

## Career Narrative

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*“Poets are the unacknowledged legislators of the world.”*  
– P.B. Shelley, *“A Defence of Poetry”*

Like many people, my earliest memory of music is of hearing my mother sing. What I did not realize until years later was that the songs she was singing were very special.

My parents were born in India and grew up in the Southern Indian state of Tamil Nadu. They were both native speakers of the ancient South Indian language of Tamil. According to British popular historian Michael Wood, the Tamils represent the last surviving classical civilization.<sup>1</sup> In Tamil culture, music and poetry are traditionally considered a single, indivisible art form. The songs that my mother was singing were Tamil poems. They had been composed by her grandfather, and, in keeping with Tamil tradition, he had set them to music himself.

As a child, I was attracted to the beauty of the songs, but I didn't know much about my mother's grandfather. In the meantime, I had become involved in both poetry and music myself. When I was 11 years old, I won a prize in a young people's poetry competition for a sonnet that I had written, on the subject of environmental degradation. The competition judges wrote to my teachers to verify that the poem I submitted had really been written by a child. I won a short story competition open to the general public at the public library in our small Prairie city, and a number of prizes for music.

As I grew older, my mother shared more stories about her family and her past in India. I learned that her grandfather, C. Subramania Bharati, had been an important Indian freedom fighter, one of the first generation of freedom fighters from the southern part of the country. He was also a pioneer of women's rights, and a passionate advocate of women's education.

His contributions to literature were spectacular. Bharati was considered the most important writer in the Tamil language of the 20th century, and his writing had essentially shaped the modern Tamil language as it is spoken today. He was multi-talented and gifted in languages beyond Tamil, speaking and writing several Indian and European languages fluently, and working as a journalist, commenting on Indian and world affairs while helping to publicize the cause of Indian independence. Today, Bharati is an iconic figure in India. He has come to be known as an Indian National Poet.

What I learned about our family's past provided marvelous food for the imagination. At the same time, we all lived a strange paradox. My parents were educated – in fact, they had come to Canada in 1969 so that my father could pursue graduate studies in English literature at Simon Fraser University – and, in this sense, they were privileged. However, they were also typical new immigrants. They had to work hard to establish themselves in Canada.

In India, my mother had been a scholar of Tamil literature. She had carried out pioneering work on her grandfather's writings, completing the first PhD on Bharati's poetry in 1966 at Annamalai

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<sup>1</sup> Michael Wood, *The Story of India*, episode 1. See [https:// www.pbs.org/thestoryofindia/](https://www.pbs.org/thestoryofindia/) (last visited 1 Aug. 2022).

University in the famed Tamil cultural capital of Chidambaram. In Canada, though, she had little opportunity to pursue her career as a Tamil academic. At that time, Bharati was largely unknown in Canada. As a family, we therefore inhabited a dual reality. We had a deep connection with Bharati and his work at home, but in the outside world, we were simply another Canadian immigrant family.

I did not see this duality start to coalesce until, as a teenager, I had the opportunity to travel to India with my parents. I had not been there since the age of eight. From India, I accompanied my mother on a visit to Mauritius, where a large community of people of Tamil origin are settled. The government of Mauritius had invited her there to speak on her grandfather. For the first time, I saw the public side of our private reality as a family. Bharati was not only well known – he was venerated. With the onset of the digital age, his fame would explode across India and towards many corners of the world, where members of the Tamil diaspora, like ourselves, would carry his name.

But here, too, I quickly found myself confronting a paradox. Tamilians felt they knew Bharati well. In many ways, though, their picture of him diverged from what we knew and thought about him. Our image of poet Bharati reflected our perspective on him as our ancestor, and my mother’s deep familiarity with his work. Whenever my mother spoke about Bharati, her focus was on the objective facts of his life, reflecting her scholarly training, and she firmly refuted unproven stories.

For people outside India, it was even more difficult to imagine the reality of the poet’s life, or what it was like for us to be part of his family. I remember being asked by someone in the United States if I had grown up in a palace. The question made me laugh at the time; but, now that I know so much more about the family’s history, I also feel a sense of sadness.

As a nationalist writer at the time of British rule, the poet had largely been unable to make a living through his writing. Much of his work was proscribed during his lifetime. When he died, his wife struggled to preserve it.

My mother and her siblings, the poet’s grandchildren, grew up in relative poverty and uncertainty. My mother has since written about the importance of education to her grandmother, who was prevented from carrying out much of her own work because of poverty and lack of access to education. When she lay on her deathbed in her native village, my mother’s grandmother was deeply concerned about her grandchildren’s future. She would apparently call out to her neighbors: “Who is going to educate these children?”

I therefore learned very early on about the hardships that can befall culturally “important” families. But I also saw how people coming from these backgrounds can truly treasure their inheritance. Independently of any material value, it is a cultural inheritance of the utmost value to them. The psychology, principles, and motivations of someone like my great-grandmother are awe-inspiring. At the same time, her life, and the lives of Bharati’s descendants, are in many

ways a cautionary tale about what can happen when cultural figures are not properly “taken care of”, to adopt Mahatma Gandhi’s own admonition in relation to poet Bharati.<sup>2</sup>

### **Bharati and his Copyright: J.D. at Osgoode Hall Law School (1994-97)**

Coming from this background, empowerment through education was a priority for me. I took the opportunity to study law at Osgoode Hall Law School, then Canada’s top-ranked law school. The law was a completely new domain for me. As a law student, I felt that I was very much an outsider. However, I now believe that my outsider status is precisely what has allowed me to make contributions in this field that are judged to be outstanding.

As a J.D. student at Osgoode Hall, I studied Copyright Law with David Vaver, then Canada’s leading expert on copyright law. For the first time, I became aware that the problems surrounding Bharati and his legacy could be understood from a legal point of view. This insight led to my first legal research project: a paper about the unusual situation surrounding Bharati’s copyright. As my research developed, I quickly realized that a valuable contribution could be made in this area, not only to poet Bharati’s legacy, but also, to the broader cause of advocacy for artists, who are often a disempowered community – particularly in developing countries.

In Bharati’s case, copyright in the poet’s works had been acquired by the government of the Indian state of Tamil Nadu, in controversial circumstances, in 1949. In 1954, after some failed attempts at publishing an authoritative edition of the poet’s works, the government gave his copyright to the public of India as a gift. This was a rare occurrence in international copyright history. It reflected competing and perhaps irreconcilable policy objectives on the part of the government, a problem that continues to affect Indian cultural policy today.

My paper was the first scholarly study of Bharati’s copyright. It became my first published scholarly paper in 2001.<sup>3</sup> My first research project contained the seed of everything that I have since done in my academic career.

### **Amar Nath Sehgal and the Moral Rights of Authors: LL.M. at the University of British Columbia (1998-99)**

My interest in cultural policy in developing countries led me to pursue a master’s degree. I received a full scholarship and teaching fellowship from the Law Foundation of British Columbia to pursue my LL.M. at the University of British Columbia Law Faculty (1998-99). My LL.M. thesis explored the impact of international copyright law on cultural policy in developing countries.

While studying for my LL.M., I wrote my second legal paper: a commentary on an ongoing case in India involving one of India’s foremost modern artists, Amar Nath Sehgal. The dispute arose out of the treatment of an artwork that had been commissioned by the Indian government from

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<sup>2</sup> The incident is described in S. Vijaya Bharati, *C. Subramania Bharati* (Government of India Publications Division, New Delhi, 1972; multiple reprints, including 2014), 50.

<sup>3</sup> Mira T. Sundara Rajan, “Copyright Matters in the Works of Indian National Poet C. Subramania Bharati” (July 2001) *Singapore Journal of Legal Studies* 161.

Mr. Sehgal in 1959. The work was a mural representing Indian diversity, and it was received with great acclaim upon its completion. However, the mural was substantially damaged when the government dismantled it several years later.

In 1992 – 13 years after the complaint had originally been made – Mr. Sehgal’s case received an interim ruling. In my paper, I considered this ruling and argued that the government’s actions had violated the moral rights of the artist. Moral rights protect the integrity of works of art. India had included them in its first independent copyright legislation after British rule, the Indian Copyright Act of 1957.

In the interim decision of 1992, the judge had ruled in the artist’s favor, granting an injunction and admonishing the government for its failure to appreciate the value of the mural – commenting, colorfully, that the government officials involved could “hardly distinguish the heads of Venus from those of Mars.”<sup>4</sup> After this decision, however, the government proceeded to amend the relevant provisions of the Indian Copyright Act. It removed many of the features of the law that could ultimately have been used to hold it responsible for its mistreatment of the mural. In my paper on the case, I proposed a novel theory by which the moral rights in Mr. Sehgal’s work could still be protected, by linking them to the international protection of cultural heritage.

Moreover, I also suggested that the Indian courts should take a leadership role on a point of legal theory that I found extremely troubling. While moral rights are supposed to protect artistic works from harm, an established tradition of scholarship in this area supports the view that outright destruction of an artwork is not prohibited by moral rights. Once the artwork ceases to exist, so the theory goes, no physical evidence of its mistreatment remains. In the absence of such evidence, a moral rights violation cannot be found. The government had relied upon this position as an alternative argument in Mr. Sehgal’s case, suggesting that damage to the artwork was so severe as to be tantamount to destroying it – and that this should actually bar Mr. Sehgal’s action for violation of his moral rights.

In its final decision in 2005, the Delhi High Court rejected this view.<sup>5</sup> Instead, the Court adopted my approach wholesale. It linked the protection of moral rights under Indian copyright law to India’s membership in international treaties on cultural property and argued that the destruction of artworks violated moral rights by destroying the value of an artist’s overall body of work – or “creative corpus”. Much of the language in the decision was directly derived from my article, including the key concept of “creative corpus”.

The Amar Nath Sehgal case has now become the leading precedent on the moral rights of authors in India. Subsequently, in 2012, the Indian government revised its previous amendments to section 57 and restored an earlier provision that had granted perpetual protection to moral rights. I had recommended this change in my scholarship. My work persuaded the Indian copyright registrar, G.R. Raghavender, to propose this amendment to the government.

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<sup>4</sup> *Amar Nath Sehgal v. Union of India & ors.* (1992), Suit No. 2074 (Delhi H.C.) at para. 3.

<sup>5</sup> *Amar Nath Sehgal v. Union of India*, (30)PTC 253 (Delhi High Court 2005), available at <http://artlawpodcast.com/2020/03/02/moral-rights-in-street-art-the-5pointz-story-revisited/>.

## **Authors' Rights and the Protection of Creative Freedom: DPhil at Oxford University (1999-2003)**

I knew that I wanted to continue working on issues like these, and I had the opportunity to do so when I was admitted to the doctoral program at Oxford University. For my DPhil thesis, I returned to my preoccupation with literature in a fascinating new context.

It was 1999 – still the first decade after the collapse of the Soviet Union. New information was emerging about the dissident movement in Russia and other post-Soviet countries. To me, the situation of these writers, poets, and artists was deeply reminiscent of the life of my great-grandfather, whose circumstances had been shaped by his objections to the British colonial government in India. Like the Soviet dissidents, he had been a passionate advocate of free speech, and a firm believer in government's accountability to its own citizens.

I wrote my DPhil thesis on efforts to reform Russian copyright law in the wake of Soviet rule. To understand the current situation, I had to dig deeply into the past. I traced the evolution of the law alongside the treatment of dissidents by the government at various stages of Soviet and Russian history. My thesis was as much a piece of historical research as legal analysis. It involved uncovering, translating, and analyzing legal provisions and commentaries in Russia from the 1870s until the present, and placing this analysis into the broader social context of the state's relationship with writers and artists. I completed my doctorate in 2003 and subsequently published a book based on my doctoral research: *Copyright and Creative Freedom: A Study of Post-Socialist Law Reform*.<sup>6</sup>

While completing my DPhil thesis, I was offered three major fellowships: a six month fellowship at the prestigious Max Planck Institute for Intellectual Property and Competition Law in Munich, a Bolton Fellowship at McGill University's Law Faculty, and a Herchel Smith Fellowship at the Queen Mary Intellectual Property Research Centre at the University of London. I accepted the Bolton Fellowship and carried out research at McGill in 2001, and then I moved back to the UK and held the Herchel Smith Fellowship at Queen Mary from 2002-04.

During this time, I traveled to India regularly, and my work attracted the attention of the Indian press for the first time. Various profiles of me appeared in the Indian media. To me, the most humbling and personally meaningful of these was an interview by the leading Tamil daily newspaper, *Thinamani*, for its magazine, *Thinamani Kathir*. On January 19, 2003, I appeared on the cover of the magazine, with the simple caption "*Pudumai Penn*" ("*The New Woman*"). These words are the title of a famous poem by C. Subramania Bharati where he describes his "ideal" woman. Among other things, Bharati says that the "new woman" will "write the laws" for the country. The journalist had seen fit to use them here.

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<sup>6</sup> (Routledge UK, 2006).

## **Canada Research Chair in Intellectual Property Law: The University of British Columbia (2004-11)**

As I was completing my doctoral work at Oxford, I was offered an outstanding opportunity by the University of British Columbia Faculty of Law: the chance to apply for a Canada Research Chair award.

These Chairs are the most prestigious awards open to academics who want to work in Canada. They are rigorously peer reviewed and they give Canadian universities an opportunity to recruit talented academics from around the world to work in underdeveloped fields of research in Canada. I accepted UBC's offer of an Assistant Professorship (tenure-track) in 2004, in order to compete for the Chair, and I was awarded the Canada Research Chair in Intellectual Property Law in 2005. At the time, I was, to my knowledge, the only racial minority woman anywhere in Canada to hold a Chair in Law. My Chair would be renewed in 2010, and awarded for the maximum period of two 5-year terms. The financial value of the two awards was \$1,000,000.

While at UBC, I pursued research projects on the evolution of copyright and moral rights in the digital environment. My focus remained on the status of authors. I was successively awarded two "Standard Research Grants" by the Social Sciences and Humanities Research Council of Canada (SSHRC) for my projects: "Copyright in a Global Society: Lessons from Europe" from 2005-08 ((\$67,821.00), followed by "Moral Rights: The Future of Copyright Law" from 2008-11 (\$124,313.00). I was also awarded several prizes at the University, including a prestigious Peter Wall Early Career Fellowship at the interdisciplinary Peter Wall Institute in 2004-05, and a Faculty Scholar award by the Law Faculty. In 2007, I was tenured and promoted to Associate Professor of Law.

I established a virtual, interdisciplinary center for copyright law research at UBC (called the "Intellectual Property Law Program"). This was one of my first projects bringing artists and intellectuals from outside the legal academy to talk to students and to collaborate on research. Visitors to the program included a director of copyright from the World Intellectual Property Organization (WIPO), the head of Canada's Copyright Board, and the second commissioner of Canada's first Aboriginal territory, Nunavut. I worked regularly on Aboriginal traditional knowledge and was commissioned to write a research paper and fact sheet on this topic (Scow Institute, \$5,000). I was also nominated for a teaching award at the Law Faculty.

From UBC, I traveled widely for visiting professorships and fellowships. Most significant among these were my visits to Waseda University in Tokyo (2008), a visiting fellowship at Magdalen College, Oxford (2009), a Global Hauser Visiting Fellowship at NYU Law School (2010), and a visiting professorship at LUISS University (Rome, 2010).

In 2011, I published my second book, which is now considered a seminal work in copyright law, with Oxford University Press: *Moral Rights: Principles, Practice & New Technology*. It is a comprehensive, comparative study of the moral rights of authors that includes less-studied countries such as India and Russia. It also explores the evolution of the moral rights doctrine in the digital environment, which has brought new opportunities and challenges to authorship,

including the spread of misinformation. This book was separately acquired and published in an Indian edition by OUP India (2012), and it was featured in several media profiles in India. A new edition of the book has now been peer reviewed by OUP in Oxford, and I expect it to be published in 2023. The book opens with a literary preface: a retelling of a short, copyright-themed story originally written by C. Subramania Bharati.

### **Professor of Intellectual Property Law at Glasgow University (2013-17): Collaboration with the United States Copyright Office on Moral Rights**

In 2013, I moved to the UK with the support of a former mentor who felt that my leadership could support a valuable new research initiative there. I was appointed Professor of Intellectual Property Law at Glasgow University, which was the seat of CREATE, a multi-million pound interdisciplinary consortium for copyright research established by the British government. At Glasgow, I led the LL.M. program in intellectual property law (“IP in the Digital Economy”), which was then the fastest growing LL.M. program at the School and focused on copyright issues. I developed a course for master’s students on International and Comparative Moral Rights and employed novel interdisciplinary techniques in teaching it. I was also Director of the LL.M. programs as a whole.

The University awarded me a grant to visit Columbia University. During this visit, I had the opportunity to participate in a study process on the moral rights of authors at the United States Copyright Office in Washington DC. Moral rights have always been, and remain, the single most controversial aspect of copyright law in the United States. In particular, it is a matter of debate whether the United States has fulfilled its international obligations to protect authors’ moral rights under the leading international agreement on copyright law, the Berne Convention for the Protection of Literary and Artistic Works, which was originally championed by Victor Hugo in 1883 and adopted in 1886. The United States became a member of Berne in 1989.

The U.S. Copyright Office study process created an unprecedented opportunity to explore moral rights in the American context. I attended a conference hosted by the Office on this subject in Washington DC in 2016, at which time, a senior U.S. policymaker suggested that I hold a companion conference in Glasgow to help the Office to gather information on international approaches to moral rights. I was awarded a grant from the UK Economic and Social Research Council (ESRC) for this purpose and I returned to the United States for a period as a Visiting Scholar at Stanford University (2016-17) to work on this project.

In 2017, I led this conference at Glasgow University. The conference attendees were leading interdisciplinary experts on copyright and related fields from around the world. They included a key Indian policymaker, a leading intellectual property judge from the UK, and a renowned record producer in classical music, as well as musicians and a visual artist who discussed copyright law from their perspectives. The articles from the conference were published in a special symposium issue, with a lead editorial by me, in the peer-reviewed *Journal of Intellectual Property Law & Practice* (Oxford University Press, 2019).

### **ESSEC Business School in Paris: Exploring Rodin's Legacy (2018-19)**

In 2018, I had the opportunity to visit Paris as a Visiting Professor at ESSEC Business School, and Brussels as a research fellow at the CRIDES interdisciplinary research centre of the Catholic University of Louvain. I was a consultant to the Rodin Museum in Paris and, in October of 2019, I organized and led another international and interdisciplinary conference there on Rodin's legacy. The conference participants came from across Europe and North America and included legal scholars, lawyers, policymakers, museum professionals, and an artist.

### **At Present: Bharati's English Writings and Beyond**

I came to the United States in 2019 and am currently Visiting Professor of Intellectual Property Law at UC Davis Law School. I have also been invited to teach and explore research in the areas of Copyright Law and Music at the San Francisco Conservatory of Music in the Spring of 2023.

During this time, I have significantly advanced my scholarship to build new bridges across the domains of law, literature, and post-colonial research. In 2021, I prepared and published a new edition of works originally in the English language by poet Bharati with Penguin India, as a Penguin Modern Classics title commemorating the 100<sup>th</sup> anniversary of the poet's death. This book is the first extended scholarly treatment of Bharati's English works, and it is the first time that these works have been presented to a worldwide audience through a mainstream publication.<sup>7</sup>

The book of Bharati's English writings specifically seeks to address what I would call a crisis of misinformation in India – about Bharati, about Indian copyright law and policy, and about the history of the Indian national movement. To help with disseminating its content, I have published articles on Bharati in all of India's leading platforms for journalism, including *The Hindu*, *The Wire*, *First Post*, *News 18*, and India's leading English language magazine, *Frontline*. The book has been reviewed in these and many other Indian publications and platforms. I have created a podcast on the book, called *Bharati 100*, to commemorate the poet's 100th death anniversary. I have appeared on other popular podcasts discussing Bharati's legacy, such as *The Hindu Business Line* and *The History of Literature*, one of the world's top podcasts on literature. In 2022, I received a grant from the Canada Council for the Arts and the Writers' Union of Canada to present a program of readings from my new book.

In Indian culture, there is a belief that a poet's words must come true. As one of poet Bharati's descendants, I am deeply gratified to see his vision for women reflected in my career progress so far. However, the ideas that he wrote about are meant for more than his family's guidance; they are intended for the world. As my career continues to grow, I have a unique opportunity to share his legacy through my work. I hope to carry it forward in ways that touch a broader public than ever before, and to continue the poet's mission to effect positive change, a century after his death.

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<sup>7</sup> C. Subramania Bharati, *The Coming Age: Collected English Writings*, edited and with an Introduction and Notes by Mira T. Sundara Rajan (Penguin India, 2021).