose to remove that sovereignty and to permit the copyright owners to sue states for infringement of the copyright of the owner. Later on every circuit court that's weighed CRCA held it unconstitutional and void on the reason that Congress don't have the authority to enact the legislation. The statute has been considered void in nature number of times that the U.S. Department of Justice no longer defends it.

Allen was asking the Courts to dismiss that rulings, and stated that Congress has the authority which it had received from CRCA, from either the Constitution's intellectual property clause or the 14th Amendment. Allen stated the Court that copyright owners are helpless as the states continuing to trample federal copyrights.

Then in November, the Justices seemed skeptical of those legal arguments, but also stated that providing the states full immunity and privileges against copyright lawsuits would let them infringe and violate the rights of others.

### **CONCLUSION -**

The main objective of the development of Copyright law is to protect the writers as the creator of any original work which ultimately encourages the creator to contribute their talents in front of public in various forms.

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<sup>34</sup> Jul 10, 2018. 895 F. 3d 337 (4th Cir. 2018)

