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## **CONCEPTUALISING PERFORMERS' RIGHTS OF SPORTSPERSONS UNDER THE INDIAN COPYRIGHT LAW**

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### **ABSTRACT**

Performers' rights are essentially a subset of neighbouring rights that protect individuals who embody live performances while granting control over fixation, reproduction and communication to the public. The Copyright Act 1957 recognises performers' rights as a distinct category of neighbouring rights designed to protect the economic and moral interests of individuals who exhibit skill, labour and personality in live performances.<sup>1</sup> While the statutory framework expressly refers to actors, musicians, singers, dancers, and acrobats, it neither explicitly addresses whether sportspersons fall within the statutory definition of 'performer' under Section 2(qq), nor whether live sporting events constitute performance under Section 2(q) under the said Act.<sup>2</sup> This ambiguity has gained increasing relevance in the light of the exponential retransmission, fantasy sports ecosystems and the emergence of e-sports as a competitive digital performance. This paper evaluates whether live sporting performances satisfy the statutory criteria to be considered a performance and, as such, whether sportspersons qualify as performers under the Copyright Act 1957.

*Keywords: Performer, Performance, Sportsperson, e-sports*

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<sup>1</sup> The Copyright Act, 1957, No. 14 of 1957, § 38 (India)

<sup>2</sup> Id. § 2(q), § 2(qq).

## I. INTRODUCTION

Performers' rights in the Indian legal context represent a statutory recognition that creative labour is embodied in live expression, which deserves protection independent of authorship in a fixed work.<sup>3</sup> Unlike traditional copyright, which attaches to original literary, dramatic, musical and artistic works under Section 13 of the Copyright Act 1957, performers' rights arise from the act of performance itself.<sup>4</sup> They are classified as neighbouring or related rights aligned with international conventions such as the Rome Convention, 1961 and later developments under the WIPO Performances and Phonograms Treaty.<sup>5</sup>

The 2012 Amendment to the Copyright Act significantly strengthened this regime by introducing Section 38A and Section 38B, extending to the exclusive rights of the performers and moral rights of performers respectively, thereby aligning with the international standards.<sup>6</sup> However, the statutory definitions that determine who qualify as a performer and what constitutes a performance remain a gray area in judicial discourse, particularly in respect of sportspersons. The definition of a performance as under Section 2(q), means any visual or acoustic presentation made live by one or more performers.<sup>7</sup> Section 2(qq) defines a performer as including an actor, singer, musician, dancer, acrobat, juggler, conjurer, snake charmer, lecturer, or any other person who makes a performance.<sup>8</sup> The phrase 'any other person who makes a performance' falls inclusive. It is here that the issue arises – does a sportsperson who demonstrably engages in live, skill-based, visual presentation before an audience, correspond to this category? The principle concerning originality in authorship under Section 13 does not directly govern neighbouring rights. The error committed in discourse is conflating the copyrightability of a sporting event with the protectability of the athlete's performance.

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<sup>3</sup> P. Narayanan, *Copyright and Industrial Designs* 335–340 (4th ed. 2007).

<sup>4</sup> The Copyright Act, 1957, § 13 (India).

<sup>5</sup> Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, Oct. 26, 1961, 496 U.N.T.S. 43.

<sup>6</sup> The Copyright (Amendment) Act, 2012, No. 27 of 2012 (India).

<sup>7</sup> The Copyright Act, 1957, § 2(q) (India).

<sup>8</sup> *Id.* § 2(qq).

## II. INTERNATIONAL FOUNDATION AND LEGISLATIVE FRAMEWORK

The Rome Convention for the Protection of Producers of Phonograms and Broadcasting Organisations, 1961, recognised performers as independent rights-bearing subjects.<sup>9</sup> Article 3(a) defines performers as actors. Singers, musicians, dancers and other persons who act, sing, deliver, declaim, play in, or otherwise perform literary or artistic works.<sup>10</sup> The phrase ‘otherwise perform’ is expansive. India acceded to the Rome Convention in 1994, thereby undertaking to provide minimum protection against unauthorised broadcasting and fixation.<sup>11</sup> This accession influenced subsequent amendments to domestic law. Originally, Section 38 provided limited protection against unauthorised recording of performances.<sup>12</sup> The 2012 amendment inserted Sections 38A and 38B, granting performers exclusive rights to reproduce, issue copies, communicate to the public, and sell recordings of their performances<sup>13</sup>. Section 38B introduced moral rights analogous to Section 57. The Statement of Objects and Reasons to the 2012 Amendment indicates alignment with the WPPT and strengthening of performers’ economic entitlements<sup>14</sup>. While WPPT focuses primarily on phonograms, the philosophical commitment to performer-centric protection is evident. Significantly, Parliament did not restrict performers’ rights to artistic or dramatic performances. The statutory language remains inclusive.

## III. A COMPARATIVE PERSPECTIVE

Under the UK Copyright, Design and Patents Act 1988, Section 180 defines ‘performance’ broadly to include dramatic or musical performances and any similar presentation<sup>15</sup>. The UK jurisprudence has consistently held that football matches are not copyright works because they lack originality and authorship<sup>16</sup>. However, this does not preclude performers’ rights analysis. In *Football Association Premier League Ltd. v. QC Leisure*, the European Court of Justice clarified that sporting events cannot be regarded as works due to the absence of creative freedom<sup>17</sup>. Yet the decision was confined to authors’ rights and did not negate neighbouring rights protection. The EU law distinguishes between copyright works and related rights. The

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<sup>9</sup> Supra note 5

<sup>10</sup> Id. Article 3(a)

<sup>11</sup> WIPO, Contracting Parties to the Rome Convention, India accession 1994

<sup>12</sup> The Copyright Act, 1957, § 38 (before 2012 Amendment) (India).

<sup>13</sup> Id. § 38A.

<sup>14</sup> Copyright (Amendment) Bill, 2012 (India).

<sup>15</sup> Copyright, Designs and Patents Act 1988, c. 48, § 180 (UK).

<sup>16</sup> *Football Association Premier League Ltd v. QC Leisure*, Case C-403/08, 2011 E.C.R. I-9083

<sup>17</sup> Supra note 16

Information Society Directive preserves performers' rights independent of originality requirements<sup>18</sup>. Scholarly commentaries recognise that neighbouring rights do not require fixation in the same manner as copyright works<sup>19</sup>. The comparative jurisprudence demonstrates that rejection of copyright in sporting events does not logically entail exclusion of sportspersons from performers' rights. The analytical distinction is foundational.

#### **IV. WHETHER LIVE SPORTING EVENTS CONSTITUTE 'PERFORMANCES' UNDER SECTION 2(q)**

Section 2(q) of the Copyright Act defines 'performance' as 'any visual or acoustic presentation made live by one or more performers'<sup>20</sup>. The definition is concise, technology-neutral, and notably devoid of artistic limitation. It does not confine performance to dramatic, musical, or literary expression. The statutory emphasis is on the visual or acoustic presentation, made live and by one or more performers. A live cricket match, football game, tennis match, or athletic event incontrovertibly satisfies the first two limbs. It is a visual presentation, often accompanied by acoustic elements, made live before spectators and broadcast audiences. The controversy lies in whether such a presentation qualifies as a performance in the statutory sense or whether it is merely an event. The Copyright Act does not define 'presentation'. In statutory interpretation, in the absence of a definition, words must be construed in their ordinary meaning<sup>21</sup>. A 'presentation' connotes display or exhibition before an audience. Sport, by design, is structured for public display. Competitive rules, rehearsed training, coordinated movements, and performance metrics are all directed towards an audience, whether stadium spectators or broadcast viewers. The argument that sport lacks pre-scripted artistic content mirrors the originality debate under Section 13. However, performers' rights are not contingent upon originality in the copyright sense. The Supreme Court in *Eastern Book Company v D.B. Modak* clarified that originality relates to copyright in works and requires minimal creativity<sup>22</sup>. That principle does not govern neighbouring rights. Further, Section 38 protects a performer's 'performance'<sup>23</sup>. The statutory scheme assumes that performance may exist independent of fixation in a copyrightable work. The act itself triggers the right. Therefore, a live sporting display that involves coordinated skill, physical expression, and structured engagement before

<sup>18</sup> Directive 2001/29/EC of the European Parliament and of the Council, 2001 O.J. (L 167) 10

<sup>19</sup> Lionel Bently & Brad Sherman, *Intellectual Property Law* 303–309 (5th ed. 2018).

<sup>20</sup> The Copyright Act, 1957, § 2(q) (India).

<sup>21</sup> *Nathi Devi v. Radha Devi Gupta*, (2005) 2 SCC 271 (India)

<sup>22</sup> *Eastern Book Co. v. D.B. Modak*, (2008) 1 SCC 1 (India)

<sup>23</sup> The Copyright Act, 1957, § 38 (India).

an audience satisfies the textual elements of Section 2(q). The question then shifts to whether sportspersons qualify as ‘performers’.

## **V. WHETHER SPORTSPERSONS FALL WITHIN ‘PERFORMER’ UNDER SECTION 2(qq)**

Section 2(qq) defines ‘performer’ to include: an actor, singer, musician, dancer, acrobat, juggler, conjurer, snake charmer, lecturer, or any other person who makes a performance<sup>24</sup>. This is an inclusive definition. The residuary phrase “any other person who makes a performance” broadens its scope. Applying principles of ejusdem generis would require identifying a common genus among the listed categories. The listed individuals are persons who publicly exhibit skill, talent, or expressive ability before an audience. They are not limited to artistic professions; the inclusion of snake charmers and lecturers demonstrates breadth. Sportspersons similarly exhibit rehearsed physical skill before an audience. Gymnasts, figure skaters, and divers arguably resemble dancers or acrobats. Even in team sports such as cricket or football, the individual athlete’s bodily movement is a live display of trained skill.

Indian courts have recognised that statutory definitions containing inclusive language must be interpreted expansively<sup>25</sup>. The absence of exclusion suggests legislative openness. Internationally, scholarly analysis of neighbouring rights indicates that performers’ protection is grounded in the investment of labour and personality in a live act<sup>26</sup>. Athletic performance satisfies both criteria. One counterargument asserts that sport is competitive rather than expressive. However, nothing in Section 2(qq) requires artistic intent. A lecturer performs intellectual exposition; an acrobat performs physical dexterity. Competitive context does not negate performance. Accordingly, a purposive reading supports inclusion of sportspersons within Section 2(qq).

## **VI. SECTION 38A AND THE NATURE OF EXCLUSIVE RIGHTS**

Section 38A grants performers exclusive rights to make a sound or visual recording of the performance, reproduce it, issue copies, communicate it to the public, sell or give on commercial rental.<sup>27</sup> These rights are structurally analogous to copyright. The legislative intent was to strengthen performer autonomy post-2012.<sup>28</sup> If sportspersons qualify as performers, they

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<sup>24</sup> Id. § 2(qq)

<sup>25</sup> Regional Director, ESI Corp. v. High Land Coffee Works, (1991) 3 SCC 617 (India).

<sup>26</sup> W.R. Cornish, D. Llewelyn & T. Aplin, *Intellectual Property: Patents, Copyright, Trade Marks and Allied Rights* 602–610 (8th ed. 2013).

<sup>27</sup> The Copyright Act, 1957, § 38A (India).

would theoretically possess independent rights against unauthorised fixation or communication of their live performance, subject to contractual arrangements with event organisers and broadcasters. However, in organised sports, athletes typically assign or license rights contractually to governing bodies. This does not negate the existence of statutory rights; it merely channels them through contractual frameworks.

## VII. INTERFACE WITH BROADCASTING RIGHTS UNDER SECTIONS 37 TO 39A

Indian sports jurisprudence has predominantly evolved through broadcasting disputes. Section 37 grants broadcasting reproduction rights to broadcasting organisations<sup>29</sup>. These rights protect broadcast signals against unauthorised rebroadcast or communication.

In *ESPN Star Sports v. Global Broadcast News Ltd*, the Delhi High Court recognised that live telecasts enjoy statutory protection under Section 37 even absent underlying copyright in the event itself.<sup>30</sup> The Court emphasised signal-based protection. Similarly, in *Star India Pvt Ltd v. Piyush Agarwal*, the Delhi High Court restrained unauthorised online streaming of live cricket broadcasts, reinforcing the enforceability of broadcast reproduction rights in the digital sphere.<sup>31</sup> The Supreme Court in *Star India Pvt Ltd v Piyush Agarwal* (appeal contextually related to signal piracy litigation) acknowledged the statutory architecture protecting broadcasts independent of copyright in the event.<sup>32</sup>

Sections 39 and 39A apply certain provisions of copyright infringement mutatis mutandis to performers and broadcasters.<sup>33</sup> This structural symmetry suggests legislative intent to treat performers' rights and broadcasting rights as parallel, not hierarchical. The practical reality, however, is that Indian litigation has focused almost exclusively on broadcaster-centric enforcement, not performer-centric enforcement. This asymmetry should not obscure doctrinal possibility.

## VIII. UNAUTHORISED COMMERCIAL EXPLOITATION AND DIGITAL STREAMING

The proliferation of OTT platforms and online streaming has intensified infringement disputes.

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<sup>28</sup> Copyright (Amendment) Act, 2012.

<sup>29</sup> The Copyright Act, 1957, § 37 (India).

<sup>30</sup> *ESPN Star Sports v. Global Broadcast News Ltd.*, 2008 SCC OnLine Del 1349

<sup>31</sup> *Star India Pvt. Ltd. v. Piyush Agarwal*, 2013 SCC OnLine Del 3794

<sup>32</sup> *Star India Pvt. Ltd. v. Piyush Agarwal*, (2013) 15 SCC 719.

<sup>33</sup> The Copyright Act, 1957, §§ 39–39A (India).

Courts have repeatedly granted dynamic injunctions against rogue streaming websites in sports broadcasting cases. In *UTV Software Communication Ltd v 1337X.to*, the Delhi High Court developed the concept of dynamic injunctions against online piracy.<sup>34</sup> Although the case concerned cinematograph films, its reasoning has been applied to sports broadcasts. Signal piracy jurisprudence demonstrates judicial recognition of commercial value in live transmission. If performer rights are conceptualised independently, unauthorised capture of an athlete's live act, separate from broadcast signal piracy, could theoretically engage Section 38A.

## IX. E-SPORTS AND FANTASY SPORTS AS PERFORMANCE

Esports athletes engage in live digital competition broadcast to global audiences. Their participation involves skill, coordination, and live visual presentation. Unlike traditional sports, esports may involve underlying copyrighted video games owned by publishers. The athlete's gameplay, however, is a live performance layered over copyrighted software. The conceptual question mirrors that of musicians performing a copyrighted composition. Performers' rights arise from the act of performance, even if the underlying work belongs to another. The Indian jurisprudence has not yet addressed esports under performers' rights. However, statutory language does not exclude digital environments. Section 2(q) is technology-neutral. A live-streamed esports tournament constitutes a visual presentation made live.

Fantasy sports platforms statistically simulate real-world performances of athletes. The Bombay High Court in *Gurdeep Singh Sachar v Union of India* held that fantasy sports involve skill and are not gambling.<sup>35</sup> While not a copyright case, it reflects judicial recognition of performance-based data commodification. Fantasy sports do not reproduce live performances audio-visually; they use statistical abstraction. Therefore, performers' rights infringement is unlikely unless actual audiovisual footage is used without consent. However, the future emergence of realistic digital avatars replicating athlete movements through motion capture may raise performer-rights concerns, particularly under Section 38B moral rights.

## X. CRITICAL ANALYSIS OF INDIAN JURISPRUDENCE

Indian courts have not directly adjudicated whether sportspersons qualify as 'performers' under Section 2(qq). Nevertheless, a careful reading of sports broadcasting jurisprudence reveals implicit judicial premises that are doctrinally relevant. In *ESPN Star Sports v. Global Broadcast*

<sup>34</sup> *UTV Software Communication Ltd. v. 1337X.to*, 2019 SCC OnLine Del 8002.

<sup>35</sup> *Gurdeep Singh Sachar v. Union of India*, 2019 SCC OnLine Bom 13059

*News Ltd*, the Delhi High Court clarified that live telecasts of sporting events are protectable under Section 37 as broadcast reproduction rights even in the absence of copyright in the underlying event.<sup>36</sup> The Court rejected the argument that the absence of copyright in a sporting event renders its telecast unprotectable. The recognition that the broadcast signal attracts statutory protection independent of originality underscores the separability of neighbouring rights from authors' rights.

Similarly, in *Star India Pvt Ltd v. Piyush Agarwal*, the Delhi High Court restrained unauthorised online streaming of live cricket matches and emphasised the commercial investment involved in producing and transmitting sports broadcasts.<sup>37</sup> The Court acknowledged that signal piracy erodes statutory rights created under Chapter VIII of the Act. The decision, although broadcaster-centric, demonstrates judicial sensitivity to the layered structure of rights in live events. The Supreme Court in *Star India Pvt Ltd v. Piyush Agarwal*, while dealing with related enforcement issues, recognised the legislative intent to protect broadcast signals against technological circumvention.<sup>41</sup> This reinforces that Parliament envisaged a multi-tiered protection framework in live transmissions.

In *Super Cassettes Industries Ltd v. MySpace Inc*, the Delhi High Court elaborated upon communication to the public in the digital environment and the responsibilities of online intermediaries.<sup>38</sup> Although not a sports case, its articulation of digital exploitation principles directly informs unauthorised streaming of sporting performances. The Supreme Court's decision in *Eastern Book Company v. D.B. Modak* remains relevant because it clarifies that originality is a copyright-specific requirement and should not be conflated with neighbouring rights analysis.<sup>39</sup> Courts must therefore avoid importing originality thresholds into Section 2(q) interpretation.

A coherent doctrinal approach distinguishes four layers: the sporting event, the broadcast signal, the audiovisual recording, and the live athletic act which may constitute a 'performance' under Section 2(q). Doctrinal confusion arises when courts conflate the sporting event with the athlete's embodied act; while the event itself lacks authorship, the live execution may still qualify as a performance. The inclusive wording of Section 2(qq), the absence of an artistic

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<sup>36</sup> *ESPN Star Sports v. Global Broadcast News Ltd.*, 2008 SCC OnLine Del 1349

<sup>37</sup> *Star India Pvt. Ltd. v. Piyush Agarwal*, 2013 SCC OnLine Del 3794

<sup>38</sup> *Super Cassettes Indus. Ltd. v. MySpace Inc.*, 2016 SCC OnLine Del 6382

<sup>39</sup> *Eastern Book Co. v. D.B. Modak*, (2008) 1 SCC 1 (India).

limitation, India's obligations under the Rome Convention, and the performer-centric orientation of the 2012 amendments support a purposive interpretation that does not exclude sportspersons. At the same time, recognition of athletes as performers must not undermine broadcasting contracts, create duplicative claims, or blur the distinction between copyright and related rights concerns, which can be addressed through contractual assignments and harmonised interpretation of Sections 38A and 37. Since Section 2(q) requires only live presentation rather than aesthetic intent, live sporting participation can doctrinally satisfy the definition of performance, bringing sportspersons within Section 2(qq), subject to contractual arrangements governing exploitation of such rights.

## **XI. CONCLUSION**

The conceptual uncertainty surrounding the recognition of sportspersons' performers' rights in Indian copyright law arises not from any explicit statutory exclusion, but from a longstanding conflation between copyright authorship and neighbouring rights protection. Once this conceptual confusion is dismantled, the architecture of the Copyright Act, 1957, particularly Sections 2(q) and 2(qq) read in conjunction with Sections 38, 38A, and 38B, reveals a deliberately inclusive framework capable of accommodating athletic performance within its protective ambit. The legislative trajectory of the Act, especially following the transformative 2012 Amendment, reflects a clear normative shift toward recognising embodied labour, skill, and personality in live presentations as rights-bearing subject matter independent of originality or authorship. Significantly, the statutory language does not require that such performances be confined to traditionally artistic domains.

Indian jurisprudence, although historically broadcaster-centric, has nonetheless affirmed the doctrinal separability of broadcast reproduction rights from copyright in the underlying event. Moreover, courts have demonstrated a willingness to adapt statutory interpretation to technological developments, particularly in the context of digital streaming and online dissemination. This adaptive interpretive approach provides a persuasive foundation for recognising that sportspersons who engage in rehearsed, structured, and publicly presented physical expression before both live and broadcast audiences fall within the definitional contours of 'performer' under Section 2(qq). Comparative jurisprudence further reinforces this conclusion; both the United Kingdom and the European Union have consistently maintained that while sporting events may not attract copyright protection, such exclusion does not

preclude the conceptual viability of neighbouring rights protection for the embodied act of performance.

In the contemporary commercial ecosystem marked by global sports leagues, OTT broadcasting platforms, dynamic anti-piracy injunctions, and the rapid rise of esports tournaments attracting mass spectatorship, the continued refusal to recognise athletes as performers risks producing doctrinal incoherence and economic asymmetry. Such an approach privileges broadcasters and commercial intermediaries while marginalising the individual whose labour and skill animate the spectacle itself. A purposive and textually grounded interpretation that recognises sportspersons as performers under Section 2(qq), while harmonising such recognition with contractual industry practices and broadcast reproduction rights under Section 37, therefore represents the most coherent reconciliation of statutory text, international obligations, and evolving commercial realities.

Ultimately, the future development of Indian copyright jurisprudence in the sporting domain does not depend upon legislative overhaul. Rather, it turns upon judicial willingness to articulate explicitly what the statutory framework already structurally permits: that live athletic performance, constituting a visual presentation of trained skill before an audience, qualifies as a performance in law as much as it does in fact.