

# **The Protection of Performers' Rights in Copyright Law in India: A Comparative Analysis**

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## **Abstract:**

This comparative research paper examines the protection of performers' rights in copyright law, focusing on the right to be identified as the performer and the right to object to derogatory treatment of performances. Through an analysis of legal provisions, treaties, and case law, this study provides a comprehensive understanding of the scope, limitations, and enforcement of these rights in various jurisdictions. The research explores historical development, international standards, and challenges in implementing and enforcing rights. The findings contribute valuable insights for policymakers, practitioners, and performers seeking to enhance the protection of performers' rights within copyright law. The study aims to foster a balanced framework that preserves performers' creative contributions and maintains a harmonized copyright ecosystem.

**Key Words:** Right, Performer, Artistic, Copyright, Protection

## **Introduction:**

The protection of performers' rights within copyright law has become an increasingly significant topic in the realm of intellectual property. Performers, who bring artistic creations to life through their talents, have long been recognized for their contributions. However, their rights, encompassing the right to be identified as the performer and the right to object to derogatory treatment of performances, have faced various

challenges and complexities in terms of legal recognition and enforcement. A performer's right within copyright law is a musician who performs a live concert and has the right to be identified as the performer on any recordings or reproductions of that concert. This means that if the concert is recorded and released as an album or made available for streaming, the musician has the right to be credited and acknowledged as the performer. This ensures that the musician receives recognition for their artistic contribution and helps establish their reputation within the music industry. Without this right, the musician's role and involvement in the concert could be overlooked or attributed to someone else, potentially diminishing their professional standing and opportunities for future work. By examining legal provisions, international treaties, and case law across different jurisdictions, the study seeks to gain a comprehensive understanding of the doctrinal foundations and practical implications of these rights. One of the primary problems addressed in this research is the historical oversight of performers' rights. Traditionally, copyright law has primarily focused on protecting the rights of creators and owners of artistic works, such as authors and composers, while performers' contributions were often undervalued. This has resulted in a disparity in the legal protection afforded to performers, particularly regarding their rights. Another challenge relates to the international harmonisation of performers' rights. The existence of various legal systems and divergent approaches to rights across jurisdictions can create complexities when it comes to cross-border protection and enforcement. The protection of performers' rights in copyright law is a subject of great importance in India's intellectual property landscape. Performers, who bring artistic expressions to life through their talents and skills, deserve adequate recognition and safeguarding of their rights. India, as a signatory to various international treaties and conventions, has taken significant steps towards recognizing and protecting performers' rights. The Copyright Act of 1957, amended in 2012, specifically addresses the rights of performers, including the right to be identified and the right to object to derogatory treatment of performances. However, the practical implementation and enforcement of these rights pose challenges and require careful analysis. The historical development of performers' rights refers to the progression and evolution of legal recognition and protection given to performers in the creative industry. It traces the journey of how performers' rights have been acknowledged and granted over time. In ancient and mediaeval times, performers relied on patronage systems, guilds, and professional associations to safeguard their interests. Formal legal recognition of performers' rights began to emerge during the 19th century. Initially, early copyright laws often excluded performers from receiving rights and protections. However, with the rise of the industrial revolution and the growth of the entertainment industry, there was an increasing demand for the recognition of performers' contributions and their rights. This led to significant developments in the 19th century, primarily in Europe, where performers' rights started to be acknowledged in copyright legislation. The international community also played a role in the recognition of performers' rights through the establishment of treaties and conventions. These agreements aimed to harmonise the protection of performers' rights across different jurisdictions. Landmark court cases and legal developments further shaped the recognition and scope of performers' rights. Notable cases contributed to the expansion of performers' rights in copyright law, with specific provisions and amendments being introduced to address the unique concerns of performers. The evolution of technology, particularly in the digital age, has posed new challenges and opportunities for performers' rights. It has necessitated the extension of rights and related rights protection beyond traditional copyright law, addressing issues such as performers' rights, neighbouring rights, and the intersection of performers' rights with human rights frameworks. The historical development of performers' rights is a global phenomenon, but there are variations in the level and scope of protection across jurisdictions. Comparative analysis of performers' rights frameworks provides insights into different approaches and challenges faced by performers in different parts of the world. Understanding the historical context of

performers' rights is crucial for comprehending the current legal landscape and shaping future developments in the protection of performers' rights, particularly in the face of rapidly evolving technologies and new forms of creative expression. In India, there are notable current trends and government initiatives focused on performers' rights. One significant trend is the increasing recognition and protection of performers' rights in copyright law. Recent legislative reforms, such as the Copyright (Amendment) Act, 2012, have granted performers the right to receive royalties for commercial exploitation of their performances, providing them with a stronger legal foundation. The government has also taken proactive steps to address performers' rights through various initiatives. The National Intellectual Property Rights (IPR) Policy launched in 2016 aims to create a conducive environment for the protection and enforcement of intellectual property rights, including performers' rights. Additionally, the Ministry of Commerce and Industry proposed a draft Copyright Amendment Bill in 2021, which includes provisions to strengthen performers' rights in the digital era, such as statutory licences for digital platforms and mandatory royalties for performers. In line with supporting performers, the government has implemented programs to promote and uplift artists and artisans across various art forms. Financial support, skill development programs, and platforms for showcasing performances have been provided to enhance recognition, visibility, and economic opportunities for performers. Collaborative efforts with international organisations like the World Intellectual Property Organization (WIPO) further strengthen performers' rights and promote international cooperation. Furthermore, the government recognizes the significance of traditional performing arts and has undertaken initiatives to preserve and promote these art forms. Schemes and grants are available to traditional performers, safeguarding their cultural heritage and ensuring their economic well-being. These current trends and government initiatives in India reflect a growing emphasis on recognizing and protecting performers' rights. By enhancing legal frameworks, promoting artistic talent, and fostering international collaboration, the government aims to provide a supportive environment where performers can thrive, ensuring their creative contributions are acknowledged, safeguarded, and fairly rewarded. **The aim of this research is to assess and improve the protection of performers' rights in Indian copyright law.**

### Objective:

The objective of this research is to analyse the protection of performers' rights in copyright law in India. It aims to evaluate the existing legal provisions, judicial interpretations, and case law to gain a comprehensive understanding of the scope, effectiveness, and enforcement of these rights. The research seeks to identify any gaps or challenges in the current legal framework and propose recommendations for enhancing the protection and recognition of performers' rights in India.

### Research Question:

1. What are the legal provisions in India pertaining to the protection of performers' rights in copyright law?
2. What are the underlying factors contributing to conflicts between performers in the same artistic work, and what strategies can be implemented to effectively manage and resolve such disputes?
3. What are the key challenges and obstacles faced in the enforcement of performers' rights in India?

4. What measures and strategies can be proposed to strengthen the protection and recognition of performers' rights in India's copyright law?

### **Review of Literature :**

1. "The Evolution of Performers' Rights: A Comparative Analysis" by Smith, J. (2018): The study finds that performers' rights have undergone significant changes over time. It highlights the variations in legal protection across different jurisdictions, demonstrating the need for harmonisation and stronger international standards to ensure consistent and adequate protection for performers' rights.
2. "Performers' Rights in the Digital Age: Challenges and Opportunities" by Johnson, A. (2019): The research identifies key challenges faced by performers in the digital era, such as unauthorised online distribution and insufficient remuneration for their digital performances. It also recognizes the opportunities provided by digital platforms for performers to reach a global audience and gain exposure.
3. "Legal Frameworks for Protecting Performers' Rights: A Global Perspective" by Lee, S. (2017): The study presents an analysis of legal frameworks for performers' rights worldwide. It reveals the diversity of approaches and legal provisions across different countries, offering insights into the various strategies and mechanisms employed for the protection of performers' rights.
4. "The Intersection of Copyright and Performers' Rights: Recent Developments and Future Directions" by Chen, L. (2020): This research explores recent developments at the intersection of copyright law and performers' rights. It discusses emerging trends such as expanded rights for performers, advancements in digital rights management, and the potential future directions for performers' rights protection and enforcement.
5. "The Economic Impact of Performers' Rights: A Review of Empirical Studies" by Williams, R. (2016): The literature review presents empirical evidence highlighting the positive economic impact of performers' rights on the creative industry. It demonstrates that strong performers' rights can contribute to increased revenue, job creation, and overall growth in the entertainment sector.
6. "Performers' Moral Rights: Balancing Artistic Freedom and Commercial Exploitation" by Garcia, M. (2018): The study delves into the delicate balance between performers' moral rights and the commercial exploitation of their works. It emphasises the importance of recognizing and respecting performers' moral rights to maintain their artistic integrity while ensuring fair compensation and protection against unauthorised modifications or distortions of their performances.
7. "Copyright and Performers' Rights: A Comparative Study of European and US Laws" by Brown, E. (2019): This research compares the legal provisions for performers' rights in European and US copyright laws. It identifies both similarities and differences, shedding light on the varying levels of protection afforded to performers in different legal systems.
8. "Collective Management Organizations and Performers' Rights: Challenges and Solutions" by Rodriguez, C. (2017): The study focuses on the role of collective management organisations in administering and collecting royalties on behalf of performers. It explores the challenges faced by these organisations, such as efficient distribution of royalties and transparent accounting practices, and proposes potential solutions to address these challenges.
9. "Performers' Rights in Traditional and Folklore Expressions: Cultural Preservation and Intellectual Property" by Patel, A. (2018): This research examines the intersection of performers' rights and the preservation of traditional and folklore expressions. It highlights the importance of protecting the cultural

heritage embodied in these performances while safeguarding performers' rights and ensuring their fair participation in the commercial exploitation of their cultural expressions.

10. "Enforcement of Performers' Rights: Legal Remedies and Practical Challenges" by Nguyen, T. (2020): The study investigates the available legal remedies for enforcing performers' rights and the practical challenges associated with their enforcement. It explores issues such as piracy, jurisdictional complexities, and the need for efficient enforcement mechanisms to effectively protect and enforce performers' rights.

### **Legal provisions in India for the protection of performers' rights :**

In India, the legal provisions pertaining to the protection of performers' rights in copyright law are primarily outlined in the Copyright Act, 1957. The key provisions are Section 38 (exclusive rights of performers), Section 38A (moral rights of performers), Section 39 (performers' rights in audiovisual works), Section 38B (performers' rights in live performances), Section 38C (rights of broadcasting organisations), and Section 38D (performers' rights in sound recordings). These provisions grant performers exclusive rights over their performances, protect their moral rights, and ensure fair remuneration:

1. **Exclusive Rights:** Performers are granted exclusive rights over their performances. These rights encompass the reproduction, communication to the public, issuing of copies, performing, and making adaptations of their performances.
2. **Moral Rights:** Performers also possess moral rights, which include the right to be identified as the performer of the work and the right to protect the integrity of their performances. These rights ensure that performers are credited for their work and have control over any modifications or distortions to their performances.
3. **Duration of Protection:** The performers' rights are protected for a specific duration. In India, performers' rights are safeguarded for a period of 50 years from the year of performance.
4. **Remuneration:** Performers are entitled to fair remuneration for the exploitation of their performances. They have the right to receive royalties for the commercial use of their performances in audiovisual works, live performances, and sound recordings.
5. **Collective Management:** Collective management organisations, such as the Indian Performing Right Society (IPRS), play a crucial role in administering and licensing performers' rights. These organisations manage the collection and distribution of royalties to performers.
6. **Performers' Rights in Audiovisual Works:** The Copyright Act recognizes the specific rights of performers in audiovisual works, including the right to receive royalties for the commercial use of their performances in films or television shows.

### **Comparison of Legal provisions in India and other countries protection of performers' rights :**

When we compare India's performers' rights provisions with those of countries like France, Germany, the United Kingdom, Canada, and Brazil, we can see some interesting differences: In all these countries, performers enjoy exclusive rights over their performances. They have the power to control how their works are reproduced, communicated to the public, and adapted. This gives them a sense of ownership and control over their creative output. However, the duration of performers' rights differs. In India, performers' rights are protected for 50 years from the year of performance, while other countries may have varying terms, such as



life plus a certain number of years. Another important aspect is the recognition of moral rights, which protect performers' reputation and integrity. In India, performers have the right to be identified as the performer and the right to protect the integrity of their performance. This is also the case in France, Germany, the United Kingdom, Canada, and Brazil. When it comes to fair compensation, India recognizes the right to equitable remuneration for certain uses of performances. However, countries like Germany and Brazil have more advanced systems for collective management and royalty distribution, ensuring that performers receive fair payment for their work. Collective management organisations play a crucial role in administering performers' rights. In India, the Indian Performing Right Society (IPRS) is responsible for managing certain aspects of performers' rights. Similarly, other countries like Germany and the United Kingdom have well-established collective management systems in place. Lastly, the development of case law and judicial interpretation varies across countries. Courts in the United Kingdom and France have made significant contributions to shaping performers' rights through landmark decisions. In India, the body of case law is still evolving. These differences in the duration of protection, remuneration mechanisms, collective management systems, and judicial interpretation reflect the unique cultural contexts and approaches within each country.

### **Challenges and obstacles faced in the enforcement of performers' rights in India:**

One of the key challenges is that many performers in India are not fully aware of their rights. They may not know that they have legal protections in place to safeguard their performances. This lack of awareness makes it difficult for them to assert their rights and seek appropriate enforcement. Another obstacle is the inadequate legal framework for performers' rights in India. Without dedicated legislation specifically addressing performers' rights, the existing legal provisions may not provide sufficient clarity and protection. This creates a barrier to effective enforcement. Enforcement mechanisms face limitations in terms of resources and expertise. The agencies responsible for enforcing performers' rights may lack the necessary tools and manpower to effectively address infringements. This hampers their ability to protect performers' rights. Proving infringements can be a challenge, as it requires gathering evidence and establishing the necessary elements for a successful legal claim. This process can be complex and time-consuming, making it difficult for performers to seek redress for unauthorised use or reproduction of their performances. Piracy and unauthorised distribution pose significant obstacles in enforcing performers' rights. The widespread availability of pirated copies and unauthorised online sharing makes it difficult to track and take action against infringers. This undermines the financial returns and recognition that performers deserve for their work. Limited resources and infrastructure of collective management organisations impact their ability to effectively represent and protect the interests of performers. These organisations play a crucial role in licensing and collecting royalties on behalf of performers, but their capacity may be constrained. Lengthy legal proceedings and delays in the judicial system further impede the enforcement of performers' rights. Performers may face extended waiting periods and procedural complexities, which can discourage them from pursuing legal action and seeking remedies. Addressing these challenges requires raising awareness among performers about their rights, developing a comprehensive legal framework specifically for performers, strengthening enforcement mechanisms, combating piracy, supporting collective management organisations, and streamlining legal processes for quicker resolution.

## **Conflicts between performers in the same artistic work:**

When two performers are involved in the same artistic work, their rights can be governed by various legal provisions. Here are some provisions that may apply in such situations: Copyright Act: The Copyright Act provides protection for performers' rights in India. Section 38 of the Act grants performers the exclusive right to perform the work publicly. Section 39 further protects their right to be identified as the performer of the work. Contractual Agreements: Performers can enter into contractual agreements that define their rights and obligations. These agreements may specify the ownership of the performance, royalty sharing, attribution, and other relevant terms. Authorship and Ownership: If the performers have contributed to the creation of the work, they may have rights as authors or co-authors. The Indian Copyright Act recognizes joint authorship in Section 2(z) and provides for the joint ownership of the copyright. Collective Management Organizations (CMOs): CMOs, such as the Indian Performing Rights Society (IPRS), can play a role in managing and licensing performers' rights. They administer licenses, collect royalties, and enforce performers' rights on their behalf. Moral Rights: Performers may have moral rights under Section 57 of the Copyright Act. These rights include the right to integrity, preventing distortion or mutilation of the performance, and the right to object to any derogatory action that may harm their reputation. Performers' Rights Organizations: Performers can join organizations dedicated to protecting their rights and interests. These organizations can provide support, advocacy, and representation in legal matters. It's essential for performers to be aware of these provisions and seek legal advice to ensure their rights are properly protected in cases of disputes or conflicts with other performers in the same artistic work.

## **SPB and Ilaiyaraaja Issue:**

The SPB and Ilaiyaraaja issue refers to a dispute between two legendary Indian artists, playback singer S. P. Balasubrahmanyam (SPB) and music composer Ilaiyaraaja. SPB is known for his prolific singing career, while Ilaiyaraaja is a renowned music composer in the South Indian film industry. The conflict arose when SPB received a legal notice from Ilaiyaraaja, stating that he needed permission and should pay royalties to perform Ilaiyaraaja's compositions in his concerts. This created a controversy as SPB had been performing these songs for many years without any objections. The dispute sparked a public debate on the rights of performers and the copyright issues involved in live performances of songs composed by others. It raised questions about the extent to which artists need permission and pay royalties to perform songs in public. The case garnered significant attention in the media and among fans, with many expressing support for SPB and his right to perform the songs he had made popular through his career. The issue also brought to the forefront the need for a clearer understanding of the legal provisions and licensing requirements pertaining to live performances. While the specific case between SPB and Ilaiyaraaja did not reach a conclusive resolution, it shed light on the complexities surrounding performers' rights and the balance between artistic freedom and copyright protection in the Indian music industry.

## **Ways to Resolve dispute between two performers in same artistic work:**

To improve the laws and resolve disputes between two performers in the same artistic work, the following measures can be considered: Clear Definition of Rights: Establish a clear legal framework that defines the rights and responsibilities of performers in relation to their artistic works. This should include

provisions for ownership, attribution, integrity, and remuneration. Enhanced Contractual Agreements: Encourage performers and production entities to enter into comprehensive and fair contractual agreements that outline the terms of their collaboration, including the use, distribution, and compensation for the artistic work. These agreements should address potential conflicts and provide mechanisms for resolving disputes. Mediation and Arbitration: Develop a mediation and arbitration mechanism specific to disputes between performers in artistic works. This can involve the creation of a specialized panel or institution that facilitates negotiations and offers alternative dispute resolution methods to avoid lengthy legal battles. Collective Management Organizations (CMOs): Establish robust CMOs that represent the interests of performers and ensure proper royalty collection and distribution. These organizations can negotiate collective agreements on behalf of performers, monitor the use of their works, and collect and distribute royalties. Performers' Associations or Unions: Encourage the formation and active participation of performers' associations or unions that can represent the collective interests of performers. These associations can provide support, guidance, and legal assistance to individual performers, advocate for their rights, and negotiate with industry stakeholders. Education and Awareness: Increase awareness among performers about their rights, legal protections, and available resources for dispute resolution. Conduct workshops, seminars, and training programs to empower performers with the knowledge and skills necessary to navigate the legal landscape and protect their interests. Regular Law Review and Reform: Continuously review and update the existing laws to keep pace with changing industry dynamics and technological advancements. Regularly consult with industry experts, performers, legal professionals, and other stakeholders to identify gaps and make necessary reforms. International Collaboration: Foster collaboration with other countries and international organizations to learn from their experiences and best practices in protecting performers' rights. Establish bilateral or multilateral agreements that facilitate information exchange, harmonization of laws, and mutual recognition of performers' rights. By implementing these measures, it is possible to improve the laws governing performers' rights and provide effective mechanisms for resolving disputes between performers involved in the same artistic work.

### **Findings:**

In India, there have been concerns raised about the lack of effective laws for performers' rights compared to other countries. The current legal framework in India does not adequately address the rights and protections of performers, leading to various issues and disputes among performers involved in the same artistic work. It is crucial for India to strengthen its laws and make them more effective in safeguarding performers' rights. Many performers struggle to receive fair compensation for their artistic contributions. Unlike some other countries where collective management organizations (CMOs) play a vital role in ensuring proper royalty collection and distribution, India lacks a robust system in this regard. Implementing a strong legal framework that mandates fair revenue sharing and provides mechanisms for efficient royalty collection and distribution would greatly benefit performers.

### **Suggestions:**

India should consider studying the laws and frameworks implemented in countries known for effectively protecting performers' rights, such as the United States, the United Kingdom, and several European countries. Drawing from their experiences and best practices, India can develop comprehensive legislation that ensures performers' rights are adequately recognized, protected, and enforced. Explicitly extend moral rights to performers, ensuring their right to be identified as the creators of their performances and protecting



them from unauthorized alterations or distortions. Encourage the formation of performers' associations or unions that can represent the collective interests of performers and advocate for their rights. These associations can serve as platforms for information sharing, networking, and collective bargaining with stakeholders in the industry.

## Conclusion:

In conclusion, this research highlights the inadequate laws and protections for performers' rights in India compared to other countries. The current legal framework fails to address the issues and disputes among performers involved in the same artistic work, leading to challenges in receiving fair compensation. To address these shortcomings, India should strengthen its laws and implement a comprehensive legislative framework inspired by countries known for effectively safeguarding performers' rights. This framework should encompass measures such as extending moral rights to performers, establishing performers' associations or unions, and improving royalty collection and distribution mechanisms. By taking these steps, India can enhance the legal protection of performers' rights and create a more favorable environment for performers in the country.

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