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Brushing Up on Artist Resale Rights: Understanding Artist Resale Rights in Indian Art Market -Unlocking Fair Compensation for Creativity.

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In recent years, the Indian art market has experienced a significant surge in growth, resulting in high-priced sales of artworks across various platforms. While this growth provides artists with an excellent opportunity to showcase their talent and creativity, it also presents challenges related to fair compensation and recognition of their artistic contributions. To address these issues, the Artist Resale Rights (ARR) system has emerged as a vital mechanism to ensure that artists receive equitable benefits from the resale of their original artworks.

Artists are individuals who can conceptualize emotions, ideas, or moments and express them through their imagination, regardless of their medium, activity, or skill level. Artistic work comprises paintings, sculptures, drawings, engravings, photographs, architecture, or any other work of artistic craftsmanship. This includes blueprints, cartoons, maps, graphics, plans, plots, and photographs. Therefore, an original artwork can be defined as a unique work created by an author or owner in tangible form, expressed as a result of the artist's talent and judgment, and not merely mechanical exercises.²

The concept of ARR is a testament to the enduring value of Original visual artistic creations and the integral role of artists in cultural expression. By granting artists and their heirs the right to receive a percentage of the resale price each time their artworks are sold in the secondary market, ARR seeks to rectify the financial imbalances that many artists face. This residual right not only

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² The Indian Copyright Act 1957 Section 2C

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provides artists with ongoing income but also recognizes the appreciation of their work over time. Artist's Rights are an essential aspect of the legal framework in India, based on the Copyright Act of 1957. Although implementing these rights has been challenging, it is a necessary step towards safeguarding artists' economic interests. Many artists remain unaware of their rights, and the secondary art market operates without adequate safeguards for them. However, with proper regulations, enforcement mechanisms, and infrastructure for royalty collection and distribution, artists' rights can be put into practice, empowering them to achieve their full potential.

As artworks move through the market, the economic implications for artists are becoming increasingly significant. The goal is to gain insights into the multifaceted nature of artist resale value, including its origins, current status, and potential future trajectories. Currently, artists who are still alive are entitled to the artist's resale right, which remains valid for up to 60 years after their passing. This right is considered "inalienable," meaning that artists and their heirs own it and cannot sell or waive it. However, there are circumstances where it may make sense for an artist to transfer the right to a charity or other third-party. Questions arise as to who is responsible for paying the resale royalty, the seller or the buyer, and what percentage of the royalty is appropriate. Additionally, there is the question of whether the auction price or the sales price should be used as the basis for the calculation.

The doctrine of resale rights for artists originates from the concept of *Droit de suite* ("DDS"), which means the "right to follow". DDS was first introduced in France, and it expands on the concept of copyright law by emphasizing an artwork's representation of the artist's character and personality, as well as its economic value. The question then arises if the original artist, legally referred to as the "author", is entitled to any share in the significant increase in the artwork's value.

Under Indian law, the answer to this question can be found in Section 53A of the Indian Copyright Act, 1957 ("Copyright Act"). India is a signatory to the Berne Convention, and in 1994, it amended the Copyright Act and introduced Section 53A, which enumerates the concept of resale rights for artists. Therefore, it is clear that under Section 53A, artists and their legal heirs have a resale share right in the original copies of the works listed therein. However, this right is only available if the artist is the first owner of the rights in the concerned work under Section 17 of the Copyright Act..

It's important to note that artists do not have the right to their work if it was created during employment and the employer is the first owner of copyright in the work, or if the work was commissioned and the commissioner is the first owner of copyright. To avoid any confusion regarding ownership rights and responsibilities, employers and employees should clearly define them in written agreements and contracts.

However, there is an exception to this rule. The resale right allows artists to benefit from any increase in value of their work, even if they have assigned the copyright to someone else. This right is only applicable to visual artists and only if the resale price of the original copy of the work exceeds ten thousand rupees. This is because visual artists cannot benefit from derivative or reproducible income in the same way that writers, filmmakers, and musicians can. The resale right is a legal term that applies to the sale of artworks through established commercial channels such as auction houses, galleries, or art dealerships. This right generally applies to transactions carried out within the formal art market and involves commercial entities facilitating the resale of artworks. Under Indian copyright law, it is the primary responsibility of the seller or intermediary involved in the resale transaction of original visual art to provide an artist resale share. This obligation does not extend to private individuals who resell artworks in private transactions. Therefore, art dealers, galleries, auction houses, art buyers and collectors, and other intermediaries involved in the art market are bound by law to provide the resale share to the artist.

CONCLUSION

India's Copyright Act of 1957 covers a range of creative works, including paintings, sculptures, photographs, and other forms of artistic expression, but it does not provide a precise definition of what constitutes an "artist." Instead, the Act offers protection to various categories of creative works and creators.

Under Section 53A of the Act, artists are entitled to a resale royalty right. However, this right only applies to artworks that sell for more than a specified threshold of rupees ten thousand. Furthermore, this royalty right is applicable for the lifetime of the artist plus 60 years. The Act does not provide any exemptions for specific transactions. Therefore, anyone who sells an artwork is subject to the Act, unless there is a specific agreement or contract between the seller and artist.

The term "original copy" refers to the first version of an artwork created by the artist or the initial manuscript or composition written by the author or composer. This version represents the artist's or author's authentic vision and voice and is often considered the most valuable version of the work.