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## Performer's Rights in Copyright Law: Evolution, Protection, and Contemporary Challenges

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# Performer's Rights in Copyright Law: Evolution, Protection, and Contemporary Challenges

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## ABSTRACT

Performers actors, musicians, dancers, and other artists play a central role in the creative economy. Yet, in the past, they did not have independent legal recognition, so often the work of these women became prey to unauthorized reproduction and exploitation. This article focuses on the development of the rights of performers in India against the backdrop of international treaties such as the Rome Convention, WPPT and Beijing Treaty on Audiovisual Performances. It discusses the statutory and moral rights granted by the Indian law and the judicial interpretations and the challenges that come with the digital age, social media piracy, AI-generated content, exploitation of contracts, etc. The article ends with policy recommendations on how to better protect the rights of performers, ensure fair remuneration and balance between rights and public access.

**Keywords:** Performers' Rights, Neighbouring Rights, Copyright Act 1957, Moral and Economic Rights, International Treaties (WPPT & Beijing Treaty), Digital Infringement

## 1. INTRODUCTION

Performers bring creative works to life for audiences by adding voice, movement or expression to the work that goes beyond the original work of the author. In India, there are performers who perform the role of actors, singers, dancers, musicians, narrators, lecturers, etc.<sup>1</sup> Their performances are frequently recorded, broadcasted, streamed, or otherwise reproduced for commercial and public consumption. Historically, these people have had little legal control over their work, and producers, broadcasters, and intermediaries have dominated the exploitation chain.<sup>2</sup>

The Indian Copyright Act, 1957, did not initially protect the rights of performers and the main focus was on the rights of authors.<sup>3</sup> As the norms around the world changed through the various international treaties, the Indian Copyright Act was modified in 1994 and 2012 to provide an all-round protection to performers.<sup>4</sup> The amendments of this law provided for economic rights, moral rights and digital communication rights, bringing India on a par with international norms. This article aims to examine:

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<sup>1</sup> Performers' Rights under Copyright Law, iPlaaders Blog, <https://blog.ipleaders.in/performers-rights-under-copyright-law/>.

<sup>2</sup> Rights of Performers and Broadcasters under Copyright Act, 1957, LawBhoomi, <https://lawbhoomi.com/rights-of-performers-and-broadcasters-rights-under-copyright-act1957/>.

<sup>3</sup> Copyright Act, 1957 (as amended), Section 2(qq).

<sup>4</sup> JETIR Research Paper, *Performer's Rights*, <https://www.jetir.org/papers/JETIR2403852.pdf>. <sup>5</sup> Copyright Act, 1957, Section 2(qq).

- The conceptual and legal basis of performers' rights;
- Historical evolution and legislative reforms in India;
- Economic and moral rights under the statute;
- Infringement cases, digital age issues, and court rulings;
- Recommendations for Reform and Increased Protection.

By placing the rights of performers within the domestic and international context, this paper highlights the importance of the rights of performers in maintaining the cultural and creative economy.

## 2. CONCEPTUAL UNDERPINNINGS OF PERFORMERS' RIGHTS

### 2.1 Definition and Scope

A performer under the Indian law is defined as an individual who acts, sings, dances, plays instruments, lectures or otherwise makes a performance.<sup>5</sup> This definition is made deliberately broad to include folk, classical and contemporary forms of expression. Modern performances, such as studio recordings, online streaming and presentation on social media, are also within this ambit.<sup>5</sup>

### 2.2 Rationale for Protection

Economic Value: Performances are a source of revenue in the form of concerts, recordings, television and streaming platforms. The protection of economic rights means that performers will be able to negotiate for fair remuneration.

Moral/Personality Rights: A performance is an extension of artistic personality. Distortion or misuse can be harmful to reputation and creative integrity. Cultural Significance: The protection of performers fosters the preservation of artistic heritage and the ongoing production of creative work.<sup>7</sup>

### 2.3 Performers Rights as Neighbour Rights

Performers' rights are considered to be a category of neighbouring rights, separate from copyright but closely related.<sup>8</sup> Authors are the creators of works, while performers are the interpreters and executors of those works. International treaties - the Rome Convention (1961), WPPT (1996), and Beijing Treaty on Audiovisual Performances (2012) - recognise performers as independent rights-holders.<sup>9</sup> These treaties influenced India's statutory reforms.

## 3. HISTORICAL DEVELOPMENT OF PERFORMERS RIGHT IN INDIA

### 3.1 Pre-1994 Scenario

Before 1994, Indian law did not give statutory recognition to the performers. Courts always held that performers lacked the right to assert their rights over a work unless they were authors.<sup>6</sup>

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<sup>5</sup> *Performer's Rights under Intellectual Property Rights*, Legal Service India, <https://www.legalserviceindia.com/legal/article-10492-performer-s-rights-under-intellectualproperty-rights.html>.

<sup>6</sup> *Rights of Performers and Broadcasters under Copyright Act, 1957*, LawBhoomi.

This left live performances, recordings, and broadcasts open to exploitation. Unauthorised reproduction, piracy and re-broadcasting were rampant, often leaving performers without remuneration and credit.

### 3.2 Global Influence

International treaties and conventions influenced the legal development in India. Participation in the Rome Convention (1961) and the adherence to the WIPO treaties (1996) helped to put pressure to recognize the rights of performers at the domestic level.<sup>7</sup>

### 3.3 1994 Amendment

The Copyright (Amendment) Act, 1994 brought in the initial performers' rights such as the right to prevent unauthorised fixation and broadcast.<sup>8</sup> However, these rights were limited and did not cover reproduction and distribution or the emerging digital platforms adequately.

### 3.4 2012 Amendment

The 2012 Amendment added more protections, giving:

- Exclusive economic rights,
- Moral rights,
- Digital communication and broadcasting rights,
- Royalty entitlements.<sup>9</sup>

This amendment brought India in line with the international norms including the Beijing Treaty, and covered gaps that technological advancements had revealed.

## 4. STATUTORY RIGHTS OF PERFORMERS

Performers have economic rights as well as moral rights, which are the rights to their financial and personal interests.

### 4.1 Economic Rights

**Fixation Rights:** Performers can give their permission or not give their permission to record live performances. Unauthorised recording is an infringement.<sup>10</sup> For example, a live concert cannot be recorded by an attendee and distributed online without permission.

**Reproduction Rights:** Even after lawful fixation, performers have control over reproduction of the performance in any format: CDs, DVDs or digital streaming.<sup>11</sup>

**Distribution Rights:** Performers are in charge of the distribution of the performances. Unauthorized commercial circulation (selling bootleg recordings, for example) violates these rights.<sup>12</sup>

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<sup>7</sup> JETIR Research Paper, *Performer's Rights*, <https://www.jetir.org/papers/JETIR2403852.pdf>.

<sup>8</sup> Copyright (Amendment) Act, 1994.

<sup>9</sup> Copyright (Amendment) Act, 2012.

<sup>10</sup> Copyright Act, 1957, Section 38B(1).

<sup>11</sup> Ibid., Section 38B(2).

<sup>12</sup> Ibid., Section 38B(3).

**Rental and Lending Rights:** These rights provide for the performers to receive payment when their recordings are rented or lent commercially, such as by music stores or libraries.<sup>13</sup>

**Broadcasting and Communication Rights:** Performers have control of the transmission via television, radio, satellite or online streaming platforms.<sup>14</sup>

**Making Available Rights:** The performer is able to authorize interactive on-demand access on digital platforms, such as OTT services.<sup>15</sup>

#### 4.2 Moral Rights

**Right of Attribution:** Performers should be attributed to whenever their work is used. For instance, a playback singer has to be credited in a film soundtrack.<sup>16</sup>

**Right of Integrity:** Protects performers from distortion, mutilation or misrepresentation of performer's performance.<sup>17</sup> Voice of a singer or choreography of dancer cannot be altered without consent if it affects the reputation or artistic expression.

#### 4.3 Duration and Assignment

Performers' economic rights last for 50 years from the year after performance.<sup>18</sup> Economic rights may be assigned by contract but moral rights are inalienable.<sup>19</sup> This prevents exploitative buy-outs whereby performers forfeit personal rights.

### 5. INFRINGEMENT OF PERFORMERS RIGHTS

Performers' rights are infringed if any unauthorized person:

- Records, reproduces, distributes or communicates the performance;<sup>20</sup>
- Does not attribute the performance appropriately;<sup>21</sup>
- Alters or adjusts the performance to the detriment of reputation;<sup>22</sup>
- Uploads or broadcasts performances on the internet without permission.<sup>23</sup>

#### 5.1 Digital-Age Challenges

**Piracy and Online Distribution:** Unauthorized streaming and file-sharing websites pass out performances without consent.

**Social Media Misuse:** The with clip or remixes which are uploaded on social media platforms such as Instagram or TikTok are often unauthorized.

**AI-Generated Performances:** Deepfake videos and AI-synthesized voices have introduced new problems. Unauthorized AI replication may be an infringement of both moral and economic rights, but there is not much legal clarity here.

<sup>13</sup> Ibid., Section 38B(4).

<sup>14</sup> Ibid., Section 38B(5).

<sup>15</sup> *Performer's Rights under Copyright Law*, iPleaders Blog.

<sup>16</sup> Copyright Act, 1957, Section 38C(1).

<sup>17</sup> Ibid., Section 38C(2).

<sup>18</sup> Ibid., Section 38D.

<sup>19</sup> *Performer's Rights under Intellectual Property Rights*, Legal Service India.

<sup>20</sup> Copyright Act, 1957, Section 51.

<sup>21</sup> Ibid., Section 38C(1).

<sup>22</sup> Ibid., Section 38C(2).

<sup>23</sup> *Rights of Performers and Broadcasters under Copyright Act, 1957*, LawBhoomi.

## 6. Exceptions and Limitations

There are some types of uses of performances that are not subject to claims of infringement:

- Private or personal use;
- Educational or research purposes;
- Criticism, review or news reporting;
- Judicial or legislative proceedings.<sup>24</sup>

These exceptions are intended to balance the rights of performers with access to and freedom of information by the public.

## 7. REMEDIES

### 7.1 Civil Remedies

Performers may seek:

- Injunctions to prevent infringement;
- Damages and account of profits;
- Seizure and destruction of infringing copies.<sup>25</sup>

### 7.2 Criminal Remedies

Unauthorized reproduction or communication for commercial gain may be attracted by:

- Fines;
- Imprisonment;
- Seizure of infringing devices and materials.<sup>26</sup>

### 7.3 Collective Management Organisations

CMOs assist performers in administering rights, licensing use and collecting royalties. A fully integrated system of performer-centric CMO, performing on a performer-centric model, still does not exist in India, leading to inefficiencies in royalty collection.<sup>27</sup>

## 8. JUDICIAL INTERPRETATIONS

Indian courts have made it clear on the following aspects:

1. Studio Performances Count Pre-recorded studio sessions qualify as "performances."<sup>28</sup>
2. Unauthorised Re-recordings Copying or rebroadcasting without consent is an infringement of economic rights.<sup>29</sup>
3. Moral Rights Protection: Distortion or misrepresentation is recognised by the courts as being actionable.<sup>30</sup>

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<sup>24</sup> Copyright Act, 1957, Section 52.

<sup>25</sup> Copyright Act, 1957, Sections 55–56.

<sup>26</sup> Ibid., Section 63.

<sup>27</sup> *Performer's Rights under Copyright Law*, iPleaders Blog.

<sup>28</sup> *Performer's Rights under Intellectual Property Rights*, Legal Service India.

<sup>29</sup> Ibid.

<sup>30</sup> Copyright Act, 1957, Section 38C.

4. Contractual Fairness: Courts examine contracts in which performers are waiving rights, especially junior artists.<sup>31</sup>

These interpretations demonstrate that the interests of performers increasingly have been protected by the courts, particularly in cases involving new media and technology.

## 9. RIGHTS AND OVERLAPS OF BROADCASTERS

Broadcasting organizations own rights to:

- Reproduce and re-broadcast content;
- Communicate performances to the public.<sup>32</sup>

Licensing agreements are important to help manage overlapping rights between performers and broadcasters. Proper arrangements are made so that they are compensated fairly and not double-exploited.

## 10. CONTEMPORARY CHALLENGES

**Digital Piracy:** Illegal streaming has been a major issue, especially for film songs and music videos.<sup>33</sup>

**Social Media Use:** Viral videos are often based on performances that are done without the consent. Content moderation policies of platforms may not be adequate.

**AI-Generated Content:** Voice cloning and deepfake performances are threatening the control of performers over their persona.<sup>34</sup>

**Contractual Exploitation:** Many performers who are just beginning their careers sign contracts that waive economic and moral rights.<sup>35</sup>

**Royalty Distribution:** India does not have a streamlined system of tracking and paying digital royalties.<sup>36</sup>

## 11. POLICY RECOMMENDATIONS

1. **Strengthen Digital and AI Protections:** Amend the Copyright Act to specifically address AI-generated performances and online sharing.
2. **Performer-Centric CMOs:** Establish transparent, efficient societies to account for and distribute licenses and royalties.
3. **Fair Contracting Standards:** Introduce mandatory non-waivable standards of moral and royalty rights of performers.
4. **Improved Enforcement Mechanisms:** Fast-track tribunals, online takedowns, and automated monitoring of digital platforms.
5. **Awareness and Capacity Building:** Workshops for performers on contracts, rights and licensing to enable them to be better bargainers.

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<sup>31</sup> *Rights of Performers and Broadcasters under Copyright Act, 1957*, LawBhoomi.

<sup>32</sup> Copyright Act, 1957, Section 37.

<sup>33</sup> *Performer's Rights under Copyright Law*, iPleaders Blog.

<sup>34</sup> JETIR Research Paper, *Performer's Rights*, <https://www.jetir.org/papers/JETIR2403852.pdf>.

<sup>35</sup> Ibid.

<sup>36</sup> *Rights of Performers and Broadcasters under Copyright Act, 1957*, LawBhoomi.

These reforms would bring India in line with the best practices around the world and preserve the position of performers in the digital age.

## 12. CONCLUSION

India's performers' rights framework has evolved significantly, from non-recognition to comprehensive protection under the 2012 amendments. Statutory economic and moral rights, judicial interpretations, and emerging collective management mechanisms provide performers with legal leverage. However, challenges from digital distribution, social media, AI-generated content, and contractual exploitation remain pressing.

Strengthening digital rights, enhancing collective management, and enforcing fair contracts are critical steps for sustaining a vibrant creative economy. Protecting performers not only ensures justice and remuneration but also safeguards cultural heritage and artistic integrity.

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