



The Death of Criticism: *Moral Rights v Fair Dealing* in the Indian Context

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Received: 18th December 2022; accepted: 21st March 2023

Copyright protection is a legal force which has the power to encourage creators/authors by creating propriety rights in intangible assets. However, its purpose is not limited to serving creators. It also has the onus to balance out the interests of the society by ensuring reasonable access of ideas to the public at large. Moral rights and fair dealing exist at the two extremes of this incentive-access balance, necessitating friction in certain cases. This paper is aimed at highlighting a gap in the Indian legal context, where moral rights have become broad enough to pose a threat to fair dealing, particularly criticism, which is one of the most important aspects of development in any field. Pursuant to this aim, the paper puts forward an argument to subjugate moral rights to fair dealing through legislative amendments. Further, it suggests two judicial standards to navigate through the grey waters of the aforementioned friction.

Keywords: Moral Rights, Fair Dealing, Criticism, Public Interest, Right of Integrity

"Criticism may not be agreeable, but it is necessary. It fulfils the same function as pain in the human body; it calls attention to the development of an unhealthy state of things. If it is heeded in time, danger may be averted; if it is suppressed, a fatal distemper may develop." – Winston Churchill

It is the power of criticizing existing norms and challenging the *status quo* which has pulled the human race forward for centuries. Abject innovation and individuality have often resulted from vehement disagreements with popular ideas. For instance, the criticism of Aristotelian ideas regarding the astronomical placement of the Earth led Copernicus to conclude that it was not the Earth but the Sun at the centre of the solar system.¹ The idea of the Earth not being the centre was very hard for the Catholic Church to accept. Yet, had Copernicus not dared to derive a different conclusion from Aristotle's observations, the world would have been denied of perhaps one of the greatest scientific discoveries.¹

What if, in this situation, Aristotle, or rather his heirs, claimed that Copernicus had essentially modified and mutilated their forefather's reflections? At that point, instead of taking credit for Aristotle's contribution, it was more than likely that they would have wanted to disassociate with the idea that went against the Church. It goes without saying that a law

allowing objections to mere criticism or disagreement would have crippled the innovative new model of the solar system.

If this idea seems dangerous and stifling for mankind back then, how can the present society be comfortable with suffocating the indomitable progress of new ideas? Why is codified law being allowed to reflect such opposition to criticism?

Copyright protection is a legal force which has the power to encourage creators/authors by creating propriety rights in intangible assets.² However, its purpose is not limited to serving creators. It also has the onus to balance out the interests of society by ensuring reasonable access of ideas to the public at large.³

Moral Rights are meant to protect the non-economic interests of an author. They safeguard an artist's reputation and honour in their own work and allow them to participate in the marketplace of ideas without the fear of losing their individuality.⁴ Fair dealing, on the other hand, allows a second creator to reasonably use an original creation for certain limited purposes which serve the society as a whole.⁴ Under fair dealing, such use is not considered an infringement of the original author's copyright.⁴ Society needs both the first artist and the parodist/critic as ideas progress on the shoulders of other ideas.⁵ Therefore, it is reasonable to conclude that moral rights and fair dealing exist at the two extremes of the incentive-access balance,

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necessitating friction in certain cases. It must be noted that both ideas exist at the extreme ends of the incentive-access balance, making friction inevitable and Indian Copyright Law gives a very broad scope to moral rights while it has reduced fair dealing to limited situations, making the water murkier.

This paper aims to highlight such situations of contradiction to conclude that Moral Rights in India must be made subject to fair dealing, *akin* to The Visual Rights Act (VARA Act) in the United States.⁶ It further aims to establish a framework of decision-making which may be used to fairly resolve such cases. At this juncture, it is important to note that due to the lack of judicial scrutiny on this topic till date, this paper is writing on a clean slate and invites further discussions and scholarly attention for creative solutions.

The Narrative of Moral Rights

Moral Rights are aimed at protecting an author's honour and reputation. In other words, one can say that the interests protected by the moral rights doctrine are 'personality' interests.⁷ This idea is derived from the Hegelian theory of property ownership, which concludes that self-actualization is predicated upon the control of external objects.⁸ Simply put, property is not a mere object that a person owns; rather, it is the embodiment of expressing one's personality by appropriation of the external environment. Flowing from this conception, is the Romantic idea that copyright works inherently express a creator's own personality and, therefore, must be protected from unauthorized interferences.⁸ It implies that the original creator should have an ultimate say over his unique expression as he is the genius without whom there would be nothing worth protecting in the first place.⁹

The roots of this Romantic conception may be traced back to ancient Rome, after which it gained importance during the Renaissance and the Reformation, peaking in popularity during the Enlightenment Era and in Revolutionary France.¹⁰ The term '*droit moral*', which has a slightly lesser evocative English translation, refers largely to rights of 'personal' or 'spiritual' nature above all and has an extensive history in most civil law jurisdictions.¹¹ This is exemplified by the fact that present-day France has the most rigorous moral rights protection regime. On the other hand, common law systems historically have been comfortable with sacrificing

moral rights in favour of economic expediency.⁸ While, it may be argued that the value of this opinion is diminished significantly by the international harmonization of copyright law, it remains a concern in terms of moral rights.⁸

But before delving deeper into this conundrum, it is important to understand what moral rights comprise of? Since they were aimed at guarding certain interests of the original creator once they have parted with their work or published it to the world at large, these interests are legally expressed as four kinds of rights, which are collectively referred to as Moral Rights,⁷ such as:

- (i) Right of Attribution/Paternity
- (ii) Right of Integrity
- (iii) Right of disclosure
- (iv) Right of Withdrawal

The first one guarantees recognition of the artist as the original creator and entitles them to the credit they deserve.¹¹ Right of integrity helps the creator in protecting the original essence of their work by preventing any subsequent alterations or modifications.⁷ The Right of Disclosure or Publication gives the creator the authority to determine if they want to publish their work or not, along with the time and medium of publication.¹¹ Lastly, the Right of Withdrawal enables the creator to retract their work from the public arena and prevent any subsequent reproduction, distribution, or representation.¹¹

Interestingly, all four were to be included in the Berne Convention, not when it was drafted but when it was revised in the year 1928. However, due to a lack of agreement between the participating nations, only Right of Integrity and Paternity made it to the final draft.¹¹ The inclusion of the remaining two has not been propped again at a subsequent revision conference as of now.¹²

Therefore, presently the main source of moral right protection in the international sphere is Article 6bis of the Berne Convention for the Protection of Literary and Artistic Works.¹³ It consolidates Right of Paternity and Integrity in the following language:

*"Independently of the author's economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honour or reputation."*¹³

The complexities of the right to Paternity remain beyond the scope of this article for the sake of relevance. However, the Right to Integrity must be elaborated upon further. Firstly, it must be noted that this right given to an author is independent of their economic rights. In simple words, even in cases where the original creator, by way of contract, assigns their economic interests in a copyright to the publisher, they will retain their right to protect their work from any sort of distortion, mutilation, other modification, or any other derogatory action. This otherwise broadly drafted right is limited by the phrase ‘which would be prejudicial to his honor or reputation.’¹³ This limitation restricts infringement to cases where the distortion or modification is harmful to the original creator’s reputation.

Strict adherence to international copyright standards is now a prerequisite for economic growth in the era of the Agreement on Trade Related-Aspects of Intellectual Property Rights (TRIPS) Agreement.¹² This could have proven to be an undeniable opportunity for a rigorous implementation of Moral rights. However, mainly at the insistence of American negotiators, moral rights were kept outside the purview of the TRIPS Agreement as Article 9 therein reads as follows:¹⁴

“Members shall comply with Articles 1 through 21 of the Berne Convention (1971) and the Appendix thereto. However, Members shall not have rights or obligations under this Agreement in respect of the rights conferred under Article 6bis of that Convention or of the rights derived there from.”

This has denied moral rights the advantage of the TRIPS dispute resolution and enforcement mechanisms.¹² This is probably the reason that despite the unenthusiastic inclusion of these rights in various jurisdictions, artists have often overlooked their vitality.¹¹

As far as the Indian law is concerned, Moral Rights are provided for in Section 57 of the Indian Copyright Act, 1957.¹⁵ Before this, Indian copyright law was governed by the Indian Copyright Act 1914, which was a direct reflection of the British Copyright Act of 1911. The 1957 Act was drafted after independence in light of India’s priority to align its intellectual property law with international standards.¹²

It is noteworthy that the initial draft of Section 57 did not limit instances of moral right infringement to cases where there had been harm to the original author’s reputation. However, this omission resulted

in protection beyond the mandate of the Berne Convention.¹² Living up to the stand of other common law nations on moral rights, India decided to remedy the situation by way of the 1994 amendment.¹⁶ The phrase ‘prejudicial to his honour or reputation’ was, thus, added. Section 57, in its present form, reads as follows:

(1) Independently of the author’s copyright and even after the assignment either wholly or partially of the said copyright, the author of a work shall have the right-

(a) To claim 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 act would be prejudicial to his honour or reputation.”

Despite said addition, the law has left multiple questions unanswered. How broadly may the court interpret ‘distortion’ or ‘mutilation’? Is there a way to narrow down ‘modification’ or give a meaningful reading to the term ‘other act’? Will the terms ‘honour’ and ‘reputation’ have a subjective or objective standard of analysis? While there is still scope for multiplying examples, these questions are the most vital inquiries supplementing the conclusion of the paper.

It was only judicial analysis that could have clarified the ambiguities of the section; however, the lack of cases under this section has robbed Indian law off the opportunity. Moreover, even when it has been subjected to judicial analysis, the scope has been further distorted. For instance, in the case of *Amarnath Sehgal v Union of India*, the Court had the opportunity to clarify if the prejudice caused to the author’s reputation may be analyzed objectively or subjectively, but it remained silent on the issue.¹⁷ The decision was given in favour of the artist with an underlying assumption that destruction would ultimately cause damage to his honour by reducing the volume of his creative corpus.¹⁷ There was no objective interrogation conducted to analyze if there was an actual harm. This can be interpreted to mean that the court did promote a subjective lens by omission. This has essentially removed the burden of proof upon the plaintiff to show prejudice to honour and reputation. The unanswered questions above, combined with judicial ambiguity, have created a

potential problem which will be discussed below, after delving deeper into the complexities of fair dealing.

India and Concept of Fair Dealing

The grant of copyright to the original creator of a work entails that they have an exclusive right to control the use and distribution of their creative expression. However, since Intellectual Property law must be aimed at striking a balance between the incentive to the creator and access to the public, fair dealing has been carved out as an equitable rule of reason.¹⁸ It can be defined as a privilege available to the people rather than the owner of a copyright to use the copyrighted material in a reasonable manner without his consent, notwithstanding the monopoly granted to the owner of the copyright.¹⁹ Essentially, an act that would generally be considered infringement, will be excused if it is done for a fair purpose. It is a mandate for all countries under the WTO regime to comply with Article 13 of the TRIPS Agreement, which provides for fair dealing.²⁰

At the outset, it must be clarified that the standard of fair dealing followed in India is different and narrower than its American counterpart 'Fair Use', though they are often mistaken as synonymous.²¹ Fair Use is a standard of analysis encoded in Section 107 of the American Copyright Act, which gives 4 factors which must be considered to deduce if a certain act may fall under fair use.²² These 4 factors are as follows:

- (i) The purpose and character of the use, including the fact, if the work is for commercial or nonprofit purposes.
- (ii) Nature of the Copyrighted work.
- (iii) The amount and substantiality of the portion reproduced
- (iv) The effect of the reproduced work on the potential market of the original creation

These factors are based largely on the case of *Folsom v Marsh*, where Justice Joseph Story upheld the following:

"A reviewer may fairly cite largely from the original work, if his design be really and truly to use the passages for the purposes of fair and reasonable criticism. On the other hand, it is as clear, that if he thus cites the most important parts of the work, with a view, not to criticize, but to supersede the use of the original work, and substitute the review for it, such a use will be deemed in law a piracy ..."

*In short, we must often ... look to the nature and objects of the selections made, the quantity and value of the materials used, and the degree in which the use may prejudice the sale, or diminish the profits, or supersede the objects, of the original work."*²³

In India, Section 52 of the Indian Copyright Act, 1957²⁴ encapsulates the essence of the doctrine of fair dealing and, as opposed to being a general standard of analysis, restricts the fair dealing exception to only certain specific purposes.²¹ Taking inspiration from its British Counterpart, Section 52 is largely based on the UK case of *Hubbard v Vosper*, where Lord Denning laid out a very comprehensive outline of this doctrine, stating that:

*"It is impossible to define what is fair dealing. It must be a question of degree. You must first consider the number and extent of quotations and extracts, then you must consider the use made of them, next you must consider the proportions...other considerations may come to mind also but after all is said and done, it is a matter of impression."*²⁵

While this may seem similar to the American standard, the Indian statute is relatively rigid and carves out only 3 circumstances where a work may be reproduced without qualifying as an infringement of copyright:

- (i) Private or personal use, including research.
- (ii) Criticism or review.
- (iii) Report of current events and current affairs.

This codification by the Indian lawmakers has rendered it impossible for the courts to opt for a more flexible approach like the U.S. and develop the law on a case-by-case basis.¹⁸

For the purposes of this paper, criticism is the major form of fair dealing that will be elaborated upon. In light of this, it is also important to look at the judicial pronouncements that have dealt with criticism specifically. In the case of *Civic Chandran v Ammini Amma*, the Court has clearly held that even if the original work is substantially copied from, it cannot be constituted as infringement if it is for the purpose of criticism or review.²⁶

While the judiciary has taken a broad approach by qualifying criticism as fair dealing for the sake of public interest, the copyright law does not comment on its relationship with moral rights. What if, in this case, the plaintiff further claimed that it was his moral rights that were being violated as the criticism modifies his work and harms his reputation? This is

the main focus of this paper and will be addressed in the next section.

Subjugation of Moral Rights: The Missing Piece

It is important to note that the interests of an artist, his audience and the public at large would not always align. Consider the American example of the Tilted Arc, a sight-specific piece sculpted by Richard Serra, placed at the Federal Plaza in Downtown Manhattan.⁹ Serra was known to create art which would often criticize its surrounds instead of beautifying them. While there was no public consensus on the placement of the Tilted Arc, there were many who waged a campaign against it.²⁷ This vehemence was met by the government removing the piece from Federal Plaza. Serra claimed the removal as destruction since the piece was site-specific. While the judiciary ultimately decided in favour of its removal, it is acknowledged that this case is by no means a case of fair use. Though, it is noteworthy that public demand ultimately prevailed over moral rights.

Somewhat similar is an instance mentioned in Sandy Levinson's 'Written in Stone', which exemplifies not just public demand but public interest.²⁸ He narrates a dilemma faced by the city of New Orleans with regard to a 19th-century monument boldly illustrating and appreciating racism.²⁸ It goes without saying that the larger interests of the public dictated the destruction of the racist symbol; however, such elimination would undoubtedly qualify as an infringement of moral rights. It is one of the cases where public interest must prevail over an artist's exclusive rights, and it did, as the Robert E. Lee monument was removed on 18 September 2021.²⁹

Another case which must be considered is that of artist Clement Greenberg who vandalized some sculptures of another artist, David Smith. Smith's most famous work included some sculptures in painted steel, which were unusual for his typical sculptures in unpainted steel.³⁰ As the executor of his estate after Smith's death, Greenberg stripped and exposed several of his painted works to other elements, essentially destroying their painted surfaces.³⁰ While this was considered an absolute distortion of Smith's intent and artwork; the market termed the destroyed works as more valuable than the painted ones.³¹ This exemplifies the fact that there is an artistic value in modifying, defacing, and destroying original works.

While there is still scope for multiplying examples, the essential conclusion is that courts and governments have preferred public demand and interest over the moral rights of an individual creator. Flowing from this, if fair dealing is in the public interest, then why moral rights should not be subjected to them?

One might raise an objection that the above-mentioned instances are jurisdictionally different and, therefore, might be irrelevant. However, this paper attempts to raise a question which has not come up in the Indian context till now but may become a potential problem in the near future. Therefore, cases from other jurisdictions must come to the rescue.

In this context, it is equally important to note that such scenarios in the American jurisdiction are guided by the VARA Act, of 1990 which expressly subjugates moral rights to fair dealing by way Section 106A.⁶ It unequivocally states that the right of integrity and attribution are subject to Section 107, which stipulates fair use.⁶

As far as the Indian law is concerned, it can be inferred from above that moral rights have been worded and interpreted broadly. Section 57 (1) (b) reads as follows:

*"...distortion, mutilation, modification or other act would be prejudicial to his honour or reputation."*¹⁵

The words, distortion, mutilation and modification are broad enough to cover any transformative works which may be produced by another creator subsequently. While some may argue that this broad language is diluted by limiting moral rights infringement to cases where there has been prejudice to honour and reputation, it must be noted that the Indian courts have hinted towards a subjective interpretation of such harm. In the case of Amarnath Sehgal, harm was assumed without a fact-intensive analysis by the judges.¹⁷ Therefore, there is a scope that mere criticism may be constituted as distortion or modification, causing harm to an author's reputation. It can be assumed that such an original creator may not object to criticism or review at all. While that may be true, it will not happen in all cases. An author consenting to criticism is oxymoronic, as there is a very minute chance that the author having the authority to stop the ridicule surrounding their idea, would not use it.³² In such cases, the second creator has only two options, silence or reliance on fair dealing.⁵ However, moral rights in India are not

subject to fair dealing, and thus, such reliance also becomes futile. It is, therefore, highlighted that if original creators in India start using moral rights as a shield from the sword of criticism, it would open a floodgate of litigation and discourages debate which is socially wounding.

Another argument in favour of subjecting moral rights to fair dealing emanates from the generally accepted principle that *'the more transformative the new work, the less will be significance of other factors in the fair dealing analysis.'*³³ Since a derivative work must be transformative to qualify as fair; it has to be subjected to some form of distortion or modification. Thus, the very nature of a work qualifying as fair makes it a target of moral rights claim.

This is the precise gap that has posed a threat to literary and artistic criticism in the Indian Copyright regime. It has made all such matters highly subjective and prejudicial to derivative works. As a consequence of this, the incentive-access balance has tilted towards original creators, disregarding public interest.

The Way Forward

In the previous Section, this paper has made an argument for subjecting moral rights to fair dealing in the Indian Copyright regime. However, it must be noted that the intention behind this proposition is not to undermine the importance of moral rights. It is acknowledged that all cases similar to the dilemma above will not be instances of genuine constructive criticism. There will be second-generation creators who distort an original work with malice as their main motive, or there will be instances where the derivative work is not in the interests of the public.

For example, Edouard Manet's 'The Luncheon on the Grass', is a painting with a powerful underlying message.³⁴ It depicts a nude woman on a luncheon with two other men. The painting emphasizes that the woman has deliberately chosen not to wear clothes, and she looks questioningly at the viewer. This is deemed to be a subtle comment on the male gaze and how women should be allowed to express their sexuality openly. Unlike any other previous work of its time openly depicting a nude woman, the artist did not connect nudity to divinity or innocence. It was the boldness of this painting which made it a statement.

What happens if another artist, purely driven by the force of patriarchy, recreates this painting with the woman in conservative clothing? Hypothetically, the original creator or his heirs would have the right to

sue the derivative artist for distortion, who may, in turn, use fair dealing as a defence. In this case, a liberal judge may be willing to side with the original artist, while a conservative one would hold in favour of the derivative creator. Specifically, if moral rights are denied in this case, it would defeat the purpose of their inclusion in the Copyright regime. Therefore, the mere subjugation of moral rights is not enough. The Indian judiciary must be willing to carve out certain points of analysis which can help them in resolving such cases fairly.

While retaining the argument of subjugation with full emphasis, this Section shall analyze two such suggested standards to navigate smoothly through the murky waters of moral rights and fair dealing.

The Creative Destruction Standard

As mentioned above, France does have the most robust Moral Rights protection regime. However, even the French courts, over time, have carved out certain exceptions to this protection. They are known to use a combination of a general public interest rule and the abuse of rights doctrine to curb the incentive-access balance from tilting towards the original creator unfairly.³

Instances where modification may become necessary, like the one in Clement Greenberg's case, have been quoted in the previous Section. It is also important to note that if this case were to happen in India, Fair dealing would not be sufficient to protect the rights of the derivative creator. Therefore, in light of this consideration, this paper suggests a three-pronged lens of analysis which is the 'Creative Destruction Standard'.

- (i) The Transformative Nature
- (ii) Adds to the Value of the Existing Work/Idea
- (iii) Is in the Interest of the General Public

The first consideration is the transformative nature of the derivative work. This essentially means the extent to which the new work has 'modified' the original one. The more transformative the nature of the work, the lesser the focus will be on other factors, as is established principle.³³ The second step shall be to see if the new work adds to the value of the original one. It must be noted with caution that the interpretation of this prong has to be in broad terms. Value addition to a certain work may also be in the form of constructive criticism, which takes the debate forward rather than suppressing it. Further, the third prong would be an objective analysis to see if the new work is generally in the interest of the public.

In order to understand it better, one can apply this test to the example of Edouard Manet's 'The Luncheon on the Grass.' A conservative judge may be tempted to hold in favour of the derivative creator if moral rights are subject to fair dealing. However, if the test of 'creative destruction' is applied to this case, the derivative work where the woman is forced to wear clothes will not pass through the second prong as it takes away from the value of the painting in terms of it being a comment on the male gaze and the openness of a woman's sexuality. It does not add to the value of the debate; rather, it tries to suppress it. Therefore, even a conservative judge would have to hold in favor of the original creator.

The Actual Malice Standard

Malice is a standard popular in American Jurisprudence. However, this suggestion, though bearing the same name, is relatively different. It is being put forward in order to battle cases of moral rights infringement where the second-generation work is purely driven by malice. It is largely based upon the decision of the apex court in the case of *Chaman Lal v State of Punjab*, a landmark case in the jurisprudence of defamation³⁵ and the suggested test by Mark A. Petrolis in 'An Immoral Fight: Shielding Moral Rights with First Amendment Jurisprudence When Fair Use Battles with Actual Malice.'³⁴ This also has three prongs to it:

- (i) Motive
- (ii) Falsity
- (iii) Harsh Beyond Reasonable Standards

In the *Chaman Lal case*, the Court laid down the basis for proving good faith. The first factor for the relevant analysis is motive.³⁵ Therefore, even in the suggested test, it is important to see if the second-generation artist would have the motive to cause harm to the original creator's reputation. Further, in the second prong, the Court would have to satisfy itself that the action taken against the original work is knowingly false or recklessly untrue.⁴ This essentially means that the criticism or modification to the original work was made on facts that are either knowingly or ignorantly not true.⁴ Since freedom of speech under the Constitution must also be protected, it has to be ensured that fair and true criticism must not suffer.³⁶ The third prong is to analyze if the derivative work is unreasonably harsh and focuses more on criticism rather than taking the debate forward. This would be a slightly subjective analysis,

taking into context the language, the motive and the value of the criticism offered. The application of this standard would prevent derivative works which are driven by malice but would qualify as fair dealing.

Conclusion

This paper began with the concern that Indian Copyright Law has overlooked the potential of subjugating moral rights to fair use in curbing their exploitation. The romantic idea of a creative product being associated directly with the creator's personality has found broad manifestations in Indian law. This becomes particularly concerning when any form of criticism may be legally objected upon by the creator. While it may be argued that a requisite of harm to the honour and reputation of the original creator act as a limitation to moral rights, such harm is highly subjective in nature. A derivative work's criticism may be valid and important, but it can still affect the original creator's reputation. Any resulting obstruction in the way of such criticism has direct and harmful consequences for the society at large.

As a solution to this, the paper suggests that much like the VARA Act, 1990 of the United States, Indian moral rights must be subjected to fair dealing, which allows criticism to prevail over any such unwarranted claims.

What remains unexplored and beyond the scope of this paper, is the potential of allowing authors to waive moral rights in a situation of such friction. The major reason behind this omission is that the debate on waiver remains unresolved. Advocates opposing the waiver assume that moral rights are conceptually inherent to an author's personality and cannot be waived. However, many have also argued that if moral rights pose a threat to public policy, such a waiver may be allowed.³⁷

In light of this, the paper puts forward two standards, which may be used jointly or severally, to navigate cases where moral rights may be juxtaposed with fair dealing, despite subjugation. The 'Creative Destruction Standard' is for cases where criticism manifesting as a derivative work has to be protected to keep the debate going, and the 'Actual Malice Standard' is to weed out cases where second-generation works are a result of malice.

It must be reiterated that this problem and these standards are being presented on a clean slate. Indian jurisdiction, so far, has not seen any case like this, but it

is also emphasized that once that door opens, it would be a floodgate of litigation. Therefore, it is, by default, an invitation for scholarly debate and analysis.

Winston Churchill has rightly highlighted the vitality of criticism by comparing it to pain in the human body. According to him, criticism calls attention to the development of an unhealthy state of affairs, and if it is tended to in time, danger might be averted, but if it is suppressed, the consequences may be fatal. Lack of criticism, therefore, may create societal systems comfortable without accountability. Flowing from this, it is important to note that modern society's spirit of independence, expression of individuality and desire for innovation are often a result of vigorous dissent from the status quo and a desire to improve upon the past. In such a context, the death of criticism may become humanity's greatest loss.

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