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# Copyright in Choreography: Examining the Legal Landscape for Dance Moves in India

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## ABSTRACT

*As we all know that copyright protection is given to all forms of dramatic works under Section 2(h) of the Indian Copyright Act, 1957 and the dramatic works includes acting, choreography (dance moves), literary works, photography and other musical works, paintings, sculptures etc. This article focus on choreography that can be copyrighted so, that no other people can copy the original dance moves, even if the dance forms were available to the public, this does not mean that the choreographer cannot obtain copyright protection for their dance choreographies. It should be assumed that the creator protects everything that comes from his skill, talent, and intellect. This article will also highlight the drawbacks or the difficulties for choreographers to secure copyright for their creative dance sequences. One such is that copyright law itself restricts the media through which a less systematic dance form or flexible choreographic work can be fixed whereas, it is well settled that in order to be eligible for copyright protection, a choreographic work must be original and must be fixed in a tangible medium of expression.*

**Keywords:** *Choreography, Copyright Protection, Indian Copyright Act, 1957, Drawbacks.*

## I. INTRODUCTION

Copyright is awarded for a work which is original and contain a minimum degree of creativity. The owner of copyright means the one who has created an original work and therefore, he possesses and enjoy the legal right over it. The creator or author of work can be two or more than two. However, the author can assign or give license to others for use of his work that will add economic benefits to him. Copyright is given to different kinds of works such as literary, dramatic, artistic, musical cinematograph, sound recording and photograph. It is very much known to us that the moment it is created but in order to sue for infringement arises only when the work is registered.

Choreography comes under the dramatic work by virtue of *section 2(h)* of the Indian Copyright Act which says that the dramatic works includes within itself any piece for recitation, *choreographic work* or entertainment in dumb shows, the scenic arrangement or acting form

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which is fixed in writing or otherwise but does not include a cinematographic film. In copyright, the expression of ideas is protected not the idea itself. Similarly, the choreographic work should also be conveyed in the form of literacy work, where the work can be written down or captured electronically. By virtue of *section 14* of the Act which makes the creator or author eligible to get certain exclusive rights such as, to issue copies of your creativity or work publicly, right to reproduce work, to perform work in public, right to sue for infringement and make an adaptation of work.<sup>3</sup>

In order to get a copyright in choreographic work, some essentials are to be fulfilled i.e., originality in the dance acts and moves, dance moves are to be very systematic in nature thus, the movements or patterns organized into an integrated, coherent, and expressive compositional whole, it must be tangible in nature and must be notable as literacy work. It must be such that a story, theme, or abstract composition conveyed through movement and the same must be presented before an audience by the skilled person. Some dance forms such as ballet, Kathak, Odissi, Bharatnatyam are based in standardised manner on predetermined rules and practice. Whereas other forms of dance like bhangra and other freestyle that do not follow a precise pattern. It is difficult to safeguard such dance forms as copyright law safeguards a comprehensive and systematic combination of steps.

To obtain a copyright in the dance form is the very hard for authors as one issue that choreographers are experiencing is a financial crisis and societal restrictions as a result of a lack of proper legislation on choreography protection.

Let us now observe what Copyright Act, 1957 says in this regard, though the Act does not anywhere define the term choreography, but in order to obtain the rights, it is utmost necessary in order to get a copyright, individual or group must possess a skill in choreography, rhythm and dance movements must be in sync with music and sound patterns. The formation of art or theme should be expressive and novelty must be there. It should be treated as literacy works in nature. To sum up, it is clear from the above that in order to get a dance move registered it must be creative, original, unique and consist of unique dance steps. It should not consist of basic dance movements but must contain some level of uniqueness in order to prove ownership. Moreover, the dance moves can be reduced into writing by using dance notation.

The supreme court in the case of *Academy of General Education, Manipal & Ors vs. B. Maini Mallya*, held that ballet dance reproduced in a literary form qualified for dramatic work under

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<sup>3</sup> *Circular 52 Copyright Registration of Choreography* (May 11, 2023, 10:45), <https://www.copyright.gov/circs/circ52.pdf>.

the Copyright Act, 1957. As a result, in order to get copyright in choreography or dance work, the artist or choreographer must transform it into a written form that may be documented for the registration. the fact of the case is, Dr Karanth developed *Yakshagana ballet* where he executed the will in favour of Manini Mallya, transferring the copyright of the dance to her. Mallya filed a lawsuit for a declaration, injunction, and damages, stating that the Academy had violated her copyright by performing the dance without her consent. She claimed that this violated her copyright. The Hon'ble Court held that the rights were vested with Ms. Mallya however, the Court clarified that the Academy could take the benefit of the fair use provisions of the Copyright act 1957 and observed that:

***“When a fair dealing is made, inter alia, of a literary or dramatic work for the purpose of private use, including research and criticism or review, whether of that work or of any other work, the right in terms of the provisions of the said Act cannot be claimed. Thus, if some performance or dance is carried out within the purview of the said clause, the order of injunction shall not be applicable. Similarly, the appellant being an educational institution, if the dance is performed within the meaning of provisions of clause (i) of sub-section (1) of Section 52 of the Act strictly, the order of injunction shall not apply thereto also. Yet again, if such performance is conducted before a non-paying audience by the appellant, which is an institution if it comes within the purview of an amateur club or society, the same would not constitute any violation of the said order of injunction.”<sup>4</sup>***

Famous Kuchipudi dancer Anupama Mohan filed a Writ Petition saying that the Kerala government had violated her copyright. The dancer who asserted ownership of the dance claimed that the state government had disseminated it to the general public without her consent. According to the court's decision, dancer won.

In order to prevent their dance techniques from being freely copied, choreographers have attempted to copyright them. One such instance in India: Remo D'Souza is one such choreographer who opted to copyright specific dances from the song “Bezubaan” from Any Body Can Dance. Such dance sequences may be given a copyright under Section 13(1) of the Act, which permits copyrights for dramatic works.<sup>5</sup>

However, in the lack of registration, the choreographer is unable to initiate a lawsuit for infringement but may request an order of injunction to stop the third party from using the work

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<sup>4</sup> Academy of General Education, Manipal & Ors vs. B. Maini Mallya, 2009(3) RLW 2605 (SC)

<sup>5</sup> Khurana and Khurana, *India: Copyright Protection for Choreographic Works*, Mondaq (May 11, 2023, 10:45), <https://www.mondaq.com/india/copyright/1085416/copyright-protection-for-choreographic-works>.

any further. It is possible to seek damages and account for profits, however, it may be an arduous task altogether.

There are a few exceptions to the rights of the creator, but the law generally grants the creator or author the authority to protect his work. The creator cannot file a lawsuit if their work is utilised for 'fair use.' Fair use refers to the use of a piece of work for private or individual objectives like reviews, research, legal instruction, or the reporting of current events.

With respect to dancers, the only rights they possess is given under *section 2(q)* of the Act which defines performance as any visual or acoustic presentation by one or more performers which thereby also includes *dancers*.

For obtaining a copyright, the dance steps choreographed must be fixed in a tangible medium of expression from which the same can be perceived, reproduced, or even communicated directly or through the application on a device or machine and notation is a more refined and detailed mode of capturing the specificity of a choreographed dance, however, the same can be costly and time-consuming.

The present Indian Copyright Act, 1957 does not align with rapid technological advancements. Contrary to the earlier times, when few established dance forms were usually recorded in certain literature or were taught in gharanas, the present scenario is starkly different.

New, less systematic, flexible dance forms have emerged therefore, it becomes very difficult for the choreographers to have them 'fixed' in a literary form. The copyright Act itself restricts the mediums through which a choreographic work can be fixed. Infact, most choreographers today find it much easier to have their dance sequences recorded and preserved in the form of videos but however, due to the omission of cinematographic works from the concept of 'dramatic works,' it becomes difficult for them to quickly secure copyright over their creative dance sequences.

If we study the American and British copyright provisions, it can be observed that they are comparatively more conducive to the interests of choreographers as there is no specific exclusion of cinematographic works, the legal provisions provide a much liberal scope of interpretation, when it comes to 'fixing' in literary form.<sup>6</sup>

In the 2005 United States Code on copyrights which requires only a tangible mode of fixation and allows the aid of machines and devices, through which the work can be recovered later or preserved. The criteria for acquiring copyright in these countries are defined more clearly as

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<sup>6</sup> *Copyright for Choreography: What you need to know*, (May 12, 2023, 11:03 AM), <https://www.danceinforma.com/2021/05/04/what-you-need-to-know-about-copyright-for-choreography/>.

compared to Indian law. The two essentials, which are originality and fixation have been time and again established through statutory and judicial pronouncements in these legal systems.

To conclude, it can be said that Indian copyright law on choreography is inadequate or is in the very nascent stage. Although, choreography has been acknowledged as a ‘dramatic work’ under the Indian Copyright Act, its meaning and interpretation remains fundamentally limited. The specific exclusion of cinematography under the Act creates impediments for choreographers who wish to acquire intellectual property over their original dance sequences but cannot fix them on a literary or acceptable medium.

Copyright provisions in the American and British legal systems provide simple procedures and prescribe the essentials for works of art (such as dance) for acquiring copyrights. This not only assists the creators or authors to secure their intellectual property but also encourages them to acquire copyrights. Therefore, there is a need to create proper provisions in the Indian Copyright Act for copyright procedures related to artistic works (dance, music, etc.,). Ideally, certain amendments must be made to the Indian Copyright Law on the lines of the American and British copyright statutes, to remove the discrepancies and make the process hassle-free.

Additionally, choreographers must be made aware of their intellectual property rights so that they can acquire valid possession and privileges associated with their original creation. In an era where dance is no longer simply art and has acquired commercial prospects, it is essential to protect the intellectual property of choreographers through adequate legal provisions since, it is to be understood that development of new dance forms is useful and ultimately benefits the society and people by increasing the cultural aspect of State.

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