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**GURINDER & PARTNERS**  
*Guidance with Precision*

*Visual, Performing & Literary Artists*

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**THE LAW OF ART AS AN  
ASSET CLASS**



## THE CREATIVE ECONOMY

The creative sector is no longer peripheral. It is a high growth economic engine, contributing significantly to employment, Cross border trade and Cultural capital.



The creative economy is scaling rapidly, with global royalties **exceeding €13.9 billion** and digital revenues **crossing 60% of industry income**. Yet, legal capture of this value remains uneven. Under the Copyright Act, 1957, rights exist across ownership, royalties, and attribution, but contractual structures often dilute control. As works expand across exhibitions, streaming, and adaptations, early agreements continue to govern value. The result is clear. Rights exist in law, but value is captured through structure.



## STATUTORY ARCHITECTURE OF ARTISTIC RIGHTS

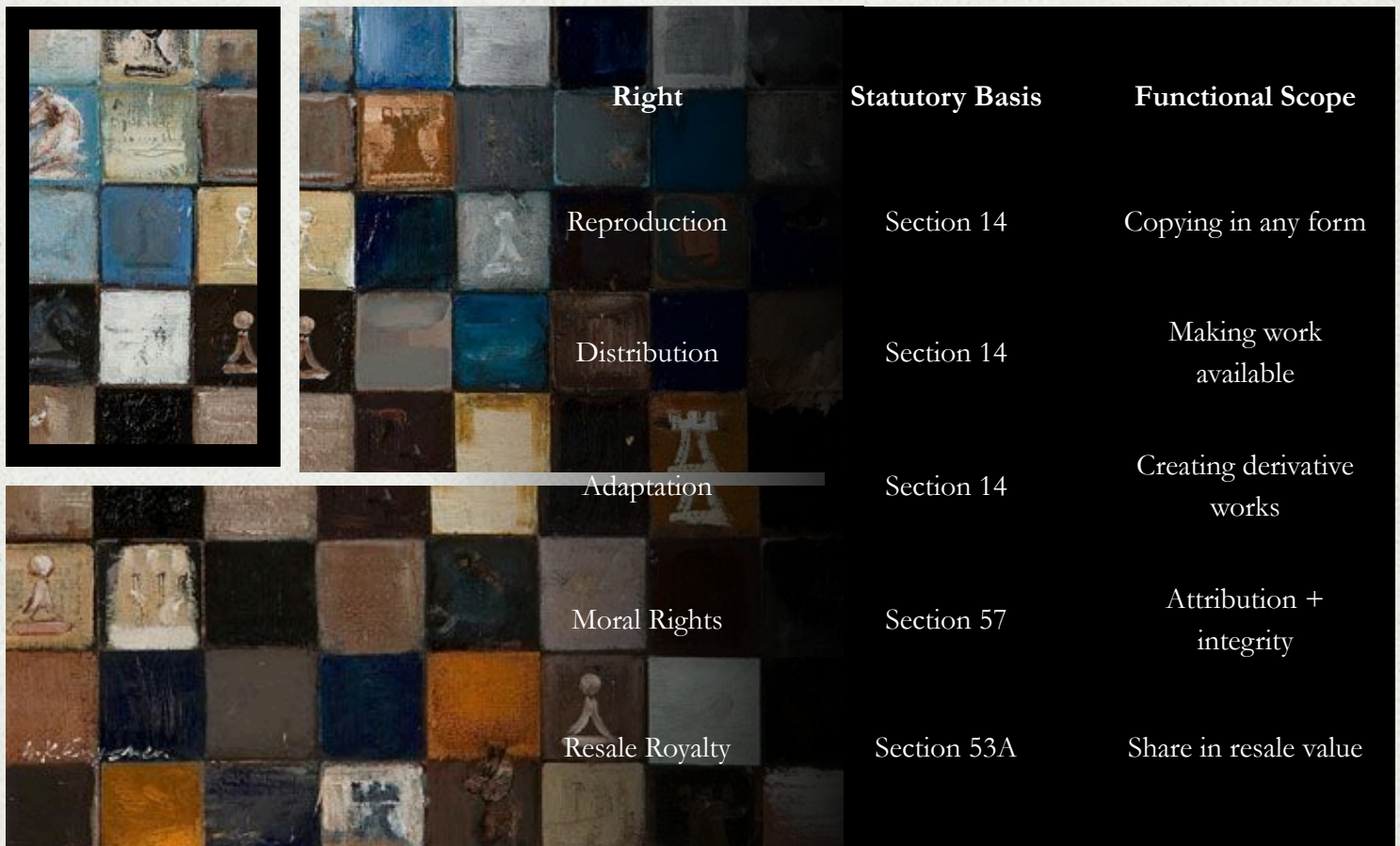
### COPYRIGHT ACT, 1957

Copyright acts as the primary legal instrument protecting artistic works in India, covering literary, dramatic, musical and other artistic works.

Importantly, protection arises automatically upon creation, without any requirement of registration.

This automatic protection is fundamental. While the rights originate with the creator, their commercial realization depends on how those rights are exercised or transferred.

### COPYRIGHT RIGHTS STRUCTURE



Right	Statutory Basis	Functional Scope
Reproduction	Section 14	Copying in any form
Distribution	Section 14	Making work available
Adaptation	Section 14	Creating derivative works
Moral Rights	Section 57	Attribution + integrity
Resale Royalty	Section 53A	Share in resale value



## EXPRESSION, NOT IDEA

A foundational doctrine under copyright law is that protection extends only to the expression of an idea, not the idea itself.

This position has been authoritatively settled by the Supreme Court in *R.G. Anand v. Delux Films* (1978 AIR 1613; (1978) 4 SCC 118), where the Court held that copyright does not subsist in ideas, themes, or subject matter and similarity in subject is not infringement if the treatment, presentation, and expression differ

It forms the basis of infringement analysis and continues to govern disputes involving originality and copying.

## OWNERSHIP VS CONTRACTUAL DISPLACEMENT

While the law recognises the author as the first owner of copyright, this position is frequently altered through employment relationships, commissioned works, contractual assignments. This results in a structural shift in control. Control over intellectual property is determined not merely by statute, but by contractual structuring at the point of creation.

In independent creation, the artist remains the legal owner of the work. In the context of employment, ownership typically vests in the employer. For commissioned works, the commissioner is recognised as the legal owner, subject to contractual terms. Where rights are assigned, ownership transfers to the assignee in accordance with the scope and duration of the assignment.



## MORAL RIGHTS

### *Protection of Artistic Identity*

Moral rights operate independently of economic rights and include the right to attribution and the right to integrity.

These rights are personal to the artist and are not extinguished by transfer of ownership.

## JUDICIAL REINFORCEMENT

In *Amar Nath Sehgal v. Union of India* 117(2005)DLT717, 2005(30)PTC253(DEL), the Delhi High Court held that destruction or mutilation of artwork constitutes a violation of the artist's moral rights, and that such rights survive the transfer of physical ownership.

## IMPLICATION

Even where economic control is diluted, reputational and authorship rights remain legally enforceable.





## DERIVATIVE WORKS & ADAPTATION

Adaptation constitutes a distinct right under copyright law and requires prior authorisation from the rights holder.

This is particularly relevant in literary works adapted into films or series, visual works reinterpreted in new formats, performances recorded and redistributed.

*Derivative value is legally protected, but its capture depends entirely on how rights are licensed or assigned.*



**FAIR DEALING  
FRAMEWORK**

Use Case	Permissibility
Educational use	Permitted
Criticism / review	Permitted
Private use	Permitted
Commercial use	Not permitted





## GURINDER & PARTNERS

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