

# FREED FROM CAGE: PUTTING AN END TO COPYRIGHT PROTECTION OF GURU RABINDRANATH TAGORE'S WORKS

*V.K. Ahuja\**

The expiry of copyright term in Guru Rabindranath Tagore's work on 31<sup>st</sup> December, 2001 has brought smiles on the faces of many and apprehensions for some. Guru Rabindranath Tagore (hereinafter referred to as 'Gurudev') died in 1941 and the copyright in his works vested in Vishva Bharti University after his death. His work was due to fall in public domain on 1<sup>st</sup> January 1992 but on the request of Vishva Bharti University, the President promulgated Copyright (Amendment) Ordinance, 1991 on December 28, 1991 to extend the term of copyright from fifty year to sixty years after the death of the author.<sup>1</sup> The Ordinance was later on replaced by the Copyright (Amendment) Act, 1992. The paper discusses the impact of the expiry of copyright in Gurudev's work on the society. The paper also discusses the amendment required to be made in Copyright Act, 1957 in order to prevent plagiarism.

## I. JUSTIFICATION FOR COPYRIGHT SYSTEM

The copyright system is developed by the nations to encourage and reward authors, composers, artists, designers and other creative people as well as the publishers and film producers, who risk their capital in putting their works before the public. This is done by giving to the author certain exclusive rights to enjoy the benefits of the created subject matter for a limited period of time. These exclusive rights include the right to reproduce the work in any material form whatsoever; to issue copies of the work to the public; to perform the work in public; to make any cinematograph film or sound recording of the work; to make any translation or adaptation of the work etc.<sup>2</sup> These rights are also known as economic rights. The grant of these rights to copyright owner under a copyright legal system is by way of a monopoly for a limited period of time. The monopoly rights are granted to copyright owner in his work, so that he could exploit his work to the exclusion of others. In India, the copyright term is normally the author's life plus sixty years after his death. During this period, persons other than the copyright owner are not allowed to make themselves enrich at the cost of the labour of copyright owner which he has put in producing the work.

The copyright law, however allows people to make some free uses of the copyright material. The list of these free uses has been laid down in the

---

\* Lecturer in Senior Scale, Law Centre-II, Faculty of Law, University of Delhi, Delhi.

<sup>1</sup> See the Copyright Act, 1957, section 22.

<sup>2</sup> *Id.*, section 14.

Copyright Act, 1957.<sup>3</sup> The reason for having provisions relating to free uses in the Act and providing copyright protection only for a limited period of time is to strike a balance between the interests of the copyright owner and the interests of the society at large. Thus, the private rights of the copyright owner have been curtailed to a limited extent in the interest of society. The concept of public interest has also been recognized in the Universal Declaration of Human Rights, 1948.

Article 27 of the Declaration reads as under:

- (1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
- (2) Everyone has the right to protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

The Declaration, thus, recognizes the rights of organized society in paragraph (1) and the rights of the copyright owner in paragraph (2).

## II. REASON FOR LIMITED DURATION OF COPYRIGHT

The reason for providing limited term to copyright does not mean that it is an inferior kind of property. It is because of the fact that the works should be accessible to the widest possible public after a limited period.

The limited copyright terms is, in fact, a compromise between those who argue that copyright should be permanent i.e. last as long as the work is used because it is appreciated and enjoyed by the public, and those who argue that it is a personal right and should terminate with the life of the author so that the public can enjoy its unrestricted use after his death.<sup>4</sup> The concept of public interest, thus, gives rise to the notion that eventually the work should enrich the national culture and become public property after a fixed period of time i.e. when the term of copyright in a work expires. This is also referred to as 'work falling into public domain'.

Historically, the Statute of Queen Anne in the United Kingdom in 1709 provided copyright term to a work for 14 years from its publication. It was renewable for another term of 14 years if after the first term the author was still alive.

At international level, the Berne Convention in 1886 provided the term of copyright as 10 years from the end of the year of first publication. However, this term was raised to a term of the life of the author and fifty years after his

---

<sup>3</sup> *Id.*, section 52

<sup>4</sup> Stephen M. Stewart, *INTERNATIONAL COPYRIGHT AND NEIGHBORING RIGHTS* 122 (London: Butterworths, 1983).

death in 1908.<sup>5</sup> In England also, the same copyright term was fixed in the Copyright Act, 1911. Following the E.C. Directive, the general term of copyright under the Copyright, Designs and Patents Act, 1988 in England has been raised to the author's life plus seventy years thereafter.

### III. DISTORTION AND MUTILATION OF GURUDEV'S WORKS

Guru Rabindranath Tagore was the first non-European to win the Nobel Prize for Literature. Translated into every established language, his books took the world by storm between 1914 and 1940, topping the bestseller lists in many countries. He published around 60 volumes of poetry, 60 plays, 100 short stories, 12 novels and innumerable essays on every conceivable subject. He invented a whole genre of songs that he composed himself. He also innovated an intense, subjective style of painting.<sup>6</sup>

After the death of Gurudev, the questions arise as to how many Indian children (excluding Bengali) read or know about Gurudev? How many adults read Gurudev's work in India?

For six decades, the copyright in all works of Gurudev-literary, dramatic, musical and artistic-vested in the Vishva Bharti University. None could publish Gurudev's work without its prior permission. Though it was the moral duty of Vishva Bharti University to project Gurudev's work in the non-Bengali sphere throughout the country, yet it failed in its duty miserably. Further, the Vishva Bharti has never encouraged people who independently approached it with translations of Gurudev's work. They were either denied permission or demanded extensive and humiliating revisions. The Vishva Bharti is however, justified to some extent when it says that existing translations were not faithful to the originals. But, in any case, it was the sole duty of Vishva Bharti to translate Gurudev's work and propagate it throughout the world, which it has not performed. Now when Gurudev's work has fallen into public domain, it is making a lot of hue and cry that the purity of Gurudev's works will be maligned.

It is noteworthy that in January 2002 itself, the month in which Gurudev's work fell into public domain, the people have started exploiting and commercialising his work. It is true that Gurudev's work will receive every imaginable and unimaginable arrangement, instrumentation and distortion of his musical work. Some will turn into commercial hits, may be pop songs or even remixes, while other renditions will follow tradition or reveal unexpectedly new artistic directions for the sensitively attuned. It is now for the listeners to decide what they will like. Contrary to Vishva Bharti's paranoia, no classic author has ever been hurt by bad productions. The blame

<sup>5</sup> Berne Convention, Article 7.

<sup>6</sup> Ananda Lal, "Caged No More", *HT Sunday Magazine*, January 13, 2002.

falls on the person who presents the work to the public in bad shape whether he is singer, music composer, director, translator, adaptor, or someone else.

#### IV. PLAGIARISM, DISTORTION OF WORK AND COPYRIGHT LAW

In India, the Copyright Act, 1957 provides two kinds of rights to the author-economic rights<sup>7</sup> and moral rights.<sup>8</sup> As already stated, economic rights of the author include *inter alia*, the right to reproduce the work in any material form whatsoever; to issue copies of the work to the public; to perform the work in public, or communicate it to the public; to make any cinematograph film or sound recording of the work; to make any translation of the work; and to make any adaptation of the work.

The moral rights are provided in section 57 of the Act as author's special rights. The moral rights of the author are (i) to claim authorship of the work; and (ii) 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. The moral rights are available to the author independently of his copyright and even after the assignment by him of his copyright.

The moral rights are not perpetual and cease to exist once the work falls into public domain. This means that anybody can legally distort, mutilate or modify the work so fell into public domain. Further, plagiarism of such work will also be allowed as section 57 is silent on this issue. It is submitted that section 57 should be amended and the right to claim authorship of the work should be made perpetual.

#### V. CONCLUSION

The work of Gurudev is no doubt, a treasure for the society. It is expected that singers, musicians, film producers, translators, publishers and others will exploit the work of Gurudev and commercialise it very soon. Some of the publishers and performers have already hit the market with Gurudev's works. For example Rupa & Co. has come out with their affordable *Rabindra Rachnavali* series. These eight, attractive pocket-sized books include *Gitanjali*, for which Tagore was awarded the Nobel Prize for Literature, *Post Office*, a play, *The Religion of Man*, his lectures on religion and its significance, *The Crescent Moon*, poems for children and *Poems of Kabir*, translated by Gurudev, Lipika, a set of poems never before published in English, and some of his later poems.<sup>9</sup> Kumarjit Sarkar, a Kolkata based young singer has come

<sup>7</sup> The Copyright Act, 1957, section 14.

<sup>8</sup> *Id.*, section 57.

<sup>9</sup> *The Hindustan Times*, January 13, 2002.

out with his album *O Shinjini*, which he terms as his experiments with Rabindra Sangeet. The album contains six songs penned by Gurudev set to tunes composed by Kumarjit Sarkar.<sup>10</sup> The album, being controversial was banned in Kolkata. In near future, there will be more experiments with Rabindra Sangeet. It is for the listeners to decide whether they would go for experimented form or puritan form.

The translators and publishers will bring out translations of Gurudev's works. The apprehension of Vishva Bharti may come true when it says that the translations may not be authentic. It is, therefore, for the Vishva Bharti if it is really concerned about authenticity, to do what it has not done in last sixty years. It should translate the work of Gurudev with the help of credible persons and make it available to the whole world.

It is noteworthy that even during the subsistence of copyright, a person can apply to the Copyright Board for a licence to produce and publish a translation of a literary or dramatic work in any language if such translation has not been published by the owner of copyright, or if a translation has been so published, it has been out of print. The Copyright Board after following the procedure as laid down in section 32 of the Copyright Act may grant a non-exclusive licence. It appears as if people did not invoke the provisions of Copyright Act regarding grant of compulsory licences.

It is submitted that the Vishva Bharti should launch a national Tagore Repertory, just like the Royal Shakespeare Company, to perform his works in Shantiniketan and Kolkata and tour the country as well.

In order to prevent distortion of Gurudev's work, the Bengal intelligentsia has appealed to the Ministry of Human Resource Development to ask the UNESCO to declare Gurudev's works a world heritage, just as the works of Shakespeare and Tolstoy are. With the rein transferred to the world's highest custodian of culture, the distortions could be prevented.<sup>11</sup>

To sum up, the fame of Gurudev will not be hurt by bad presentation of his work. The people responsible for such presentation will only be blamed by the society. Change in the society is inevitable. Let the people from academics, entertainment and art come forward and remould the texts and present a decent work. The society itself will make a difference between good and bad and accordingly accept or reject the modified form of the work. It is, however submitted that section 57 of the Copyright Act, 1957 should be amended and the right to claim authorship of the work should be made perpetual in order to prevent plagiarism, otherwise it may amount to unjust enrichment.

---

<sup>10</sup> *The Times of India*, January 14, 2002.

<sup>11</sup> *The Times of India*, January 4, 2002