

The Attribution Gap: Section 57, Fabricated Authorship, and the Limits of Moral Rights in the Age of Generative Systems

Amaresh Patel^{a*} and Jyoti Garg^b

^aResearch Scholar, Oriental University, Indore, Madhya Pradesh, India

^bAssistant Professor, Oriental University, Indore, Madhya Pradesh, India

*Corresponding author: Amaresh Patel

Abstract

Generative systems injure authors in two ways that Indian moral rights doctrine treats very differently. Where a system distorts an existing work — misquoting it, misreporting its contents, reversing its meaning — the integrity limb of Section 57 of the Copyright Act, 1957 is engaged, and the generous construction Indian courts have given to the words *other act* in relation to the said work accommodates the case without extension. Where a system fabricates material and attributes it to a named author, Section 57 has nothing to operate on: the integrity limb fails for want of a work, and the paternity limb confers a right to claim authorship of what one wrote rather than a right to disclaim authorship of what one did not. This paper argues that the resulting attribution gap is a genuine and unoccupied lacuna in Indian law; that it results from a drafting choice rather than a conceptual difficulty, the Berne Convention requiring no false attribution right and the United Kingdom conferring one; and that the alternative instruments protect the wrong people, defamation requiring a defamatory imputation and the personality rights jurisprudence resting on the commercial value of a persona. It proposes a false attribution right as a new sub-section of Section 57, and addresses the connected question of authorship in machine output.

Keywords: Moral rights; false attribution; Section 57; authorship; generative artificial intelligence; personality rights; Indian copyright law

Introduction

Copyright protects two distinct interests. The economic rights secure to an author the commercial value of a work. The moral rights secure something else: the connection between an author and what the author made, and the integrity of that work as the author left it. Indian law confers both, and the Supreme Court and High Courts have treated the second as irreducible to the first.¹

Generative systems threaten the second interest in a manner the statute did not anticipate, and they do so in two distinguishable ways that Indian doctrine handles very differently.

The first is distortion. A system asked about a work may misdescribe it, misquote it, summarise it inaccurately, or report an author as having argued something the author rejected. Here a work exists and the system has done something in relation to it. The integrity limb of Section 57 is engaged and, as this paper argues, the Indian construction of that limb is generous enough to accommodate the case.

The second is fabrication. A system may produce material no one wrote and attribute it to an identified author: a quotation the author never wrote, an article that does not exist under a real byline, a report a named agency never issued. Here nothing has been distorted, because nothing existed to distort. This paper argues that Section 57 does not reach this case at all, and that its failure is not a matter of construction but of the provision's structure.²

¹ Copyright Act, No. 14 of 1957, § 57 (India), as substituted by the Copyright (Amendment) Act, No. 38 of 1994 (India). Note on citation practice: references follow APA 7th edition. Indian decisions are cited with the SCC, SCC OnLine or PTC citation verified against the reported judgment.

² The distinction between distortion of an existing work and fabrication of an attribution is developed in Parts 5 and 6 below and is, so far as the authors are aware, unexamined in the Indian literature.

The distinction matters because the second harm is the characteristic one. Distortion of existing works is a byproduct of imprecision. Fabricated attribution follows directly from the training objective: a system optimised to produce the most probable continuation will supply a plausible source where a true one is not encoded, because plausibility rather than truth is what the objective rewards.³ The harm is a consequence of how the technology works, and it will not be engineered away entirely.

The paper also addresses the mirror question. If a machine may wrongly attribute text to a human, may a human claim text produced by a machine? That question is ordinarily framed as one of authorship; this paper argues the framing is mistaken, the prior question being originality, and Section 2(d)(vi) never coming into operation where that threshold is not crossed.⁴

The two halves are connected, and the connection is not merely thematic. The Act presupposes that a text has an author whose relation to it is a fact capable of ascertainment, so that the law need only allocate rights rather than verify claims. Generative systems break that presupposition from both ends.

Review of Literature

Three bodies of scholarship bear on the question.

The Indian moral rights literature is organised around *Amar Nath Sehgal v. Union of India* (2005), in which the High Court of Delhi held that the special rights under Section 57 extend beyond the literal language of distortion and mutilation, that the destruction of a work of art is an extreme form of mutilation which reduces the volume of the author's creative corpus and thereby affects reputation, and that the rights survive the transfer of the economic rights.⁵ Commentary has treated the decision as establishing an expansive Indian conception of the integrity right and as connecting it to the protection of cultural heritage.⁶ The literature has not asked whether that expansive conception reaches fabricated attribution.

The comparative literature on false attribution is thin because most systems do not confer such a right. The United Kingdom does, by Section 84 of the Copyright, Designs and Patents Act 1988, which confers a right not to have a literary, dramatic, musical or artistic work falsely attributed to a person as author.⁷ The Berne Convention, by contrast, requires only the paternity and integrity rights.⁸ The gap between the two has not been examined in the Indian context.

The literature on authorship of machine output is developing rapidly. The United States Copyright Office concluded in the second part of its report on copyright and artificial intelligence, published in January 2025, that copyright protects the original expression of a human author even where a work includes AI-generated material; that whether human contributions are sufficient must be analysed case by case; that, on the functioning of currently available technology, prompts alone do not provide sufficient control for the resulting work to be authored by a human; and that human authors are entitled to copyright in expression perceptible in AI outputs and in the creative selection, coordination or arrangement of material in outputs.⁹ The Office declined to recommend additional copyright or sui generis protection for AI-generated content.¹⁰

³ On the training objective see Vaswani et al. (2017) and Radford et al. (2019); on sampling at generation see Holtzman et al. (2020); on the resulting phenomenon see Ji et al. (2023).

⁴ Copyright Act, No. 14 of 1957, §§ 2(d)(vi), 13(1)(a) (India). The argument that § 2(d)(vi) is definitional rather than protective is developed in Part 8.

⁵ *Amar Nath Sehgal v. Union of India*, 2005 SCC OnLine Del 209, (2005) 30 P.T.C. 253 (Del. H.C.) (India) (Pradeep Nandrajog, J., decided Feb. 21, 2005).

⁶ *Ibid.* See also Sundara Rajan (2011) on the Indian conception of the integrity right, and Rigamonti (2006) for the comparative framework.

⁷ Copyright, Designs and Patents Act 1988, c. 48, § 84 (UK).

⁸ Berne Convention for the Protection of Literary and Artistic Works, art. 6bis, as revised at Paris July 24, 1971, 1161 U.N.T.S. 3. See also WIPO Copyright Treaty, art. 1(4), Dec. 20, 1996, 2186 U.N.T.S. 121.

⁹ United States Copyright Office, Copyright and Artificial Intelligence, Part 2: Copyrightability (2025), published January 29, 2025.

¹⁰ *Ibid.* The Office concluded that the case had not been made for additional copyright or sui generis protection for AI-generated content.

The technical literature explains the mechanism. Such systems are trained to predict the next token in a sequence (Radford et al., 2019; Vaswani et al., 2017), generation proceeding by sampling from the resulting distribution (Holtzman et al., 2020). Fabrication of plausible but false attributions follows from that objective rather than from any defect of implementation (Ji et al., 2023).

Research Gap

The Indian literature examines Section 57 in the context of physical works that have been altered or destroyed. It does not examine the position of an author to whom material is attributed that the author never wrote, and the distinction between distortion and fabrication has not been treated as marking the boundary of the provision.

Nor has the Indian literature connected the moral rights question to the authorship question, although the two are aspects of a single omission. The Act allocates rights on the assumption that authorship is ascertainable. Where a machine asserts an authorship that does not exist, and where machine output has an authorship that cannot be located, the same assumption fails.

This paper addresses both. It offers an analysis of the boundary of Section 57 in the generative context, identifies the false attribution gap, assesses the alternative instruments, and connects the analysis to the question of protection for machine output.

Objectives of the Study

- 1.To determine whether the integrity limb of Section 57 of the Copyright Act, 1957 is engaged where a generative system distorts an existing work.
- 2.To determine whether Section 57 reaches the fabrication of material attributed to an identified author, and if not, why.
- 3.To assess whether defamation, passing off, or the emerging Indian personality rights jurisprudence adequately fills the resulting gap.
- 4.To determine whether the output of a generative system attracts copyright, and to identify the party in whom any such copyright vests.
- 5.To propose a false attribution right and a provision governing the protection of computer-generated productions.

Materials and Methods

This study adopts a doctrinal and analytical research design supplemented by comparative reference. It relies on primary legal materials comprising the Copyright Act, 1957, the Berne Convention, the corresponding legislation of comparator jurisdictions, and reported decisions of the Indian courts; and on secondary materials comprising academic commentary and official reports of copyright authorities.

The study reports no primary empirical data. Technical propositions are drawn from published research and are limited by the models and dates those studies examined. The taxonomy in Table 1 and the comparison in Table 2 are the authors' analytical constructions.

Two limitations of method are recorded. Certain recent Indian personality rights orders are interlocutory and are relied upon here as reported in professional commentary rather than from the orders themselves; the citations should be verified before reliance. And the Indian law on the protection of fictional characters and on the waiver of moral rights is undeveloped, so propositions in those areas are advanced as argument rather than as settled law.

The Statutory Provision and Its Two Limbs

Section 57

Section 57(1) provides that independently of the author's copyright, and even after the assignment either wholly or partially of that copyright, the author of a work shall have the right to claim authorship of the work; and 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.¹¹

Section 57(2) provides that the right conferred by sub-section (1), other than the right to claim authorship, may be exercised by the legal representatives of the author.¹²

Two rights of different structure

The section confers two rights and they differ in structure in a way that governs the whole analysis.

The right of paternity is unqualified: it is not conditioned on prejudice to honour or reputation and requires no proof of damage.

The right of integrity — the right to restrain or claim damages for distortion, mutilation, modification or other act — is doubly qualified. It applies to acts done in relation to the said work, which is to say in relation to an existing work of the author; and it requires that the act be prejudicial to honour or reputation.

The Indian construction

Indian courts have construed the section broadly. In *Amar Nath Sehgal v. Union of India* (2005) the High Court of Delhi held that a sculptor whose commissioned mural had been dismantled and consigned to storage could maintain an action under Section 57, that the words other act in relation to the said work are not confined by ejusdem generis to acts resembling physical alteration, and that the destruction of a work reduces the volume of the author's creative corpus and thereby affects reputation.¹³ The Court treated moral rights as surviving the transfer of the economic rights and connected the integrity right to the protection of cultural heritage.¹⁴

Earlier authority had established that the section is not confined to artistic works and that the special rights survive assignment.¹⁵

Distortion of an Existing Work

The elements are satisfiable

Where a work exists and a system's output purports to reproduce or report it, the elements of the integrity limb are capable of being satisfied. There is a work. There is an act in relation to it: the system has produced a version of the work, or an account of what it says. On the construction in *Sehgal*, that suffices. The act is a distortion or modification if the output departs from the text or misrepresents its content.

What must be established is prejudice to honour or reputation, and this is a real limitation. Not every inaccuracy prejudices reputation. What is damaging is an output attributing to the author a position the author does not hold, or presenting the work as saying something discreditable.

The argument from scale

An argument peculiar to this context strengthens the claimant's position considerably and does not appear to have been advanced.

¹¹ Copyright Act, No. 14 of 1957, § 57(1) (India). A proviso excludes from the second limb the failure to display a work to the satisfaction of the author.

¹² Copyright Act, No. 14 of 1957, § 57(2) (India). The exclusion of the right to claim authorship from the rights exercisable by legal representatives has been read as indicating that the paternity right is personal to the author.

¹³ *Amar Nath Sehgal v. Union of India* (see note 5). The Court held that destruction is an extreme form of mutilation which reduces the volume of the author's creative corpus and thereby affects reputation.

¹⁴ *Ibid.* The Court connected the integrity right under § 57 to the protection of India's cultural heritage, reasoning that knowledge of authorship identifies the creator's contribution to national culture.

¹⁵ *Mannu Bhandari v. Kala Vikas Pictures Pvt. Ltd.*, A.I.R. 1987 Del. 13 (India). The citation should be verified against the report before formal reliance.

The prejudice enquiry under Section 57 has historically been conducted in relation to a single act with an identifiable audience: a mural dismantled, a film cut, a text abridged. Prejudice is assessed by asking what those who encountered the altered work would think.

A generative system distorts on demand, repeatedly, to an audience that is unbounded and unknowable, and does so with an authority that ordinary misquotation lacks, because users treat system output as informational rather than as one person's account. The distortion is not a single event but a disposition of a widely used instrument, and its cumulative effect on the reputation of an author systematically misrepresented is capable of exceeding by a wide margin the effect of any single physical alteration.

The argument requires no extension of the section. It follows the reasoning in *Sehgal*, which found prejudice in the indirect consequences of an act for the author's standing.¹⁶

The remedial difficulty

The difficulty is remedial rather than substantive. Restraining a system from distorting a work requires preventing it from producing inaccurate versions, an obligation of a wholly different character from an injunction against dismantling a mural. It requires filtering, which in turn requires the system to recognise when it is being asked about the work — a technical capability rather than a legal one.¹⁷

Fabricated Attribution: The Gap

Why the integrity limb fails

Where the material is fabricated the integrity limb fails at the threshold. It requires an act in relation to the said work. Where no work exists the output stands in no relation to anything the author produced. However broadly Indian courts construe other act, the words in relation to the said work presuppose a work, and construction cannot supply one.

Why the paternity limb fails

The paternity limb fails for the mirror reason. It confers a right to claim authorship of the work — a right to be identified as the author of what one has written. It does not, on its language, confer a right not to be identified as the author of what one has not written.

The two are not the same right, and the difference is not formal. The first protects a connection that exists and is being denied; the second would sever a connection that is being asserted falsely. A provision drafted to secure recognition is not thereby a provision securing disavowal.

Table 1. Engagement of Section 57 by configuration of output.

Note: Authors' construction. The final two rows identify the gap examined in Part 6.

Configuration	Does a work exist?	Limb engaged	Outcome
Accurate report of a work	Yes	None	No claim
Misquotation of a work	Yes	Integrity, s. 57(1)	Claim, on proof of prejudice

¹⁶ *Amar Nath Sehgal v. Union of India* (see note 5).

¹⁷ On output filtering and the sampling configuration, see *Holtzman et al.* (2020). On the general-purpose character of such systems and the range of downstream configurations they support, see *Bommasani et al.* (2021).

Configuration	Does a work exist?	Limb engaged	Outcome
Misreporting of contents	Yes	Integrity, s. 57(1)	Claim, on proof of prejudice
Omission of attribution	Yes	Paternity, arguably	Doubtful: no use of the work
Fabricated quotation	No	Neither	No claim: the gap
Fabricated article, real byline	No	Neither	No claim: the gap

A drafting choice, not a conceptual difficulty

The gap is not universal, and the comparison establishes that it results from a legislative choice rather than from any difficulty of principle.

The United Kingdom confers an express right, distinct from the paternity and integrity rights, not to have a literary, dramatic, musical or artistic work falsely attributed to a person as author. The right is infringed by a person who issues to the public copies of a work with such an attribution, or who exhibits, performs, broadcasts or deals with such a work, and it subsists until twenty years after the death of the person concerned.¹⁸

The Berne Convention requires member states to confer on authors 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 work which would be prejudicial to honour or reputation.¹⁹ It does not require a false attribution right.

India's omission is therefore not a failure to implement an international obligation. It is a decision not to go beyond one, made at a time when the fabrication of attributions at scale was not a foreseeable harm.

The Alternative Instruments

Defamation

Where fabricated material attributed to a person is damaging, defamation is engaged and is the most obvious alternative. Three limitations confine it. It requires that the imputation be defamatory, so that a fabricated quotation which is merely inaccurate — attributing to an academic a position that is respectable but not hers — falls outside it. It requires publication, and a fabricated attribution generated for a single user raises a question about the audience. And the standard defences, particularly those turning on the defendant's belief in truth, sit awkwardly where the defendant is a system with no beliefs and an operator with no knowledge of the particular output.²⁰

Passing off

Where an author's name has commercial value, passing off is available: the use of the name in connection with material the author did not produce is a misrepresentation capable of damaging goodwill. The limitation is that

¹⁸ Copyright, Designs and Patents Act 1988, c. 48, §§ 84, 86(2) (UK). Section 86(2) provides that the right subsists until twenty years after the death of the person concerned.

¹⁹ Berne Convention, art. 6bis (see note 8).

²⁰ On defamation in the Indian context and its interaction with privacy and reputation, see *R. Rajagopal v. State of Tamil Nadu*, (1994) 6 S.C.C. 632 (India).

passing off protects goodwill, and goodwill in a name requires trading significance. A well-known author has it; a working academic or a regional journalist may not. The instrument protects those who need it least.²¹

Personality rights

The most significant Indian development is the body of personality rights jurisprudence the High Courts have built since 2023. Courts have granted injunctions restraining the unauthorised use of a person's name, image, likeness and voice, expressly extending to artificial intelligence and synthetic media, and have directed platforms to remove identified material.²² The doctrinal foundation lies in authority locating publicity rights in the persona, holding that they cannot be commercially exploited without consent, together with the constitutional privacy jurisprudence.²³

The development is important and this paper does not minimise it, but it does not close the gap. The orders rest predominantly on the commercial misappropriation of a persona having trading value, so the author whose name has none falls outside them. The protected attributes are those of identity rather than of authorship, and a false attribution of text misappropriates a professional record rather than a likeness. And the relief is case-specific, requiring a suit, which is not a remedy available to most authors.

The consequence

The instruments available therefore protect the celebrated and leave the ordinary author unprotected, which is close to the inverse of what a moral rights regime is for. Moral rights exist because authorship is a personal interest independent of commercial value. A regime in which the personal interest is vindicated only where commercial value exists has abandoned its own premise.

Authorship of Machine Output

The threshold question is originality

The second half of the enquiry turns from what a system does to authors to what a system produces. The question is usually framed as one of authorship — who owns machine output? — and the framing is mistaken.

Section 2(d)(vi) of the Copyright Act defines the author, in relation to any literary, dramatic, musical or artistic work which is computer-generated, as the person who causes the work to be created.²⁴ That is a definitional provision. It tells a court whom to call the author of a work which is computer-generated. It does not determine that a computer-generated production is a work, and it does not dispense with Section 13(1)(a), which requires that a literary work be original.²⁵

The threshold question is therefore whether machine output is original within the meaning the Supreme Court gave that term in *Eastern Book Co. v. D.B. Modak* (2008): whether it is the product of the exercise of skill and judgment amounting to more than a purely mechanical exercise, displaying at least a minimal degree of creativity.²⁶ If it is not, there is no work, Section 2(d)(vi) never comes into operation, and the question of authorship does not arise.

²¹ On goodwill as the subject of protection in passing off, and on its interaction with statutory trade mark rights, see the Trade Marks Act, No. 47 of 1999 (India).

²² The orders referred to are interlocutory and are described from professional commentary rather than from the orders themselves; their citations and terms should be verified before reliance. See the limitation recorded in Part 4.

²³ *ICC Development (International) Ltd. v. Arvee Enterprises*, 2003 SCC OnLine Del 2, (2003) 26 P.T.C. 245 (India); *Titan Industries Ltd. v. Ramkumar Jewellers*, 2012 SCC OnLine Del 2382 (India); *Justice K. S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 S.C.C. 1 (India). Citations should be verified before formal reliance.

²⁴ Copyright Act, No. 14 of 1957, § 2(d)(vi) (India), inserted by the Copyright (Amendment) Act, No. 38 of 1994 (India).

²⁵ Copyright Act, No. 14 of 1957, § 13(1)(a) (India).

²⁶ *Eastern Book Co. v. D.B. Modak*, (2008) 1 S.C.C. 1 (India). The Court rejected the sweat of the brow doctrine and adopted a standard of skill and judgment displaying a minimal degree of creativity. Compare *Feist Publications, Inc. v. Rural Telephone Service Co.*, 499 U.S. 340 (1991).

Applying the standard

The standard is applied to the person claiming to be the author and asks what that person contributed to the expression.

Where a user supplies a short prompt and receives an output, the user has exercised no skill or judgment over the expression. The user has specified a subject; the particular words, their order, their emphasis and their structure were determined by the system's sampling from a probability distribution, in which the user played no part. On the Eastern Book Company standard the user is not the author of the expression.

Where a user prompts iteratively, rejects outputs, specifies structure, edits what is returned and assembles the result, the contribution differs in character. At some point along that spectrum the selection and arrangement become an exercise of skill and judgment.

This paper adopts the spectrum position and rejects both extremes. The categorical position that machine output is never protected disregards the substantial human contribution present in some workflows. The categorical position that it is always protected, the user being the person who caused it to be created, collapses the originality requirement, since it would confer copyright on the product of a five-word instruction.

What is protected on the spectrum position

A refinement is required. What crosses the threshold in a heavily directed workflow is not ordinarily the machine's prose. It is the user's selection and arrangement of it, which is what is protected in a compilation. A user who generates two hundred passages, selects fifteen, orders them, edits them and interposes original material has produced a work whose protected elements are the selection, the arrangement and the interposed material — not the sentences the system composed.

The practical consequence is a thin copyright: sufficient to prevent wholesale reproduction of the assembled whole, insufficient to prevent another person generating similar prose from a similar prompt.

The comparative position

The position adopted here corresponds closely to that reached by the United States Copyright Office. In the second part of its report on copyright and artificial intelligence the Office concluded that copyright protects the original expression of a human author even where a work includes AI-generated material; that sufficiency of human contribution must be analysed case by case; that prompts alone do not, on currently available technology, provide sufficient control for the resulting work to be authored by a human; and that human authors are entitled to copyright in expression perceptible in AI outputs and in the creative selection, coordination or arrangement of material in the outputs, or creative modifications of them.²⁷

The Office declined to recommend additional copyright or sui generis protection for AI-generated content, concluding that existing legal doctrines are adequate.²⁸ India is in a better position than jurisdictions that expressly protect computer-generated works to reach the same result without amendment, because Section 2(d)(vi) is definitional rather than protective.

Why Section 2(d)(vi) cannot allocate

Where the threshold is crossed, the allocation question arises, and Section 2(d)(vi) cannot answer it. Four candidates are supportable on the phrase the person who causes the work to be created — the user, the developer, the deployer, and no one — and the Act supplies no criterion for choosing.

A further difficulty is decisive. Section 22 measures the term of copyright in a published literary work by sixty years from the beginning of the calendar year following the author's death.²⁹ A term measured by a life

²⁷ United States Copyright Office (2025) (see note 9). See also United States Copyright Office (2023), Copyright Registration Guidance: Works Containing Material Generated by Artificial Intelligence, 88 Fed. Reg. 16190.

²⁸ United States Copyright Office (2025) (see note 9). On the wider theoretical question see Ginsburg (2003) and Yu (2017).

²⁹ Copyright Act, No. 14 of 1957, § 22 (India).

presupposes an author who has one. Where authorship is allocated to a corporate developer or deployer under Section 2(d)(vi), the provision has nothing to operate on, and the Act contains no alternative measure. This is not an infelicity that construction can repair.

Nor does joint authorship assist. Section 2(z) requires collaboration, and a user prompting a commercial service and a developer who trained the model years earlier in another country have not collaborated in any sense the word will bear.³⁰ The route being closed removes the most obvious means by which the Act might have accommodated a multi-party process without amendment.³¹

Table 2. Originality and the protection of machine output.

Note: Authors' construction, applying the standard in Eastern Book Co. v. D.B. Modak (2008).

Human contribution	Original within s. 13(1)(a)?	What, if anything, is protected
Short prompt only	No	Nothing; s. 2(d)(vi) does not engage
Detailed or iterative prompting	No, on the better view	Nothing in the output itself
Selection among many outputs	Yes, if judgment exercised	The selection, as in a compilation
Selection, arrangement and editing	Yes	Selection, arrangement, edits and interposed text
Human text perceptible in output	Yes	The human-authored expression

Findings and Discussion

The findings are as follows.

First, Section 57 is a partial instrument. The integrity limb is engaged where a system distorts an existing work, and the construction Indian courts have given to other act in relation to the said work accommodates the case without extension. The scale at which a system distorts, and the authority with which users receive its output, supply an argument on prejudice to honour or reputation that is stronger in this context than in any previously litigated and that has not been advanced.

Second, Section 57 does not reach the fabrication of material attributed to an author. The integrity limb fails for want of a work; the paternity limb confers a right to claim authorship of what one wrote and not a right to disclaim authorship of what one did not. This is a genuine gap, it is not closed by any other provision of the Act, and it corresponds to the harm generative systems produce most characteristically.

³⁰ Copyright Act, No. 14 of 1957, § 2(z) (India) (definition of a work of joint authorship, requiring collaboration in which the contribution of one author is not distinct from that of the other).

³¹ On the difficulty of accommodating multi-party creative processes within existing authorship categories, see Ginsburg (2003) and Waisman (2008). On the protection of characters and other non-textual elements, on which the Indian position is undeveloped, compare *Nichols v. Universal Pictures Corp.*, 45 F.2d 119 (2d Cir. 1930), and *Krishika Lulla v. Shyam Vithalrao Devkatta*, (2016) 2 S.C.C. 521 (India).

Third, the gap results from a drafting choice rather than a conceptual difficulty. The Berne Convention does not require a false attribution right; the United Kingdom confers one; India, drafting to satisfy the Convention, did not go beyond it.

Fourth, the alternative instruments protect the wrong people. Defamation requires a defamatory imputation, passing off requires goodwill with trading significance, and the personality rights jurisprudence rests predominantly on the commercial value of a persona. The celebrated are protected and the ordinary author is not, which inverts the premise of moral rights.

Fifth, machine output is not original within the meaning of *Eastern Book Co. v. D.B. Modak* where the human contribution is confined to a short prompt. The threshold question is originality rather than authorship, and Section 2(d)(vi) never comes into operation where the threshold is not crossed. What is protected in a heavily directed workflow is the selection, arrangement and editorial contribution, not the sentences the system composed.

Sixth, the two halves of the analysis address a single omission. The Act presupposes that a text has an author whose relation to it is ascertainable. Generative systems break that presupposition from both ends: fabricated attribution asserts a connection that does not exist, and machine output has none to assert.

These findings entail a substantial and growing public domain of machine output. Three considerations support that outcome. Copyright is an incentive, and a system producing output on demand at negligible cost requires none. Protection would be unadministrable, the ownership of most such material being untraceable. And it would corrupt the originality standard *Eastern Book Company* adopted precisely to prevent copyright attaching where no relevant judgment was exercised.

The strongest objection is that the distinction between machine and human output is not ascertainable, so that protection would turn on an undiscoverable fact. The answer is evidential: the burden of establishing subsistence lies on the party asserting copyright, which places it on the party with the knowledge. A claimant who cannot say who wrote the text it sues on has a difficulty independent of any question about machines.

Recommendations

A false attribution right

A false attribution right should be inserted as a new sub-section of Section 57, conferring on any person the right not to have a literary, dramatic, musical or artistic work falsely attributed to that person as author, infringed by the communication of material bearing such an attribution.

Four design choices are proposed, each departing from the British model for a reason.

The right should be conferred on any person rather than on an author of an existing work, and should state expressly that it is immaterial whether the work to which the attribution relates was created by any person or by automated means, or whether any such work exists. This is the provision distinguishing the new right from the existing paternity right.

The right should extend to communication to any person and not merely to issuing to the public, because a fabricated attribution generated for a single user is the ordinary case and a right confined to public issuance would miss it. The individual character of the communication should go to damages rather than to liability.

A knowledge element should be included, which the British provision does not contain for primary acts. Strict liability for every fabrication a system produces would be liability without any possibility of compliance, since some rate of fabrication follows from the training objective itself. Liability should attach where the operator knew or had reasonable grounds to believe the attribution false, or where it has failed to prevent recurrence after notice identifying a specific attribution.

A defence should be provided where a reasonable person receiving the communication would not understand the attribution as a genuine assertion of authorship. This preserves parody, satire and fiction written in an author's

voice, and it does so without requiring a court to evaluate the merit of the work — the question is whether anyone would have been misled, not whether the piece is good satire.

Duration and waiver

Duration requires a decision and neither existing model fits. Tying the right to the term of copyright is incoherent where there is no work and therefore no term. Ending it with the death of the person leaves estates without remedy against fabricated attribution to deceased authors, which is a foreseeable harm, deceased authors being frequent subjects of fabricated quotation. A fixed period running from death, exercisable by legal representatives, is the only coherent option, and twenty years follows the British precedent.

Waiver requires attention because Section 57 does not in terms address it and Indian practice has proceeded on the footing that contractual waiver is effective. A false attribution right waivable by the terms of service of a generative product would be worth very little, and would produce the arbitrary result that users of the product are unprotected while non-users are protected. The provision should therefore state that a waiver does not affect an attribution made by a person who is not a party to the agreement.

Accuracy as an element of technical care

The remedial difficulty identified above should be addressed by including, among the technical measures expected of an operator, reasonable measures directed at the accuracy of the system's reporting of a work of which the author has given notice. That is a narrower obligation than a general duty of accuracy, which no system could discharge, and it corresponds to the structure of the moral right, which is personal to the author and asserted by the author.

Computer-generated productions

An express provision should state that a production generated by a computer is a work only where a person has contributed skill and judgment to its expression, or to the selection or arrangement of its contents, sufficient to satisfy the requirement of originality; that copyright subsists in that contribution and does not extend to any part of the production to which no such contribution was made; that the giving of instructions to a computer, without more, is not such a contribution; and that the burden of establishing the contribution lies on the person claiming the copyright.

Section 2(d)(vi) should be amended to allocate authorship to the person who contributed the skill and judgment by reason of which the work is original, in place of the indeterminate person who causes the work to be created; and a fixed term should be substituted for the life-based term where the author so identified is not a natural person.

Conclusion

Indian moral rights doctrine addresses one half of the harm generative systems do to authors and not the other. Where a system distorts an existing work, Section 57 is engaged and the Indian construction of it is generous enough to accommodate the case; the difficulty is remedial and is answered by a technical care standard. Where a system fabricates material and attaches an author's name to it, Section 57 has nothing to operate on, and the instruments that remain protect commercial identity rather than authorship.

The gap is worth occupying because it is the point at which the difficulties generative systems create touch something copyright has always claimed to protect and here does not. It is a harm to authorship as such, it falls squarely within what moral rights exist to protect, and it can be closed by a sub-section.

On authorship of output, the question is prior to Section 2(d)(vi) and is answered by the originality standard the Supreme Court settled in 2008 in terms that require an exercise of skill and judgment over expression. A prompt is not such an exercise. What follows is a public domain of machine output, qualified by protection for human selection and arrangement where it exists, and that outcome is not a failure of the Act but a correct application of a standard adopted for other reasons and well suited to this one.

Future research would valuably extend this analysis in two directions: an empirical study of the incidence of fabricated attribution in deployed systems, indicating the practical scale of the harm; and a study of moral rights waiver in Indian publishing and film practice, on which the efficacy of the proposed right depends.

Limitations of the Study

This paper is doctrinal and conceptual and does not report primary empirical data. The technical propositions on which it relies are drawn from published research and are limited by the models and dates those studies examined.

Certain Indian personality rights orders relied upon are interlocutory and are described from professional commentary rather than from the orders themselves. Their citations and terms should be verified before reliance, and the jurisprudence is developing rapidly.

The Indian law on the waiver of moral rights and on the protection of fictional characters is undeveloped, and propositions in those areas are advanced as argument rather than as settled law.

The paper is confined to literary works and to text-generating systems. Conclusions reached here should not be assumed to transpose to image, audio or video generation, which would engage the corresponding rights in artistic works and sound recordings and a different body of personality rights authority.

Funding

The authors received no funding for this research.

Disclosure Statement

The authors report there are no competing interests to declare.

Declaration of Generative AI Use

The authors used a generative artificial intelligence tool to assist with drafting and language editing of the manuscript. All legal analysis, argument, doctrinal interpretation and conclusions are the authors' own. All statutory provisions, judicial decisions and secondary sources cited were independently verified by the authors against primary or authoritative sources, and the authors take full responsibility for the content and integrity of the published work.

Data Availability Statement

Data sharing is not applicable to this article as no new data were created or analysed in this study. All primary legal materials referred to are publicly available from the sources cited in the reference list.

References

- [1] Amar Nath Sehgal v. Union of India, 2005 SCC OnLine Del 209, (2005) 30 P.T.C. 253 (2005). (India).
- [2] Berne Convention for the Protection of Literary and Artistic Works, art. 6bis, Sept. 9, 1886, as revised at Paris July 24, 1971, 1161 U.N.T.S. 3.
- [3] Bommasani, R., Hudson, D. A., Adeli, E., Altman, R., Arora, S., von Arx, S., Bernstein, M. S., Bohg, J., Bosselut, A., Brunskill, E., Brynjolfsson, E., Buch, S., Card, D., Castellon, R., Chatterji, N., Chen, A., Creel, K., Davis, J. Q., Demszky, D., ... Liang, P. (2021). On the opportunities and risks of foundation models. arXiv. <https://arxiv.org/abs/2108.07258>
- [4] Copyright Act, No. 14 of 1957 (India).
- [5] Copyright (Amendment) Act, No. 38 of 1994 (India).
- [6] Copyright (Amendment) Act, No. 27 of 2012 (India).
- [7] Copyright, Designs and Patents Act 1988, c. 48 (UK).
- [8] Eastern Book Co. v. D.B. Modak, (2008) 1 S.C.C. 1 (2008). (India).

- [9] Feist Publications, Inc. v. Rural Telephone Service Co., 499 U.S. 340 (1991).
- [10] Ginsburg, J. C. (2003). The concept of authorship in comparative copyright law. *DePaul Law Review*, 52(4), 1063–1092.
- [11] Holtzman, A., Buys, J., Du, L., Forbes, M., & Choi, Y. (2020). The curious case of neural text degeneration. In *Proceedings of the 8th International Conference on Learning Representations*.
- [12] ICC Development (International) Ltd. v. Arvee Enterprises, 2003 SCC OnLine Del 2, (2003) 26 P.T.C. 245 (2003). (India).
- [13] Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (India).
- [14] Ji, Z., Lee, N., Frieske, R., Yu, T., Su, D., Xu, Y., Ishii, E., Bang, Y. J., Madotto, A., & Fung, P. (2023). Survey of hallucination in natural language generation. *ACM Computing Surveys*, 55(12), Article 248. <https://doi.org/10.1145/3571730>
- [15] Justice K. S. Puttaswamy (Retd.) v. Union of India, (2017) 10 S.C.C. 1 (2017). (India).
- [16] Krishika Lulla v. Shyam Vithalrao Devkatta, (2016) 2 S.C.C. 521 (2016). (India).
- [17] Mannu Bhandari v. Kala Vikas Pictures Pvt. Ltd., A.I.R. 1987 Del. 13 (1987). (India).
- [18] Nichols v. Universal Pictures Corp., 45 F.2d 119 (2d Cir. 1930).
- [19] Radford, A., Wu, J., Child, R., Luan, D., Amodei, D., & Sutskever, I. (2019). Language models are unsupervised multitask learners. *OpenAI*.
- [20] R. Rajagopal v. State of Tamil Nadu, (1994) 6 S.C.C. 632 (1994). (India).
- [21] Rigamonti, C. P. (2006). Deconstructing moral rights. *Harvard International Law Journal*, 47(2), 353–412.
- [22] Sundara Rajan, M. T. (2011). *Moral rights: Principles, practice and new technology*. Oxford University Press.
- [23] Titan Industries Ltd. v. Ramkumar Jewellers, 2012 SCC OnLine Del 2382 (2012). (India).
- [24] Trade Marks Act, No. 47 of 1999 (India).
- [25] United States Copyright Office. (2023). Copyright registration guidance: Works containing material generated by artificial intelligence, 88 Fed. Reg. 16190.
- [26] United States Copyright Office. (2025). Copyright and artificial intelligence, Part 2: Copyrightability.
- [27] Vaswani, A., Shazeer, N., Parmar, N., Uszkoreit, J., Jones, L., Gomez, A. N., Kaiser, Ł., & Polosukhin, I. (2017). Attention is all you need. In *Advances in Neural Information Processing Systems* (Vol. 30, pp. 5998–6008). Curran Associates.
- [28] Waisman, A. (2008). Revisiting originality. *European Intellectual Property Review*, 30(9), 370–376.
- [29] WIPO Copyright Treaty, Dec. 20, 1996, 2186 U.N.T.S. 121.
- [30] Yu, P. K. (2017). Can algorithms promote the progress of science and the useful arts? *Northwestern Journal of Technology and Intellectual Property*, 14(1), 1–58.
- [31] Zhang, C., Bengio, S., Hardt, M., Recht, B., & Vinyals, O. (2021). Understanding deep learning (still) requires rethinking generalization. *Communications of the ACM*, 64(3), 107–115. <https://doi.org/10.1145/3446776>