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Dancers' Rights: An elusive legal regime in India

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Abstract

The Copyright legal regime in India has largely been a success with the active participation of the judiciary, legislature as well as civil society in the form of practitioners of the law or those the law seeks to protect under this. However, amidst this, a section of the population that has remained mostly underrepresented and hence not beneficiary of the law despite an explicit mention of them in the law is the creative world of the dancers who tend to remain out of the complex legal world. However, owing to the ignorentia juris non excusat principle, awareness generation is definitely the prerogative of the legislature and legal practitioners who are also to ensure that they receive their due protection of the law. But, that is severely lacking coupled with the vagueness of the law that has ripped off the benefits or rights that flow therefrom by advantaging from the uncomplicated attitude of the creative workers.

The World Intellectual Property Organization's Performers and Phonograms Treaty lead to amendments in the Copyright Act 1957- codification of performer's rights, exclusive rights of rights and the moral rights of performers under sections 2(qq), 38, 38A and 38B and modifications in other provisions of the Act. In fact, the insertion of section 42A in the year 1999 subsequently protected the rights of performers even outside India. But, all these laws have remained on paper and while it has been a great initiative on the part of the government, the impact assessment of the law reveals a different picture altogether.

In this endeavor, the authors have begun a search and journey for unraveling what and how the rights of dancers of the country can be assured when it comes to protecting their creativity, hard work vis-à-vis incentives. The Lockean labor theory and its adequate implementation to the dancers' world in India time and again reflect the grim reality of the big fish eating up the small

fish. The attempt in this endeavor is not just protection of the creativity and to ensure that the work or choreographies so created remains as one's own, but also that the human rights of a life of dignity and adequate livelihood is assured.

The paper attempts to collate the vagaries and uniqueness of the dancers' world and seeks to provide a legal framework that could be adopted to assure conferment of rights- exclusive and moral to the dancers in compliance to the incentivization of the hard work, more so in the digital era that we are in.

Keywords: Copyright, choreography, rights, creativity, performer, originality

A. Introduction

The performing arts field in India is loosely structured with regard to legal protection making the stakeholders, mainly the artists extremely vulnerable to the discussion in this paper- breach of copyright or violation of the copyright law in India. However, several questions arise when copyright of dance performers and subsequently performers' rights come into the legal discourse. With the amorphous, sensitive and very technical subject-matter of concern, the law fails to address the grievances of the artists. Performing arts have a vast canvas inclusive of the theatre practitioners, musicians, singers, instrumentalists and dancers. In fact, for dance artists, there is often an admixture of these different stakeholders. For example, recording of a production to be performed by a dance troupe or company requires the contribution of singers, musicians and instrumentalists like percussionists and the recordist. The performance of the troupe is dependent on the light designer, the set and props designer, the make-up artist, costume designers and many others depending on the production and kind of performance. Interestingly, under the intellectual property law regime, mostly copyright law and for some purposes the design law and trademark accords protection to all these mentioned individuals. So, the law is clear with regard to recognizing and affording protection and rights to all those accompanying the dance. In other words, all have rights successfully enshrined and effectively implemented, but the dancers have an amorphous legislation that is ill-conceived and badly implemented laden with ineffectiveness. While the theatre practitioner's rights under the copyright law is protected through the script, musical notations protects the musician, the law does not recognize in true sense the *dancers' rights*.

Though, *ignorentia juris non excusat* is an inexcusable part of the law, the question in general is whether the awareness is made of the law(s) concerned and whose responsibility is it really to ensure that the laws reach the beneficiaries? Or is it only a gimmick that will be invoked just at that moment when the aggrieved (in this case, the dancer) approaches 'some' authority for 'some relief'? The legal failure in this regard in India has been exactly this. The bitter realities come to light and the plight of dance artists are subdued because they have to accept that and let it go. So, even if someone appropriates the dancer's supreme choreography (ies), they really have no

effective law to protect them in a country whose citizen the dancer is! They have no choice and they believe (and largely know) that they have no law for protecting them against such *immoral* and *unethical* acts of other dancers except for severe criticisms of the industry and the dancers' community. But, how much does that help? For how long would that be effective, especially if a young budding artists' concepts and choreographies are "copied" and also in case of a dance company, the choreography is entirely created and assigned to be created by, for example, the lead artist and the same is declared to be the choreography of the company or the head of the same? Many would say that evolving a contract is the best way to stop this. Is it really the case? Who frames the contract? How many artists till today in India have been bound by formal contracts? Do the dancers have any say in that contract? Certainly, free consent is enshrined under the Indian Contract Act 1872, but how far is that true owing to the socio-economic conditions of the dancers in India? Further, even if that might vitiate the contract, if at all a legal dispute is raised, what would be the future of that artist? While, these questions ponder the authors of the paper, the dilemma is being stuck in these debates having known both the dancers' world and legal world by and large. The questions that bother the authors in general are these and whether at all as law scholars, we have any answer to these with the legal protection available presently?

B. Legal regime on rights of dancers

The WIPO Performances and Phonograms Treaty (WPPT) defines "performers" as "actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, interpret, or otherwise perform literary or artistic works or expressions of folklore".[1] WPPT aims at developing and maintaining "the protection of the rights of performers and producers of phonograms in a manner as effective and uniform as possible". Thus, in relation to dancers, the treaty grants moral rights[2], economic rights in their unfixed performances[3], reproduction[4], distribution[5] and rental[6] rights, and right of making available of fixed performances[7].

WPPT had also lead to amendments in the Copyright Act, 1957 in form of definition of performer, codification of performer's rights, exclusive rights of rights and the moral rights of performers under sections 2(qq)[8], 38, 38A and 38B respectively and also modifications in other

[1] Article 2 (a), WPPT 1996.
[2] Article 5, WPPT 1996.
[3] Article 6, WPPT 1996.
[4] Article 7, WPPT 1996.
[5] Article 8, WPPT 1996.
[6] Article 9, WPPT 1996.
[7] Article 10, WPPT 1996.
[8] Section 2(qq)- "performer" includes an actor, singer, musician, dancer, acrobat, juggler, conjurer, snake charmer, a person delivering a lecture or any other person who makes a performance;

provisions of the Act. In fact, the insertion of section 42A in the year 1999 subsequently protects the rights of performers even outside India. But, all these laws have remained on paper and while it has been a great initiative on the part of the government, the impact assessment of the law reveals a different picture altogether.

Performances are protected under the Copyright law though not as a subject-matter or in the nature of work but as "any visual or acoustic presentation made live"[9]. Performers enjoy the neighbouring rights.[10] While they are not authors since they do not produce works, they have rights that are analogous to authorial rights[11].

C. Who is a performer?

Performers and creative heads are different entities and even if it is the same person, the protection under law ought to be different. While, a member of a dance troupe is a performer and to that effect certainly has the moral rights[12], there are less likelihood of exclusive rights[13] devolving therefrom for that individual artist. So, it would be the creative head on whom the copyright would exist. In recognition to this, the German law provides for artistic collaboration in a presentation wherein performers are those who are directors or conductors.[14] But, what about situations where the creative head is not a performer, for instance, Padma Vibhushan Kanak Rele who would direct the performance, but not perform in person, is not known. Similarly, if the performance is choreographed and directed by a member, can the creative director claim sole authorship of the piece or if it was choreographed jointly with a member of the troupe, would it be justified to submit the same for sole authorship of the creative director[15]? In India, to add on this reality, there can be presence of contracts that might be legally enforceable, but bad in spirit. Like publishing houses or book companies, there are contracts that seek for total submission of the choreographies to the dance institutes or companies and no retention of copyright is allowed[16]. While for books, there can be various modes by which these are executed and are not detrimental, for dancers in India, this kind of a legal framework is very problematic because the

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[Provided that in a cinematograph film a person whose performance is casual or incidental in nature and, in the normal course of the practice of the industry, is not acknowledged anywhere including in the credits of the film shall not be treated as a performer except for the purpose of clause (b) of Section 38B;]

[9] Section 2(q), Copyright Act, 1957.

[10] ELIZABETH ADENEY, THE MORAL RIGHTS OF AUTHORS AND PERFORMERS, 230 (2006).

[11] ibid.260 (2006).

[12] Section 38B, Copyright Act 1957.

[13] Section 38A, Copyright Act 1957.

[14] ELIZABETH ADENEY, THE MORAL RIGHTS OF AUTHORS AND PERFORMERS, 260 (2006).

[15] *Eastern Book Company v. D.B. Modak* 2008 (36) PTC 1 (SC).

[copyright protection finds its justification in fair play. When a person produces something with his skill and labour, it normally belongs to him and to make a profit out of the skill and labour of the original author and it is for this reason that the Copyright Act, 1957 gives to the authors certain exclusive rights in relation to the certain works referred in the Act. The object of the Act is to protect the author of the copyright work from an unlawful reproduction or exploitation of his work by others.]

[16] *Eastern Book Company v. D.B. Modak* 2008 (36) PTC 1 (SC).

returns or output of dancers are anyway lowly judged and paid for and to allow continuance of the same would end up ruining lives and livelihood of many.

In this regard, it is also important to mention that there are two distinct patterns in which performers' rights can be envisaged. For those of the dance schools and those of the professional dance troupes. In the case of the former, it is mostly the imparting training to students of the traditional compositions (at least till the advanced staged after which exclusively created choreographies by the *guru* or the dance teacher can be imparted) while for the latter, professional dancers join as a member of the troupe where there is minimal training of traditional choreographies and experimental work or productions are the main objective of the troupe. It is in the scenario explained in the latter case that performers' rights are envisaged, and both exclusive and moral and can be invoked. At the same time, if those in the advanced stages are taught a few choreographies of the *guru* or the dance teacher that s/he/they have choreographed, there too performers' rights would lie with the students (restricted to moral rights), but creative head and authorship (with exclusive performers' rights) would lie with that *guru* or dance teacher. For example, renowned Kathak dancer Sandip Mallik has a very popular dance school named Sonarpur Nadam. While he teaches the young and adolescent dancers, he also has a professional troupe under the same name. He imparts training for the traditional items to the former and has ample new choreographies for the latter. But, he too teaches some of his own choreographies to the young students and the discussion above on performers rights- moral and exclusive- is suited in such a situation as well.

D. Creativity of dance artists and the legal protection

In this section, the attempt is to evaluate the dancer's rights vis-à-vis established legal principles of the copyright regime from different jurisdictions. These legal principles are premised on understanding the threshold level for creativity in India for dancers. While these were not enunciated or evolved keeping in mind the dance artists, the humble attempt is to assess the same in case of measuring or comprehending the creativity of dancers that can be legally protected. However, before delving into that analysis, it is important to locate the range and capping of creativity.

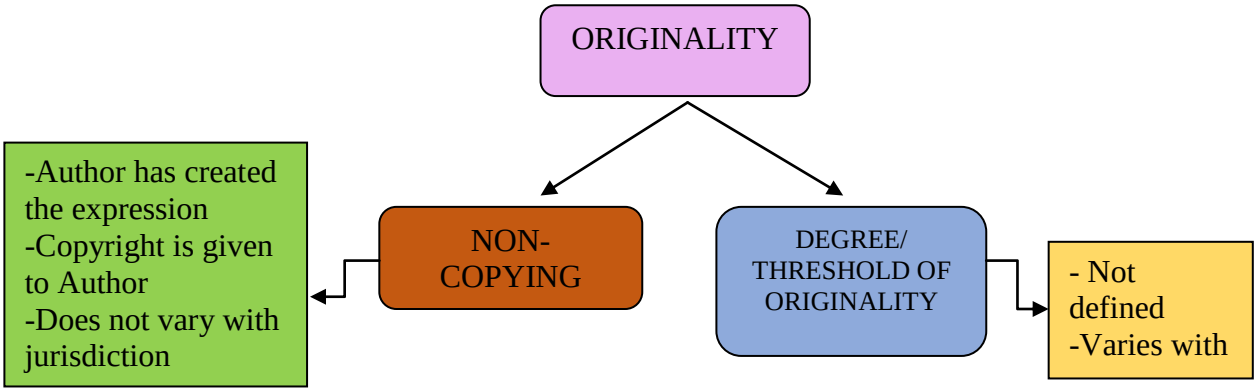
i. Whether a performance by a dancer is an original work of authorship?

The history of copyright legislations got amended with the incorporation of WPPT, but amongst those too many legislations portrayed exclusion of dancers in the definitions of performers, like the French statute[17] or the German enactment[18] or even the German law[19] that does not include

[17]Art. 212-1, Intellectual Property Code.
[18]ELIZABETH ADENEY, THE MORAL RIGHTS OF AUTHORS AND PERFORMERS, 428 (2006).
[19]Section 73, Authors' Rights Act 1965.

dancers explicitly like the Australian[20] or the Indian law. Section 13(1) (a) of the Indian Copyright Act provides that copyright subsists in the case of original artistic works. Similarly, 17 U.S. Code § 102 (the US Copyright Act) and Section 1 of the UK Copyright, Patents and Designs Act also provides that copyright subsists only in the original work of authorship.

Originality is the basic yardstick used by the copyright regimes in the world to evaluate the availability copyright protection to a particular work. Copyright subsists only if a work is original, i.e., in case of original authorship. The corresponding term in Civil Law countries (like UK) for originality is "Author's own intellectual creation". The doctrine of originality protects the public, safeguarding the rights of the copyright consumers. It prevents anyone from claiming an expression which is in the public domain as his own. However, none of the legislations has described the scope of the term "original"[21], nor provided any test to determine the originality of any work. The duty of determining the amount of originality required has been thus left to the courts. Therefore, in order to find out whether a dancer's performance is original or not, we need to see whether it passes the tests of originality followed by the courts of different jurisdictions.



From the above flowchart, it can be said that originality has two components, i.e., the non-copying requirement (objective in nature) and threshold of originality (subjective in nature). An author gets the copyright over his work if the expression is not copied from any other source or author. Therefore, author is the person who has authored the expression.

The jurisdictions around the world follows different doctrines to assess the creativity/originality factor in a work and the most recognised ones have been discussed as under:

UK Framework: Sweat of the Brow Doctrine

[20]Section 248A, Copyright Act 1957.

[21] Only Section 3A of the UK Copyright Act provides that "a database is original if, and only if, by reason of the selection or arrangement of the contents of the database the database constitutes the author's own intellectual creation".

First adopted in the case of *Walter v Lane*[22], the doctrine entirely relies upon the skill and labour. In *University of London Press v. University Tutorial Press*[23] the Chancery Division of England explained the doctrine and opined that the Copyright Act did not require the expression be in an original or novel form. It just required that the work was not copied from another work and have originated from the author.

USA Framework: Modicum of Creativity Doctrine

UK's "sweat of the brow" doctrine was completely negated in *Feist Publications, Inc. v. Rural telephone Service Co.*[24] , whereby the US Supreme Court held that in order to be original a work must not only have been the product of independent creation, but it must also exhibit a "modicum of creativity", i.e., "sufficient amount of intellectual creativity and judgment" has to be applied to a work.

Canada's Approach

The Canadian Supreme Court formed a middle ground in the landmark case of *CCH v Law Society of Upper Canada*[25] which established the "threshold of originality". It held that the work has to involve non-trivial, non-mechanical application of judgement, labour and skill.

Indian Framework

For a considerable amount of time, India used to follow the "sweat of the brow" doctrine, however, the benchmark of 'originality' was not as low as that of UK's. The Supreme Court in the *Eastern Book Company v. D.B. Modak*[26], discarded the said doctrine and shifted to "modicum of creativity" approach whereby the "flavour of minimum requirement of creativity" was introduced.

In relation to dance, this creativity, for the Indian dance artists, can be in the form of creativity of the presentation style or technique or in the composition of a new item or may even be *substantial* modifications of earlier choreographed pieces. But, of course traditional items that are in the *public domain* like Tanum of Guru Bipin Singh in Manipuri or Dashavtar of Kelucharan Mahapatra or the various Padams and Aravus of Bharatnatyam and many such items cannot be claimed to be the copyright of individual Gurus or dancers, unless, there has been changes brought about so much so that the new piece starkly differs from the earlier or original ones and also fulfills the minimum creativity requirement. However, an important question that need be answered is with regard to steps that are used in the choreography. For example, usage of *Chali* of Manipuri dance in a production is not copyrightable since it is in the public domain,

[22] [1900] AC 539.
[23] [1916] 2 Ch 601.
[24] [1991] 499 U.S. 340.
[25] [2004] 1 SCR 339.
[26] 2008 (36) PTC 1 (SC).

but the production is surely copyrightable since it is new and at the same time, the usage of *Chali* in that particular manner, in that scene with that particular song or music are all matters of copyright. But, the present laws in place severely lack all these clarity and is ambiguous and ineffective. Furthermore, a *signature* step of a particular artist, like the *Tomari matir konya* famous pose of Manjushree Chaki Sarkar and Ranjabati Sarkar of Dancers' Guild requires protection because that was the creative output of the legend. But at the same time, it is in the public domain, so anybody can replicate the same. The problem with this approach and more so in the digital era, whereby the uploading of a video or broadcast of a Facebook Live would mean it is in the public domain, is that anybody can replicate it and that would be in direct infringement of copyright. So, these intricate relationships and possibilities in creativity require the law to be dynamic and adaptive of the societal needs and developments.

ii. How much of a dancer's performance is copyrightable?

The Supreme Court in the case of *Academy of General Education, Manipal and Ors. vs. B. Malini Mallya*[27] had held that a new form of a ballet dance which was reproduced in a literary format would be considered as a dramatic work. Thus, for a person to register a choreographic work under copyright one has to reduce it in writing or any other form. However, this framework is not applicable in case of all choreographies because unlike ballet, not all forms of choreographies can be scripted and be reduced to a writing format.

In this regard it is also important to recognise that certain elements of a work are not copyrightable, namely, "ideas, facts, procedure"[28], "functionality", something which has been taken from the public domain, "*scènes à faire"* [29], and those falling under the "merger doctrine".

The public domain concept, along with other principles, too remain intact with choreographies that are traditional or indigenous to certain *gharana*s or heritage compositions. These are undoubtedly not to be subject-matter of individual appropriation and can be performed by anybody, as also taught by anyone. The authors have attempted to evolve a possible framework, as explained below, wherein a mechanism, whereby types of choreographies can be identified and accordingly the levels of creativity, that call for copyright protection.

While certainly the idea is not copyrightable, the ideas expressed from the presentation styles or the conceptualisation that find expression in case of dance performances are definitively subject-matter of protection. For example, *Bhaktirasasudhasara*, a production by Sruti Performing Troupe under the direction of Prof. Sruti Bandopadhay encapsulates the *rasa*s (emotions). To that effect, the concept of *rasa*s are not unique to the choreographer and a performance on that is a choreography based out of the public domain knowledge and inspired from traditional

[27] AIR 2009 SC 1982
[28] *Nichols v. Universal Pictures Corp*., 45 F.2d 119 (2d Cir. 1930).
[29] *Williams v. Crichton*, 84 F.3d 581, 583 (2d Cir. 1996).

choreographies. But, the presentation of the *rasa*s as per Vaishnavism, and identifying the *rasa*s as per Manipuri dance and in the dance genre of Manipur and finally bifurcating into five (5) scenes are elements that make the creativity of the choreographer and hence a subject-matter of choreography. In this sense, thus, this production is copyrightable.

E. Possible framework to protect the copyright

There is an attempt herein to provide for a possible framework. First, the categorization of choreographies and second the others parameters that in totality augment the possible framework for legal protection.

Choreographies can be broadly categorised[30] to include the following:

a. Traditional choreography

b. Inspired from traditional choreography

c. New choreography

a. ***Traditional choreography:*** It is that choreography which is known to us for years and has a particular pattern of presentation of its own. In fact, to speak of India, all classical dance forms have this kind of choreography since long. Many of these choreographies point at a particular *gharana* (style) or refers to a particular *guru*. These choreographies established the classical dance form itself and made it popular.

Padma Vibhushan Shri Kelucharan Mahapatro- the Father of Odissi dance- was instrumental in making the dance form popular to attain the acclaim of its incorporation in the classical dance genre. These choreographies are original works that have a specific pattern of presentation of the dance-form that has gained a distinctive feature over the years and has been performed widely by Odissi dancers across the country and the world. A look at his choreographies, gives reasonable relatability and the impression that it is one of the items of the Kelucharan *gharana*. This is so well-known that today it comes under the public domain knowledge of most Odissi dance artists and are taught extensively and hence it cannot be claimed to be a copyrightable work.

However, in this scenario, there is another difficulty, whether a new choreography (for instance, of Shri Kelucharan Mahapatra) that subsequently attains the status of public domain knowledge is no more a work deserving copyright at the relevant time when the assessment takes places and that it is only as a matter of public domain knowledge that cannot be copyrighted. This question arises more so because every public domain knowledge choreography was once a new composition. But, in this, the partaking is of the *guru* or creative head that through extensive teaching disseminates it to a level where the same is then continued by all those students and this process continues smoothly pervading the public domain. This is a kind of tacit assignment of

[30]Somabha Bandopadhay, *Dance Choreographies: Quest for Legality*, 2(1) WISDOM SPEAKS, INTERNATIONAL FORUM FOR ART AND CULTURE 27 (2017).

the *gurus* and the choreographers which requires greater regulation possibly through contracts owing to the present changed circumstances. Thus, in this case too, the copyright- performer's right (both exclusive and moral) still persist on the choreographer (Kelucharan Mahapatra in this example). So, performance of that, as discussed, is not copyrightable by a performer.

Likewise, in Bharatnatyam, there are traditional items like *Tillana, Padam, Varnam*, etc. which are performed in different styles by different dancers but the concept and essence remain the same. In this sense, though the pattern of presentation might differ pointing at the different *gharana*s, yet the originality remains in the introduction of the concept for the first time, so it is copyrightable for that creator- even if it is centuries old. But, subsequent artists performing them cannot claim the copyright, unless there are substantial differences in a newly choreographed *Tillana* or *Padam* or *Varnam* wherein the expression and pattern of that new presentation gets the copyright claim.

Possibility of protection in the field discussed: Such works remaining in the public domain can be copied by any dancer and performed. This is because as per the public domain doctrine, no one individual can have sole appropriation over these items and thus copyright over this must be barred. The consequence otherwise would be the restricted propagation of our cultural richness since only some individuals will have rights over these and others will not be able to perform this in public forum except in specified exceptional cases. Thus, traditional choreography is not subject to copyright protection.[31]

b. Inspired from traditional choreography: This would include the choreographies which are undertaken by the disciples of the *guru*s of the different classical dance forms and this arena is a complicated and complex one.

Possibility of protection in the field: It is difficult to understand which portions of the choreography are borrowed by the disciples and which portions form part of the public domain. This severability of the choreography is the core of the matter. The preliminary problem lies in the fact that classical dance forms are admixtures of varied *bol*s, *talas* and songs which can be used in varied combinations as per the need, want and innovativeness of the performers. So, whether any performer has used any combination of steps of any *guru* is difficult to identify. In such cases a rational and pragmatic view needs to be taken.

If in classical Manipuri dance, the famous item of *Nanichuri* is performed in the traditional way to portray the choreographies of Guru Bipin Singh or Guru Amubi Singh, that would be considered to be in the public domain since it has acquired distinctiveness over the years in the relative group of people associated with the dance form. It has been disseminated to over thousands of students by now, but if one chooses the same *bol*s and the essence of the act but

[31] Somabha Bandopadhay, *Dance Choreographies: Quest for Legality*, 2(1) WISDOM SPEAKS, INTERNATIONAL FORUM FOR ART AND CULTURE27 (2017).

puts different and new steps to choreograph it, it must be considered to be a choreography inspired from the traditional choreography which in that event be protected under the copyright laws. This can be justified as the concerned person's own creation by virtue of using her/his skill, labour and judgment to create it. This view is supported by the Lockean Labor Theory.

In this regard, another poignant parameter determining whether a choreography is inspired from traditional or earlier choreographies or it is a mere replication of the same, the principles of substantial copying comes to the fore. In this regard, the judicial guidelines from the ratio of the decisions of *Vosper Vs. Hubbard*[32] or *Zee Telefilms Vs. Sundial Communications*[33] or *Anil Gupta Vs. Kumar Dasgupta*[34] or the seven points test of *R. G. Anand Vs. Delux Films*[35] can be equally applicable. Thus, if the choreography reveals similarities to the traditional items in greater proportion then that cannot be taken to portray one's own creation.

c. ***New choreographies:*** It is another controversial aspect as to what is a new choreography and what is not, because quite often a production can be inspired from the traditional items, in which case, it falls under the second type as discussed above. So, the newness and uniqueness have to be understood from the steps, movements, *bol*s, presentation and also the chronology in which all these are placed. So, *Sakhya Prem*, a composition of Manipuri dance artist Prof. Sruti Bandopadhay, is inspired from the *Udukhalrasa* and *Goshthalila* that are traditional, ritualistic dance repertoires and are part of the festivals in Manipur, which are indigenous to Manipur and are in the public domain. But, from there, the three scenes of *Sakhya Prem* which are conceived and composed have no resemblance to the traditional dance forms and practices. While, the story of Kaliya daman, for example (as depicted in one scene) is known to all and have been performed extensively, the *bol*s and *talas* used along with usage of the steps are unique and in totality gives a different and new look- with no resemblance to any other prior work[36]. This can be a suggestive manner of evaluation of the newness in the choreographies that are strictly copyrightable.

The discussions above have quoted examples from the classical dances of India, but the same holds true for other traditional and folk dance forms. The level of creativity can be perceived to be the lowest when a performer presents a traditional *Bihu* or *Garba* as learnt from the *guru*s or as a part of their culture (more in cases of *Lai Haraoba* or Bamboo dance). This forms part of the public domain. However, if steps or portions of famous choreographies are adopted to present a

[32] 2003 (5) BomCR 404.
[33] [1972] 2 QB 84.
[34] AIR 2002 Delhi 379.
[35] 1979 SCR (1) 218.
[36] *R. G. Anand Vs. Delux Films*, (1978) 4 SCC 118.
[Where the theme is same but is present it and treat it differently so that the subsequent work becomes a completely new work, no question of violation of copyright arises.]

different dance piece, then that can be said to be inspired from the traditional items. The most suitable example for this could be examples from the Bollywood film industry, where, for example, on an old traditional *Garba* song, a *Garba* is choreographed, but that has no semblance of the original composition. Another example can be a *Lavni* choreography inspired from one famous *Lavni* choreography that is blended with a new song composition. The level of creativity, here, is more than the first one. The third type would encompass an entirely new composition basing upon the genre(s) of each Traditional Cultural Expression (TCE).

In these, it is interesting to note that TCE which at the time of writing hasn't found a statutory codification gets recognition under this regime for performing artists in India. Even though the objective of TCE is different and for many TCEs that are not popular, usually, it would be extremely traditional with minimal scope of the protection under categories (b) and (c).

Like the authorial rights, the moral rights of the performers have the non-derogable nature[37] whose recognition can be facilitated through such possible framework. These categorisations of different choreographies are on the basis of the levels of creativity that resonates with the *Abercrombie & Fitch*[38] classification of distinctiveness of trademark.

Alongside this identification, there are some other parameters that have to be adopted to confer protection mechanism in totality.

1. During course of employment, the rights to be conferred and copyright breach would be adjudged from contractual obligations. With the respect of copyright, co/joint authorship status or even holder of the copyright separate or with the dance troupe or company of the lead/head of the institution must be enshrined in the contracts.
2. Assignment as possibilities to preserve, protect and disseminate the choreographies through professional dancers or members of the troupe must be effectuated through contractual obligations for those who are taught the choreographies.
3. Regulatory mechanism to assess claims of infringement of copyright and procedure to be followed to account for violation of copyright.
4. Awareness generation and litigating this cause by knowing the elements to be proved before the courts and elements that determine copyright protection and the contrary as well.

Conclusion:

Unlike the works of a musical notations or book or script, the evaluation of the originality and creativity of a dancer is difficult to understand. In relation to choreographies, we frequently come across questions such as what happens if a choreography is taught to the disciples, is there any

[37] ELIZABETH ADENEY, THE MORAL RIGHTS OF AUTHORS AND PERFORMERS, 212 (2006).
[38] 537 F.2d 4 (1976).

license or assignment, how can substantial copying be assessed, what happens in case of minor or major modifications, what happens if movements are replicated but in different choreographies, can the script of the dance production be copyrighted, what are the rights of dancers when they are appointed in dance companies, what penalties or liabilities lie upon different stakeholders and who would monitor the contributions of each artist in a dance production and many more.

In this backdrop, the authors have tried to understand the concept of rights of dancers and evaluate the extent of the originality doctrines as applicable to dancers in India. With the emergence of copyright laws and recognition of performers' rights, it has now become quintessential to understand the periphery of dancers and necessary to make a distinction between what choreographies occupy the public domain and what does forms part of new compositions. A sincere attempt has been made to classify the choreographies under different categories because, in the contemporary world where things are changing drastically, it provides a basic model to understand the scope of the dancers' and the performers' rights under the copyright law. It further helps the *gurus* as well as the dancers with their claims of infringement because at present there is no such classification which can act as a reference point.

As artists, dancers learn, create and produce as well as train, impart and teach in their career, as a result of which the determinants for assignment, license, royalty, contract. Such concepts remain blur, especially because the law of the land has not provided special conditionalities for interpreting the same. Most of the time the performers are not aware of the available legal rights and remedies and thus they end up getting exploited by the big fishes. Therefore, it is extremely pivotal for the legislators and the legal practitioners to create awareness amongst the performers regarding the same. Further, there is no such regulating or monitoring body exclusively for the protection of rights of dancers in our country and even the Copyright Protection Board (CPB), in its present form, lacks the expertise to evaluate as against such parameters. Thus, the authors are of the opinion that a new regulatory body be framed or make the CPB competent to provide an effective regulatory mechanism which would assess the same.

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