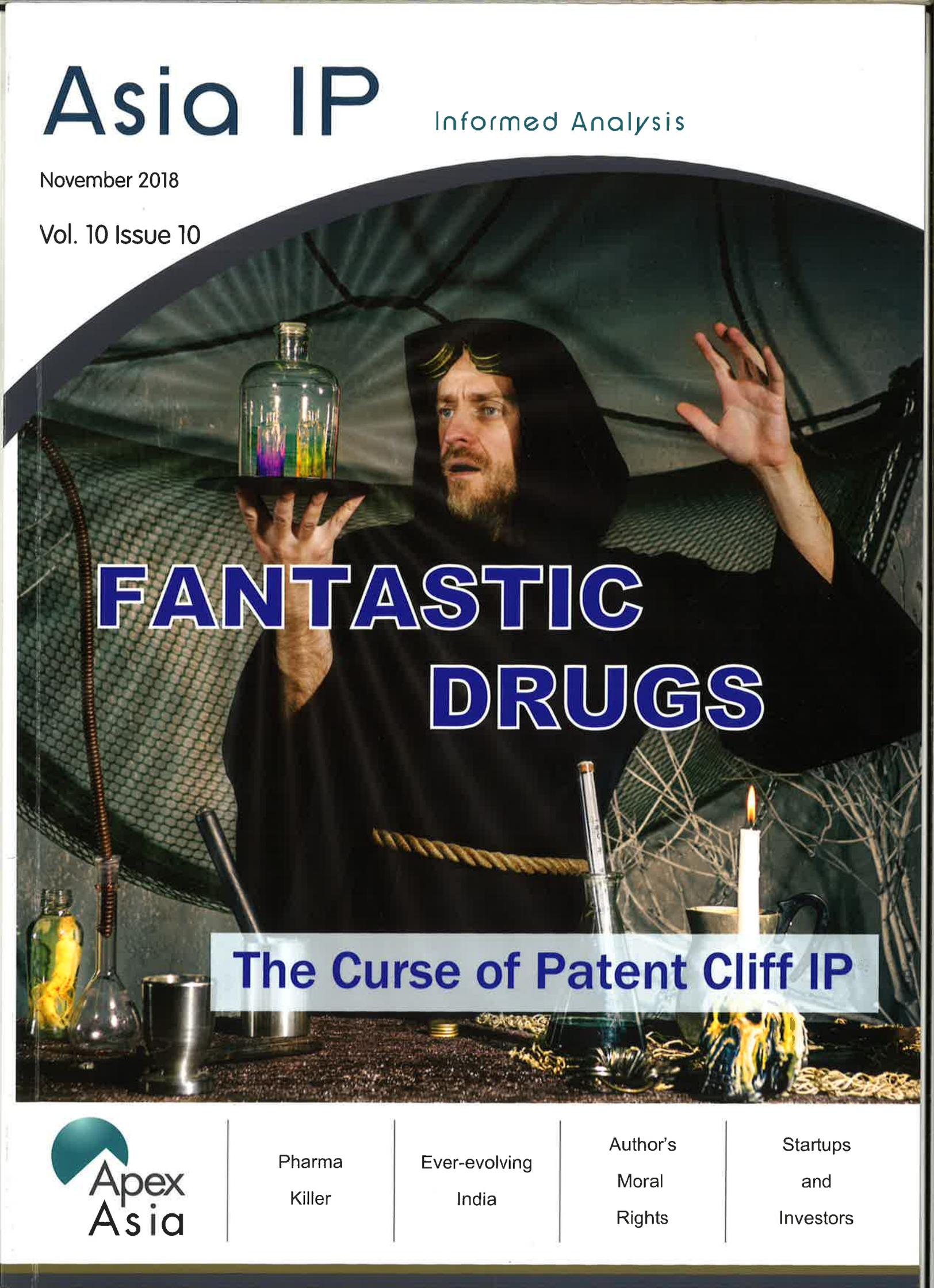


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FANTASTIC DRUGS

The Curse of Patent Cliff IP



Pharma
Killer

Ever-evolving
India

Author's
Moral
Rights

Startups
and
Investors



Author's Moral Rights and Owner's Copyright: The Incongruous Interplay

The Indian Copyright Act duly accords and protects the rights of the “owners” of copyright as well as the authors of such copyright works. **Aishwarya Chaturvedi** explains how the act is equipped to deal with the probable conflicts between an employer and his employees.

The aim of all artistic, literary and musical work is to represent its internal significance and not just its outward appearance. It would then imply that each artist, author, lyricist or composer should be accorded with due rights.

However, if this is true, then should there be as many rights as there are minds? Indian copyright law displays an interesting interplay between an author's moral rights as encompassed in Section 57 of the Copyright Act, 1957 and the rights of a copyright owner under Section 17 and rights of an assignee under Section 18 of the act.

The fulcrum of Indian copyright law is essentially the fairness theory and the welfare theory. The fairness theory is author-centric, per which the rights of authors should be promoted by providing them exclusive opportunity to benefit from their work, while the welfare theory primarily focuses on the interest of the society and, thus, propagates that the works created by authors must be made available to society at large. Therefore, even though the authors have a right under the act to reap the benefits of their labour and creativity, they also have a duty towards society to disseminate the same.

The concept of author's rights stems from the Universal Declaration of Human Rights, Article 27(2), which is as follows:

“Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.”

Similarly, the concept of moral rights finds a mention in Article 6 bis(1) of the Berne Convention:

“Independently of the author's economic rights, and even after the transfer of 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.”

An artist's creation, whether it is in the form of a painting, a photograph, a motion picture or in any tangible form, is fundamentally the opinion of that artist and, thus, ought to be protected. Moral rights encapsulate the idea that a literary, musical or artistic work reflects the character of its creator, just as the economic rights reflect the author's need to keep the body and soul together.

Section 57 of the Copyright Act, 1957 deals with the author's special rights, whereby under sub-section (1)(b), independent of the author's copyright and even after the whole or partial assignment of such copyright, an author shall have the right “to restrain or claim damages in respect of any distortion, mutilation, modification or other act in relation to the said work if such distortion, mutilation, modification or other act would be prejudicial to his honour or reputation.” Section 57 of the act involves the three basic “moral rights” of an author, which are as follows:

- i) **Right of publication.** The right of publication confers upon the author the right to decide whether to publish or not to publish the work;
- ii) **Right of paternity.** The right of paternity refers to a right

of an author to claim authorship of work and a right to prevent all others from claiming authorship of his work; and

iii) **Right of integrity.** The right of integrity empowers the author to prevent distortion, mutilation or other alterations of his work, or any other action in relation to said work, which would be prejudicial to his honour or reputation.

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Even as per Section 17 of the Copyright Act, 1957 the author or creator of the work is the first owner of copyright. However, it is clause c of Section 17 which poses a problem. Section 17(c) of the Copyright Act *inter alia* provides that if a work is created by an author in the course of employment under a contract of service or apprenticeship, the employer shall be the owner of copyright, in the absence of any agreement to the contrary. Essentially, the terms of contract define the ambit of rights guaranteed therein. This is where the incongruity as well as interplay between Section 57 and Section 17 of the act comes into play because an author cannot surrender his moral rights even if he creates such work under a contract of service during the course of employment. For instance, even if a lyricist or music composer signs a contract under Section 17 of the act surrendering his rights to the producer of a cinematographic film, he can still challenge the said contract later and be entitled to receive royalties earned by the producer with respect to the work which forms of the subject matter of the contract. Furthermore, the provisos to Sections 18 and 19 of the act make it amply clear that an author of a literary or musical work cannot assign or waive off his right to receive royalties and, therefore, all royalties earned from the exploitation of the lyrics and/or music as part of a cinematographic film shall be shared equally between the assignee and the lyricist/composer. This right to receive royalty has the following features:

- 1) It is inalienable and incapable of being waived;
- 2) The right to receive royalty remains with the author even if the copyright has been assigned or licensed to another person. It can only devolve on legal heirs. Copyright societies can also be authorized to collect such royalty on behalf of the author;
- 3) For underlying works incorporated in sound recordings forming part of films, this right can be exercised only with respect to exploitation of the underlying works outside cinema halls. Thus, royalties from all non-cinema hall uses of the work are to

be shared with the authors.

4) For underlying works incorporated in non-film sound recordings, this right can be exercised with respect to any exploitation of the underlying works.

It is pertinent to mention that in 1987, *Mannu Bhandhari v. Kala Vikas Pictures* was the first case that acknowledged the moral rights of an author, wherein it was held that Section 57 is a special provision for the protection of the special rights of the authors and the objective of the said section is to put the intellectual property of an author on a higher footing than the normal objects of copyright. The court further observed that the language of Section 57 is of widest amplitude and cannot be restricted to literary expression only and, thus, visual and audio manifestations also fall within its ambit. However, it was in *Amar Nath Sehgal v. Union of India* in 2005 that the jurisprudence of moral rights was expounded and an author's moral rights under the Copyright Act, 1957 were

upheld. The court recognized an author's moral rights to be the soul of his works, essentially granting the author the right to preserve, protect and nurture his creations irrespective of the assignment of such copyright, whether wholly or partially. The court further pertinently observed and held that where the owner (not being the author) of the copyright work, treats the work in a manner that is prejudicial to the reputation and honour of the author, the court may transfer all rights over the work to the author.

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It is explicit from the foregoing discussion that even if a work has been created under a contract of service during the course of employment, the author of such work would still hold special rights in the same as provided for under Section 57 of the Copyright Act, 1957. Thus, it is of great relevance here to understand that Section 17 and Section 57 of the act are to be read in conjunction with each other inasmuch as both are not exclusive to each other. Section 57 provides an exception to the rule that after an author has parted with his rights in favour of a publisher or other person, the latter alone is entitled to sue in respect of infringement. The principle underlying this section is that damage to the reputation of an author is different from infringement of the work itself. The aforesaid section clearly



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C - 139, DEFENCE COLONY, NEW DELHI-110 024, INDIA

TEL.: +91 11 4987 6099, +91 11 4982 6000 to 6099

EMAIL: email@singhandsingh.com ; WEBSITE: www.singhandsingh.com

overrides the terms of the contract of assignment of copyright. The contract of assignment would be read subject to the provisions of Section 57 and the terms of contract cannot negate the special rights and remedies guaranteed under Section 57. The assignee of a copyright cannot claim any rights or immunities based on the contract, which are inconsistent with the provisions of Section 57. The said position was upheld in 1983 in *K.P.M. Sundhram v. Rattan Prakashan Mandir* as the court held that the moral rights remain with the author and shall be enforceable even if all the economic rights have been licensed/assigned.

Therefore, it can be said that the concept of indivisibility of copyright in a work has become redundant and likewise, technically the author of an original literary, musical work always remains the first owner of copyright under Section 17 of the act as the author always retains and can claim the authorship of his original work and, interestingly, does not entirely give up on his economic rights as well inasmuch as he is always entitled to receive a part of royalties from the producers/assignee of copyright.



Alshwarya Chaturvedi is an associate at Singh & Singh in New Delhi. She completed her degree in philosophy from the University of Delhi in 2014 and thereafter obtained her law degree from Campus Law Centre, Faculty of Law, University of Delhi, in 2017. She is author of the book *The Unheard Predicament: Social and Legal Perspective on Women and Child Rights in India*. She was admitted to the bar in 2017.

The Indian Copyright Act duly accords and protects the rights of the "owners" of copyright as well as the authors of such copyright works and thus, the act is equipped to deal with the probable conflicts between an employer and his employees. The Indian Copyright Act has successfully kept pace with the developments in the sphere of copyright law per se which have taken in other parts of the world and, more so, the Indian Judiciary has been instrumental in progressively harmonizing the interests of the authors and owners of copyright. **AIP**

