Panel Discussion at UPenn and IDIA conference at Indian Law Institute

CIIPC
11 March 2019

University of Pennsylvania Law School and IDIA organised a conference titled 'A 3-D Perspective on Indian Intellectual Property: Distinct, Diverse and Democratic?'at the Indian Law Institute, New Delhi on 5th March 2019. Dr. Arul George Scaria, Co-director, CIIPC, was part of the panel discussion on copyright law in India and this panel was chaired by Prof. Shyamkrishna Balganesh, Professor of Law and Co-Director of the Centre for Technology, Innovation and Competition, University of Pennsylvania Law School.

During his presentation, Dr Scaria discussed the distinct, diverse and democratic characterof the Indian Copyright Law by focusing on 2 provisions – educational use exception under S. 52(1)(i) and moral rights protection under S. 57. Dr. Scaria started his presentation by highlighting that philosophical underpinnings of India's Copyright regime could not be traced to a single theory of copyright and history of Indian copyright law shows the openness to adopt elements from diverse clusters of theories such as welfare theory, personality theory, and fairness theory. According to him, this openness has often also resulted in better balance between the rights of creators, copyright owners and users of copyrighted works. He used the educational use exception under Sec. 52(1)(i) and the moral rights provision as two examples in this regard. In the context of the educational use exception, he discussed how the Single Bench and the Division Bench of the Delhi High Court approached the educational use exception provision in the in the DU Photocopy Shop case (*Chancellors and Masters of University of Oxford* v. *Rameshwari Photocopy Services & Others)*. By examining the approaches taken in both the judgments, and by contrasting it with the position taken by courts abroad in similar factual circumstances, he argued that India has taken a distinct and democratic approach that aims to better balance the rights of users and producers of knowledge, and democratise access to knowledge.he With regard to the moral rights provision in S. 57, he pointed out that one can find the roots of that approach in the personality theory of copyright. While common law countries have not historically shown much enthusiasm for adopting personality theory or rights based on personality theory, India took a distinct approach during the post-independence period. India granted strong moral rights protection in the first post-colonial copyright legislation and this approach might have been shaped by the views of the leaders of the freedom struggle. Referring to Prof. Balganesh's seminal work titled 'Gandhi and Copyright Pragmatism', he highlighted how Gandhi tried to protect certain non-economic rights of authors through the copyright system and according to him, leaders like him have contributed to the evolution of a distinct, diverse and democratic approach in Indian copyright law.

Cite as (OSCOLA, 5th ed.): CIIPC, 'Panel Discussion at UPenn and IDIA conference at Indian Law Institute' (*The Innovation Brief*, 11 March 2019) <https://innovationbrief.nludelhi.ac.in/essays/panel-discussion-at-upenn-and-idia-conference-at-indian-law-institute> accessed 18 November 2026.

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Published by the Centre for Innovation, Intellectual Property and Competition, National Law University Delhi. Read online at https://innovationbrief.nludelhi.ac.in/essays/panel-discussion-at-upenn-and-idia-conference-at-indian-law-institute.