

# INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

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Volume 7 | Issue 2

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2024

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# Performance Action of Sports Moves Copyright in India

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## ABSTRACT

*The paper analyzes the legislative framework of the Indian Copyright Act, 2012 to understand the protection of sports moves under Indian laws talking about the idea of copyright protection and how it strikes a balance between the public interest in digital environments and the rights of copyright holders. bringing attention to the shortcomings and problems with the current copyright regulations, particularly as they pertain to the defence of athletic moves. The definition of "performer" was addressed in u/s 2(qq) of this already-existing piece of legislation, however the concern here is whether athletes qualify as performers. If yes then should the sports moves be eligible for copyright protection under the Indian laws. mentioning specific examples of sports moves, such as MS Dhoni's Helicopter shot, rise of Connor McGregor walking style as a recent example: creative punch from an unexpected angle in an unexpected moment secured him victory in his championship bout in under 13 seconds, Ronaldo's Suii celebration and many other movments to illustrate the subject matter of sports moves. The research evaluates the principle of 'Ejusdem Generis' in interpreting copyright laws and discusses the relevance of the WIPO Performances and Phonograms Treaty of 1996 in protecting performers' rights. It analyzes the economic significance of sports moves delving with the athletes personel rights and their potential for copyright protection.*

**Keywords:** Challenges, Copyright, Framework, Legislative, Performer

## I. INTRODUCTION

### A. Brief overview of copyright law

Authors of literary, theatrical, musical, and other creative works are awarded the legal right known as copyright, which gives them complete control over how their works are reproduced, distributed, and sold. This right covers the entire work as well as substantial elements of it, such as translations or adaptations, and is valid for the author's lifetime plus an additional sixty years. The creation of new works based on preexisting ones is permitted by copyright law, which permits improvements and additions without forbidding the use of important elements from the

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original. Regardless of the work's apparent literary worth, the creator must devote a significant amount of judgement, skill, labour, or capital to secure copyright protection, and copyright ownership does not grant a monopoly over subject matter.

Other are allowed to independently produce results that are equivalent, provided that their work is truly original and does not violate any already-existing copyrights. This protection discourages the monopolisation of whole industries and encourages diversity in the creative process. Furthermore, as long as the works are created independently with one's own resources and efforts, they can also be produced in a similar way or structure, maintaining originality and fostering the creation of new works through hard work and dedication on the part of the individual.

### **B. Introduction to the topic of sports moves and copyrightability**

Sports have long played a significant role in human social interaction. It has become a major source of entertainment for us and is ingrained in our daily lives. But in the modern day, sports have moved beyond just amusement or leisure and have acquired commercial and economic significance, particularly in the US, India, the UK, and all of the European Union's member states. Professional sports clubs and teams in these nations have gained economic significance and viability through merchandising, marketing, franchising, promotion, and brand building, and they have also adopted the influences typically associated with global corporations.<sup>3</sup>

The core of copyright law is also this idea of creativity. It is often known that creative expressions have moral and legal rights to be protected. Sportsmen create and execute their own unique sports moves and celebration routines to commemorate their achievements in the game. Using the likes of M S Dhoni's helicopter shot, Conor McGregor's walk, also known as the Billionaire Strut, M S Dhoni's cover drive, and Ravinder Jadeja's original creation of the 'Sword Dance', in which he expresses his Rajputana roots and spins and flaunts his agility on the field, demonstrates a taste of creativity and an element of innovation.<sup>4</sup>

This is required for sports celebration moves and several other situations where sports moves exhibit uniqueness and can be eligible for copyright protection<sup>5</sup>. Sports and intellectual property law are closely related to a number of different activities, including broadcasting, branding, merchandising, and safeguarding the individual rights of athletes. This overlap demonstrates the various ways that intellectual property and sports intersect with the law.

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<sup>3</sup> *Study of intellectual property laws in sports industry specifically focusing on copyright and trademark Legal Service India - Law, Lawyers and Legal Resources.*

<sup>4</sup> *National Basketball Association v. Motorola Inc.*, 105 F.3d 841, 846 (2d Cir. 1997)

<sup>5</sup> Aggarwal, R. (2023) *Copyrightability of sports celebration moves under the Indian law – copyright*

### **C. Role of Intellectual Property Rights in Sports in India**

The Indian sports sector is heavily reliant on intellectual property rights (IPRs), particularly with regard to trademarks, broadcasting rights, sponsorship deals, and licencing matters. As a result of sports being more commercialised, several types of intellectual property, such as patents, trademarks, industrial designs, and copyrights, are now valued assets that need to be protected.

Despite obstacles, the Indian government has attempted to regulate the sports sector by enacting laws such as the National Sports Ethics Commission Bill, 2016 and the Sports Bill, 2011. Furthermore, major sporting events like the Formula One race, Indian Badminton League, Hockey India League, Indian Super League, ProKabaddi, and heritage sports like Goti, Lagori, and Gatta Gusthi have all proudly declared that the protection of intellectual property rights in sporting events is becoming increasingly important as commerce takes centre stage in these games.

Because of the commercialization and exploitation of athletes and sporting events, intellectual properties such as patents, trademarks, industrial designs, and copyrights have become extremely valuable assets in terms of legal protection. have emphasised the significance of intellectual property rights and sports laws, which support and contribute to the industry branding and revenue creation.<sup>6</sup>

Certain elements of sporting events, like logos, trademarks, slogans, promotions, and player photos, are vitally protected by copyrights. The ability to broadcast big sporting events to a global audience and provide cash for sports organisations makes broadcasting rights extremely important. In India, copyrights are protected by the Copyright Act, 1957, which also establishes criminal sanctions for violation and civil remedies.

Wider access to important sporting events is now possible thanks to advancements in communication technologies, which have revolutionised sports coverage. Avatars, graphics, and other creative features are now covered under copyright protection due to the widespread use of video games and internet content. It is not necessary for copyright proprietors to register their rights in India, however doing so is advised in order to prove ownership and make enforcement easier.

The Copyright Act gives law enforcement organisations the authority to take measures against copyright infringement that is necessary to stop third parties from getting involved, including

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<sup>6</sup> INTELLECTUAL PROPERTY RIGHTS IN SPORTS - Paras Sharma IJCRT | Volume 8, Issue 3 March 2020 | ISSN: 2320-2882

seizing illegal materials without going to court. In general, intellectual property rights are essential for safeguarding the artistic resources and financial interests of Indian sports teams and players.

### **Thesis statement outlining the objectives and scope of the research**

Absence of Sports persons/ Athletes under section 38 of Performers Rights under Copyrights act 2012, Infringing the Right To Privacy under Right To Personality of Article 21 of the Constitution of India.

## **II. OVERVIEW OF COPYRIGHT LAW IN INDIA AND ITS RELEVANCE TO SPORTS MOVES**

### **A. The Copyright (Amendment) Act, 2012**

There has been implementation some significant amendments to this already-existing legislation, which deals with the concept of "performer" in u/s 2(qq).<sup>7</sup> The point that needs to be addressed, though, is whether athletes qualify as performers?

The complexity of the problems with the loopholes seems to increase with technological advancement. Copyright Act of 1956 does not currently contain any provisions. However, this does not imply that the "Performer's rights" section of the Copyright Act of 1956, which was added to the Copyright Amendment Act of 1994, sec. 2,38,39, has little or no significance.<sup>8</sup>

The most important point which need addressing is whether athletes are, in the context of their sporting event, performing or producing a qualifying "work" in relation of copyright legislation. If the answer is in the positive then they would have a claim over the exclusive rights to control the distribution of their work.<sup>9</sup>

The legislation goes on to define "performance," stating that it is the direct display of the work to the public in a way that allows the public to understand it without the need for any intermediary communication. Thus, would an athlete's performance be included in the definition? Athletes are not specifically covered by the law.<sup>10</sup>

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<sup>7</sup> The Copyright (Amendment Act), 1970 (Act 39 of 1970)

<sup>8</sup> Rao, Amogh Srinivas. "Copyright in Sports – Are Sports Moves Copyrightable?" International Journal of Advanced Legal Research (Volume 1, Issue 4)

<sup>9</sup> *Can copyright be claimed by athletes in their sporting performances? - copyright - malta, Can Copyright Be Claimed By Athletes In Their Sporting Performances? - Copyright - Malta*. Available at: <https://www.mondaq.com/copyright/446046/can-copyright-be-claimed-by-athletes-in-their-sporting-performances>

<sup>10</sup> Abhyudaya *Intellectual property rights or IPR in sports, iPleaders*. Available at: <https://blog.ipleaders.in/intellectual-property-rights-ipr-in-sports/>

### **B. Analysis of the principle of 'Ejusdem Generis' in determining copyrightability**

Since there exists no explicit mentioning of the term sportspersons there arise lacunae in its interpretation. therefore, necessary to apply the principle of 'Ejusdem Generis' to derive a reasonable interpretation of the above-mentioned section. "Ejusdem Generis – (of the same kind). It is a well-established principle of law that is used to interpret loosely written statutes where a law lists specific classes of persons or things specifically. The creativity of a work doesn't be guaranteed to imply that the work should be another creation in itself rather it should be a freely made work

### **C. The WIPO Performances and Phonograms Treaty of 1996 –**

The treaty divides rights into moral and economic categories to protect the performances of actors, singers, musicians, and phonogram makers. Independently created works, rather than completely new creations, are required for copyright originality. Sports moves' copyrightability is still up for debate, with some arguing they should be protected.

The significance of originality is emphasized in the *Feist Publications v. Rural Telephones Services Co.*<sup>11</sup> case, which rewards "sweat of the brow." Sports moves may be regarded as choreographic works even though copyright law doesn't specifically cover them.

The case of *Interlego AC v. Tyco Industries Inc.*<sup>12</sup> highlights the significance of expertise and judgment in safeguarding copyright, necessitating more than just ideas to be admissible. Determining the copyrightability of sports moves demands a nuanced understanding and consideration of their creation process within the legal framework.

## **III. LEGAL FRAMEWORK AND CASE STUDIES**

### **A. Examination of the Copyright (Amendment) Act, 2012 and its provisions related to performers' rights**

Sports Moves as Subject Matter of Copyright Satisfying the Doctrine of Originality: Section 13 of the Indian Copyright Act, 1957, which deals with Original Works, is applied. Since the act does not provide a legislative definition for the term, one must interpret it using other sources of external data.<sup>13</sup>

Indian Provisions follows modicum of creativity mainly stating the minimum amount of

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<sup>11</sup> *Feist Publications, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 345 (1991)

<sup>12</sup> *Interlego AG v Tyco Industries Inc*, [1989] AC 217 (Oxbridge Law Team)

<sup>13</sup> Aggarwal, R. *Copyrightability of sports celebration moves under the Indian law - copyright - India*, Available at: <https://www.mondaq.com/india/copyright/1392362/copyrightability-of-sports-celebration-moves-under-the-indian-law>

creativity canceling the requirement of a entirely new invention or they do not need to be new but should be independently created.

### **B. The Actions should Satisfy the Functionality Test**

Ordinary or functional elements are usually not protected by copyright. Pitching motions and other common sports motions may be deemed purely functional and not subject to copyright protection. Conversely, sports celebrations and motions are more artistic and expressive and only tangentially related to the game's goals. These expressive motions are probably going to pass the functionality test because they have some connection to the sporting event's functional objective. This distinction highlights the possibility that sporting gestures that are expressive, one-of-a-kind, and unrelated to the utilitarian aspects of the sport could be protected by copyright.<sup>14</sup>

Sports moves are often referred to as choreography. These moves, for the purpose of copyrightability. This can be witnessed from Football Player From Manchester City Aymeric Laporte's goal celebration, Rashford's 'temple point' reaction and Kylian Mbappe's arm-fold these are fine examples of signature trademark celebration . Given this nature of celebration moves, they fall under the head of choreographic work as explained under the definition of 'Dramatic Work' in the Act.<sup>15</sup>

### **C. Analysis of personality rights and economic significance in sports**

The right of publicity, often known as personality rights, forbids the unapproved use of a person's name or other distinctive personal traits. The popularity and image of the brand convert into financial rewards through advertising, brand ambassadors, the goodwill of sponsors, and their reputation.

In India, personality rights are not well acknowledged per se. They are often used to assert the implied right to publicity guaranteed by Article 19 or the right to privacy guaranteed by Article 21 of the Indian Constitution. Personality rights are either protected as right to privacy or they can be protected as the property of a persona.

Players' names like Sachin Tendulkar, Dhoni have become trademarks because of their famous status. as in the use of "gesture" and "mannerism" Companies sponsor sporting events and associate their goods and images with celebrities.<sup>16</sup>

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<sup>14</sup> Id.

<sup>15</sup> “**Marcus Rashford’s Goal Celebration: What It Means.**” *Sporting News*

<sup>16</sup> **Sujith, Aswathy.** “Sports and Intellectual Property Rights – An Overview on the Indian Standards.” *International Journal of Advanced Legal Research* (Volume 4, Issue 1)

A sportsperson's right to publicity will also be violated if his celebration methods are used to exploit his image or reputation. A sportsperson gains identity and worth for himself by being connected to a certain sport. In *ICC Development (International) Ltd. v. Arvee Enterprises*<sup>17</sup>, the Hon'ble Delhi High Court further noted that any use of Kapil Dev's persona or indicia without his permission would constitute a "valid and enforceable cause of action."

Cristiano Ronaldo sells his image rights to Peter Lim, the owner of Mint Media Company, in mid-June 2015, to counter La Liga team Valencia. Thus, Mint Media was awarded Cristiano Ronaldo's publicity rights for a period of six years.

Regarding Cristiano Ronaldo's supporters and football critics, it was necessary to have a clear understanding of sports marketing and publicity rights in order to comprehend the scenario. However, Ronaldo's representative addressed the matter by stating that it was a calculated strategy to capitalise on Ronaldo's brand.<sup>18</sup>

By taking prime example of Ronaldo, sports moves are certain gestures or mannerisms that are personal to a sportsperson. A sportsperson can be identified by the general public by such creative and unique gestures which amount to celebration moves. One such famous gesture of the West Indies bowler Kesrick William is the 'notebook' celebration move in which after dismissing a batsman, he celebrates his victory by drawing an imaginary long tick on his palm, as if adding the name of the batsman to the list of those whom he's dismissed.

A sportsperson needs to satisfy two basic elements to prove infringement of his right to publicity. First, validity, which means the sportsperson's right in his identity. Second, identifiability, Thus, if a sportsperson is able to prove that an individual has used his celebration moves, which are a reflection of his persona or indicia, and that he can be identified by such unauthorised use, the unauthorised user should be held liable for infringement of the sportsperson's personality right.<sup>19</sup>

## **V. Discussion on dissenting opinions regarding the copyrightability of sports moves**

Giving the fundamental concept of copyright-protected expression a monopoly will stifle future innovation and be harmful. Ideas cannot be protected by copyright since simple or routine sports actions are intended to be played according to the regulations of the sport; nonetheless, original expressions are always protected by copyright. A more intricate sporting manoeuvre which qualifies to be extraordinary in nature example - a few unique steps not normally seen in the

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<sup>17</sup> *ICC Development (Int.) Ltd. v. Arvee Enterprises*, 2003(26)PTC245(Del) para. 14.

<sup>18</sup> "Singapore Billionaire Acquires Ronaldo Image Rights." *India Today*

<sup>19</sup> *Ibid*, 11.



course of events, most likely qualifies for protection.

There is disagreement about whether sportspersons' actions are protected under the right to publicity because they are not part of their persona. They argue that simple gestures or mannerisms are not protected. Both the United States and India have laws that largely exclude gestures from the notion of personality rights. As an instance, in *Shivaji Rao Gaikwad v. Varsha Productions*<sup>20</sup>, the Madras High Court held that personality rights include qualities such as name, signature, and voice, but not gestures or mannerisms. Thus, celebration moves, like gestures, may not be protected by personality rights regulations.

sports moves are non-rival because if one athlete uses a particular move, then the benefit to those already using the move is not diminished, likewise sports moves are also non-excludable, which implies that once athlete has used the move, all other athletes cannot be prevented from benefitting from the move, unless it is explicitly provided because it violates the morality of spirit of the game

Notwithstanding their distinctiveness, these celebratory sports moves are not protected by copyright, according to a 2017 circular from the U.S. Copyright Office<sup>21</sup>, which is in line with the TRIPS agreement like India. They reasoned that these actions are simple gestures that don't warrant copyright protection, such as routine ones. It argues that celebratory gestures, which are similar to sports moves, could not fit the requirements for copyright protection in India<sup>22</sup>, taking influence from the American approach.

#### **IV. RECOMMENDATIONS FOR ADDRESSING CHALLENGES AND GAPS IN INTELLECTUAL PROPERTY PROTECTION OF COPYRIGHT FOR SPORTS MOVES**

A quick overview of the aforementioned interpretation of the current legal regime on sports celebration moves reveals that because these moves are expressive, creative, finally put together by sportspeople's skills, these moves adhere to the principles of originality and fixation, they can be subject matter of Copyright under Indian law.

For a sportsperson to protect his / moves will have to satisfy that:

- a. They are the result of the athlete's labour, capital investment, skill, expression, and idea.
- b. They pass the functionality test and show themselves to have merely a passing connection to the sports move's intended use.

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<sup>20</sup> *Shivaji Rao Gaikwad v. Varsha Productions*, 2015 (62) PTC 351 (Mad)

<sup>21</sup> Circular 52 of the Copyright Registration of Choreography and Pantomime, U.S. Copyright Office, Sept. 2017, available at <https://www.Copyright.gov/circs/circ52.pdf>

<sup>22</sup> *Ibid*, 11.

c. They meet the requirements for personality rights, namely validity, which refers to the athlete's right to maintain his identity. The second requirement is identifiability, which states that the violation must be one from which the athlete can be recognised.<sup>23</sup>

If such moves were given copyright protection, coaches and players would be incentivized to create even more ground-breaking and inventive plays.

Enabling copyright protection for innovative plays and tactics would probably lead to a great deal of conflict with the Copyright Act's primary objective, which is to Promote the progress of Science and the useful Arts.

The possible economic impact of sports celebration moves is a strong case for their copyright protection. Fans pay a lot of money, as the current market demonstrates, to try and see and relate to their favourite athlete's movements. This excessive spending indicates that there is a large market for marketing goods linked to an athlete's charisma and success on the pitch.

Athletes must make the most of their earning potential while still competing, as their careers are typically cut short by age or injuries. The increased emphasis on an athlete's off-field achievements and personal branding creates a rare chance for players to achieve recognition and financial stability during their playing careers.

Lastly, allowing copyright protection for celebratory moves does not prevent competition. Although this is an issue for movements that are employed during gameplay, celebratory moves are just incidental to the game. There would be absolutely no difference in the game's outcome if multiple football players celebrated a score in the same way. Thus, when it comes to sports celebration moves, therefore, the biggest issue with copyrighting sports moves-conflicting with the Copyright Act's underlying goal to promote the progress of science and useful arts-is not present when dealing with sports celebration moves.

In spite of all the obstacles, the Indian government needs to move forward with enacting the National Sports Ethics Commission Bill, 2016, which attempts to improve the nation's sporting standards on subjects regarding intellectual property rights.<sup>24</sup>

Protecting and upholding intellectual property rights in the sports industry is essential to ensuring the financial sustainability of athletic events in India.

Alternative dispute resolution techniques in sports copyright issues are used to enforce rights in sports conflicts. As a developing country with a genuine aim to attract and sustain investments,

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<sup>23</sup> Chorian Rights Ltd. v. Ishan Apparel, 2010 SCC OnLine Del 1518

<sup>24</sup> Sujith, Aswathy. "Sports and Intellectual Property Rights – An Overview on the Indian Standards." JOURNAL OF LEGAL STUDIES AND RESEARCH (Volume 2, Issue 5)

India has to implement a law to protect sensitive information, particularly in the sports business, so that it acts as an appropriate deterrent for future offenders.<sup>25</sup>

## V. CONCLUSION

### **Summary of key findings and arguments presented in the research**

Copyright law is prepared to embrace broader sports moves. The distinction between the aforementioned exclusions, which apply to complete sports events, and this chapter's examination of specific sporting manoeuvres separately must be emphasised once more. The aim of this study is to investigate whether the individual components of sporting events or the combination of sporting motions (including choreographies) should be protected by copyright for athletes and their coaches. Therefore, the main topic of this essay is a basic query about copyright law: novelty.<sup>26</sup>

It would seem that excessive protection of athletic moves is harmful to amateur and professional sports' regular operations. The best defence for the Athletes is copyright laws for there moves would be acting as professional honouring method legally. One way to use this technique would be to name a movement or routine after the athlete or trainer who created it. Such "protection" would stand for both a special kind of extralegal attribution rights and professional recognition. In addition, professional titles may be given to players or coaches to recognize their inventiveness and athletic abilities. Lastly, professional athletes' accomplishments would be far more fully reflected by their signatures on endorsements or other forms of contracts to an greater extent with the help of copyright laws.

The research delves into the intricate intersection of copyright law and sports moves, particularly in the Indian context. It navigates through the complexities of copyright protection, highlighting the absence of explicit provisions for sportspersons under performers' rights. While the Copyright (Amendment) Act, 2012 introduces definitions pertinent to performers, the ambiguity persists regarding the applicability to athletes. Drawing parallels with international treaties and legal precedents, the paper assesses the potential copyrightability of sports moves, emphasizing the need for originality and fixation. Despite dissenting views, advocating against copyrighting basic ideas, the economic significance of protecting sports moves for athletes' financial security is underscored. Recommendations include aligning legislation with the National Sports Ethics Commission Bill, 2016, and establishing alternative dispute resolution mechanisms. The research calls for further exploration into this evolving area of law to address

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<sup>25</sup> Id.

<sup>26</sup> Mezei, Peter. "Copyright Protection of Sport Moves." *Journal of Intellectual Property Law*, vol. 25, no. 3, 2018

existing gaps and foster the growth of the sports industry while safeguarding intellectual property rights.

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