



# PROTECTION OF RIGHTS OF PERFORMERS IN INDIA: AN ANALYSIS OF COPYRIGHT ACT IN INDIA

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## Abstract

The word performer means a person who performs something for an audience which is created by his own hard work. So it's, important to protect their works. The copyright act 1957 gives protection to work of performs and artist In the era, that is dominated by the modern usage of technology. However, despite having significant interests in creating effective protection legislation because of its enormous entertainment sector, there is still much to be desired. The objective of this essay is to critically evaluate the degree of protection provided to performers in India by the Copyright Act and to point out shortcomings in the current legal system. This essay will also focus on the protection given in other countries and what certain provisions could be incorporated in India to fill in the lacunas within India's existing framework.

**Keywords:** performs, performers right, protection given under the copyright act 1957, remedies against infringement.

## INTRODUCTION

It has a lengthy and complicated history for performers' rights to be protected under intellectual property law. In the creative sector, performers have always been crucial, and their contributions have helped to shape the cultural landscape of various nations. However, the rights of performers were not always acknowledged, and their development was gradual.

When the copyright law was introduced at that time there was no recognition given to the performer's rights. Performer's rights were not mentioned when the Copyright Act of 1957 was passed after the country gained independence. In *Fortune Films v. Dev Anand*, the Bombay High Court ruled in 1979 that because actor rights are not recognized by the Copyright Act, they lack any copyright protection. After this ruling, it was thought that the performer's right need to be covered by copyright regulations. Sections 38, 39, and 39A were included to the copyright amendment in 1994 to recognize the rights of performers. The term "performer" is defined in Section 2(qq), and includes actors, dancers, musicians, singers, acrobats, conjurers, snake charmers, jugglers, lecturers, and anybody else who puts on a show.<sup>1</sup> The Rome Convention of 1961 was the first to acknowledge the rights of performers, and its Article 7 grants performers the right to bar others from broadcasting their performances to the public or otherwise economically exploiting them. The WIPO Performance and Phonogram Treaty (WPPT) and The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), which acknowledged the performers' economic and moral rights, advanced these

<sup>1</sup> trivedi, G. (2021) *the rights of performers under indian law*. Available at: <https://lexlife.in/2021/06/03/analysis-rights-of-performers-under-indian-copyright-law/>.

rights.<sup>2</sup> The Copyright Act states that a performer's rights are safeguarded for fifty years from the start of the calendar year that follows the year the performance is produced, or, in the case of a sound recording, from the date the recording is released.

## ORIGIN AND DEVELOPMENT OF PERFORMERS RIGHTS

### A. Rome Convention, 1961

The person's contribution to the content transmitted was not acknowledged in earlier times. The idea of performer rights received recognized in 1961 with the adoption of the Rome Convention. As per the terms of Convention performer's works were protected for the duration of 20 years. Article 7 of the Convention talks about protection to the rights of the performers. They are as follows:

1. They have the right to prevent others from reproduction of their live performance without their consent
2. They have right to prevent others from broadcasting or communicating to the public by means other than broadcasting without their consent.
3. They have the right to prevent others from fixation of their unfixed live performance without taking their consent.
4. They have the right to prevent others from fixation of their unfixed live performance without taking their consent.<sup>3</sup>

### B. WIPO Performers and Phonograms Treaty, 1996

The TRIPS agreement, which is overseen by the WTO, strengthens the provisions of this convention even more. According to Article 14 of the TRIPS agreement:

1. They have the right to prevent reproduction of their live performances.
2. They have the right to protect their work from broadcast and communication to the public by wireless means.
3. They have the right to prevent the fixation of their live performance on phonograms.

The WIPO Performance and Phonogram Treaty (WPPT) were established in 1996. The moral rights of the performers were acknowledged in this convention for the first time in an international agreement. The performers' financial rights were also covered. Performers should be paid for their work, and they are also entitled to royalties if the work is used for any other reason than that for which they have granted approval. Other aspects of the WPPT include the performers' economic rights, which include the rights to reproduction, distribution, renting, and making of their performances recorded as phonograms available.

### C. Beijing Treaty on Audio-Visual Performances, 2012

Moreover, WIPO adopted the Beijing Treaty on Audio-Visual Performance in 2012, which included a thorough discussion of the audio-visual performers. The rights of actors and actresses who work in movies, television shows, short films, and other media were discussed by the contracting states. The Beijing Treaty's Articles 7 to 11, include the reproduction, distribution, and leasing rights as well as the right to make available, broadcast, and communication rights. However, Article 12 somewhat reduces the performer's rights by allowing a member state to pass legislation that would allow the producer of an audio-visual work to acquire the performer's rights from Articles 7 to 11 if the performer agrees to fix their performance in the work. The Beijing Treaty's Article 12(3) protects performers' rights by stating that, "the national law or individual, collective or other agreements may provide the performer with the right to receive royalties or equitable remuneration for any use of the performance," including the right to make their performance available for broadcasting and communication. While the Beijing Treaty covered all of these rights and included provisions for the transfer of performer's rights to film producers, the WPPT did not address performers' rights related to their work in television or motion pictures.<sup>4</sup>

<sup>2</sup>trivedi, G. (2021) *the rights of performers under indian law*. Available at: <https://lexlife.in/2021/06/03/analysis-rights-of-performers-under-indian-copyright-law/>.

<sup>3</sup> 'Legal Service India E- Journal "What Are the Rights of Performers under Indian Copyright Law' .

<sup>4</sup>[https://blog.ipleaders.in/performersrightsundercopyrightlaw/#Origin\\_and\\_Development\\_ofPerforms\\_Right](https://blog.ipleaders.in/performersrightsundercopyrightlaw/#Origin_and_Development_ofPerforms_Right).

## POSITION OF PERFORMERS IN UK AND US

### U.S.A

When compared to the complex regulations in the U.K. and the U.S.A., India's laws governing performers' rights are weak. Although the protection offered by the US is structured similarly to that in India, the main mechanism in the US is the tort law. Although there is no explicit law that protects performers, their rights are safeguarded by the tortious doctrine known as the right of publicity, which was developed by American courts in response to complaints of infringement of performers' rights. Due to this, the American system differs significantly from the English and Indian systems.

### UNITED KINGDOM

The Performers Protection Act was enacted in England in 1925. In England, performers' rights are on par with those in India. The performers in England are given financial rights. The English legal system is insufficient especially in the areas of unprotected moral rights and intangible rights. This is primarily due to the fact that England uses a copyright system to safeguard the interests of performers, much like the Indian system does. Thus, we can say that the legal system of USA is stronger as compared to that of India.<sup>5</sup>

## RIGHTS OF PERFORMERS UNDER COPYRIGHT ACT

The certain rights which are granted are as follows:

### 1. **Right to make sound or visual recordings:**

The artist has the right to record his live performance in audio or video form in order to keep others out. Additionally, the performer has the right to make unlimited number of copies of the recording. Let's say the performer has signed a written agreement authorizing the use of his performance in a cinematographic work. In that instance, he would not be permitted to prevent the filmmaker from exploiting the performance.

### 2. **Right to broadcast or communicate performance:**

If not previously broadcast via cinematographic film or another means, a performer also has the freedom to broadcast or otherwise convey his act to the public while excluding others. Any anyone who conveys such a work to the public without the performer's permission is violating copyright and is liable for legal action.

### 3. **Right to produce sound or visual recordings:**

The performer also has the right to record his act on audio or video. In this situation, the performer will be granted all of the Copyright Act's producer-level privileges including the ability to reproduce, provide copies for commercial rental, transmit the work to the public, etc.

### 4. **Moral Rights:**

A performer has moral rights as well as pecuniary rights under Section 38 B of the Copyright Act, in addition to the rights mentioned above. The moral rights include (i) the right to credit for one's performance and (ii) the right to sue for damages if one's performance is twisted, mangled, or otherwise altered in a way that harms one's reputation as a performer.<sup>6</sup>

### **Exceptions to Performers' Rights under the Copyright Act**

The following acts constitute an exception to the rights granted by Section 38A of the Copyright Act:

1. reproducing any audio or visual work solely for personal, educational, or research purposes
2. reproduction of the piece for legal purposes

<sup>5</sup> 'Performer's Rights Under Copyright Law', 'Performer's Rights Under Copyright Law' (23 April 2021).

<sup>6</sup> Vibha Oswal 23 Dec 2021, "What are performers' rights under the Copyright Act".

3. reproduction done for the purpose of reporting, reviewing, or other activities covered under fair dealing
4. reproduction of the writing for parliamentary use; and
5. Under Section 52 of the Copyright Act, other actions are not regarded as infringements.<sup>7</sup>
6. Use of audio or video recording during a performance during an educational institution's operations if the audience is restricted to students, their parents or guardians, and those who are closely involved with the institution's operations.

In addition, Performers' rights are protected by Section 38 of the Copyright Act for 50 years following the calendar year in which the performance was recorded. For instance, if the performance was captured in 2021, the period would start on January 1st, 2022, and last for 50 years.

## LANDMARK JUDGEMENTS

### A. Fortune Films International v. Dev Anand<sup>8</sup>

It was among the first case when the performer's rights were contested and the court declined to acknowledge the performer's claim to the cinematograph film. In this instance, the court held that an actor has no legal authority to control how their performance in a film is used. The actors were compensated for their labor, and the producer was free to use it anyway they saw fit Fortune Films International v. Dev Anand. However, after the Copyright Act was changed in 1994, performer's rights were acknowledged.

### B. Super Cassettes Industries v. Bathla<sup>9</sup>

In this case, despite the plaintiff's notice stating that such adjustments had not been made, the Ld. Judge concluded that significant changes had been made to the work intended for sound recording. There was a violation of the law (Section 52(1)(j) and Rule 21(2)(b)) since these adjustments, including altering the singer and orchestra, were not disclosed to the copyright owner and their approval was not acquired. Additionally, the Ld. Judge stated that changing the singer constitutes a significant amendment and necessitates the consent of the original owner. The judge also believed that version records, which alter the vocalist or orchestra without the permission of the original owner, shouldn't be permitted since they can encourage plagiarism. In addition, he maintained that version recordings cannot be regarded as separate sound recordings with their own copyright.

### C. Neha Bhasin v. Anand Raj Anand<sup>10</sup>

In this case, the court addressed the issue of what counts as a live performance, ruling that both performances that are recorded in a studio or in front of an audience are, in the first instance, considered live performances. If anyone uses a performance like this without the performer's consent, the performer's rights are said to be violated.

### D. Indian Singers Rights Association v. Entertainment Network (India) Ltd.

The Bombay High Court ruled in this case that radio stations were responsible for copyright infringement when they broadcast protected content without the rights holder's consent. The court further emphasized that artists had the exclusive authority to consent to the public broadcast of their performances and to be fairly compensated for their efforts.<sup>11</sup>

<sup>7</sup> Ibid.

<sup>8</sup> *Fortune Films International v. Dev Anand* [AIR 1979 Bom 17].

<sup>9</sup> *Super Cassettes Industries v. Bathla Cassette Industries* (2003).

<sup>10</sup> *Neha Bhasin v. Anand Raj Anand* [2006 (32) PTC 779 Del.].

<sup>11</sup> *Indian Singers Rights Association v. Entertainment Network (India) Ltd.* (2021).



**E. Tips Industries Ltd. v. Wynk Music Ltd.**

The Bombay High Court ruled in this case that copyright infringement occurred when music streaming services like Wynk Music offered copyrighted content without the rights holder's consent. The court further emphasized that artists had the only authority to decide how their performances were used and were entitled to just compensation for their contributions.<sup>12</sup>

**F. Shreya Singhal v. Union of India**

In this case, the Supreme Court of India overturned an Information Technology Act clause that made some types of internet communication illegal. The court pointed out that the clause was extremely general and might be applied to stifle free speech, including the artistic expression of performers.<sup>13</sup>

**G. Music Broadcast vs. Phonographic Performance<sup>14</sup>**

The plaintiff in Music Broadcast vs. Phonographic Performance was given authorization to launch an FM radio station and had secured permits from multiple organizations, including the Indian Performing Right Society (IPRS), to do so. The defendant, a group that manages sound recording publishers' public performance rights, declined to lower their exorbitant rate. The plaintiff filed a request to broadcast sound recordings of the defendant at acceptable royalty rates with the Copyright Board while also requesting a compulsory license. The defendant's cited current rate appeared to be exorbitant, according to the Bombay High Court. The defendant was ordered by the court to give the plaintiff a license. This order is important since although a court cannot set royalty rates or issue a forced license, it may, under certain circumstances, require the owner of the rights to issue a temporary license until the compulsory licensing application is resolved.

Overall, these decisions have, in general, improved the protection of artists' rights under Indian intellectual property law and highlighted the significance of making sure that performers are fairly compensated for their work.

**REMEDIES AGAINST INFRINGEMENT OF PERFORMERS RIGHTS: <sup>15</sup>**

The remedies can be availed in a suit against infringement of performer's rights under Sections 55 and 63 to 70 of the Copyright Protection Act.

**1. Civil remedies:**

The owner of the copyright, his or her assign, his or her exclusive licensee, or a legatee may obtain (a) an injunction or (b) pursue damages under civil remedies.

**2. Criminal remedies:**

The Copyright Act gives the owner of the copyright the option of filing a criminal complaint against the offender in addition to civil remedies. Infringing on someone else's intellectual property is illegal and is punishable by imprisonment for a minimum of six months and a maximum of three years, or by a fine ranging from Rs 50,000 to Rs 2 lakh.

**3. Anton Pillar order:**

In some circumstances, the court may grant the plaintiff's request for an *ex parte* order requiring the defendant to allow the plaintiff to enter his premises in order to inspect any pertinent documents and items, make copies of them, or remove them for safekeeping. In order to prevent the goals of justice from being subverted, such an order becomes necessary when there is a serious risk that pertinent papers and infringing items may be removed or destroyed.

**CONCLUSION**

Performers' rights are a crucial component of intellectual property law, to sum up. Performers have the right to decide how their performances are used, to be paid for such usage, and to safeguard their good name and moral character. Different levels of protection for performers' rights are provided by national laws and

<sup>12</sup> Tips Industries Ltd. v. Wynk Music Ltd. (2019).

<sup>13</sup> Shreya Singhal v. Union of India (2015).

<sup>14</sup> Music Broadcast vs. Phonographic Performance

<sup>15</sup> Team L, 'Performers Right in India' (*lawyersclubindia*, 8 January 2011).

international treaties, and artists need to be aware of the applicable legal framework. The maintenance and expansion of the creative sector, as well as ensuring that performers receive the credit and payment they are due, depend on the preservation of performers' rights. The performers' rights have been granted, and this is a very positive development for copyright law. They have always held a special place in the copyright work, but they have never received the necessary level of gratitude for their contributions. Now that their rights are safeguarded by copyright law, their financial situation has also improved.

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