

CAN CHOREOGRAPHY BE PROTECTED UNDER COPYRIGHT ACT?¹

Can anyone imagine life without entertainment? In our everyday life we crave for entertainment of different genre. Popular entertainment mediums are TV, Cinema, Dance Shows, Reality Shows, Drama, ballet, social media platforms e.g., Instagram, Facebook, YouTube etc. One common thing amongst all these popular entertainment mediums is dance. For many people dance is a stress buster, one can simply enjoy by watching dance whether live or through videos.

A dance is a combination of body movements and facial expressions to the tune and rhythm. If we consider a particular dance performance, dancer is not the only person who is responsible for such performance but generally it is set or choreographed by the Choreographer.

Along with the choreographer dance performance is a coordinated effort of the entire team including dancers, set designers, costume designers, script writers, composers of songs, writers of the songs, narrators, makeup artists etc. The question is whether choreographer can claim copyright over their choreography and what would be the essentials for the same?

Let us understand this by analysing different concepts that are essential to address this question.

COPYRIGHT PROTECTION

Any work which is originally created by the creator including literary work, artistic work dramatic work can be protected under Copyright as per Section 13 (1) of the Copyright Act, 1957² (“Act”).

Choreography is not separately defined under the Act, however, the Act defines the word “Dramatic Work” under which term choreography is covered.

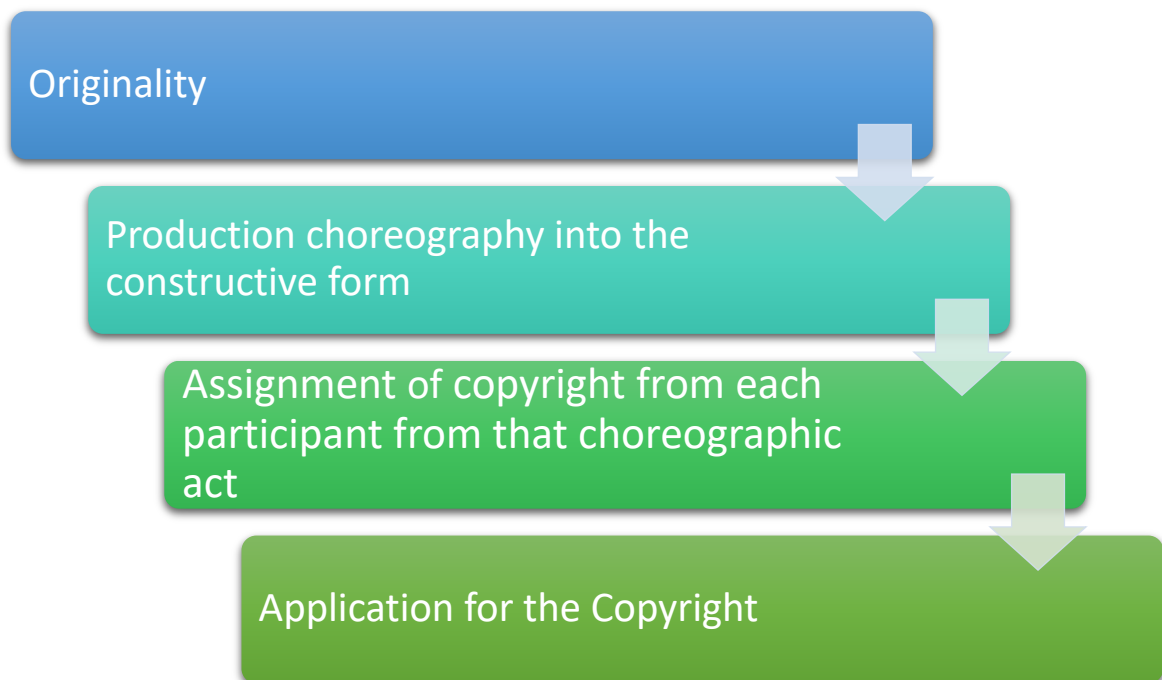
¹ The article reflects the general work of the authors and the views expressed are personal. No reader should act on any statement contained herein without seeking detailed professional advice.

² The Copyright Act, 1957

Under section 2 (h) of the Act ***“Dramatic Work” includes any piece for recitation, choreographic work or entertainment in dumb show, the scenic arrangement or acting, form of which is fixed in writing or otherwise but does not include a cinematograph film.***

Generally, choreography is understood to be a pattern of movements including expressions, created by a person or group of persons and the same is performed by the performers. Therefore, if the choreography is original and invented by the choreographer with his/her own ability and creativity, such work can be protected under the Act.

PROCEDURE IN CASE CHOREOGRAPHIC WORK IS TO BE COPYRIGHTED:



Originality:

First and utmost important criteria for application for copyright is originality of work. Any work (whether it is literary or dramatic or in any other form) only gets protection under the Act if its an original creation. There are many dance forms *prevalent* in India since ancient times, especially classical dance forms such as Katthak, Bharatnatyam, Kathakali, Kuchipudi etc. Choreographer cannot get copyright over simple rearrangement of known steps or *mudras* of these dance forms. However, if a unique dance is created using these steps or *mudras* on a unique idea or concept such work may be registered under the Act with respect to such idea/concept of the choreography.

Production of choreography into constructive form:

Choreographers need to document his/her choreography by way of writing or by videography. Even though copyright is generated along with the creation of the work, proving that such work belongs to the author can be challenging. Especially for dramatic work like dance, even though it is visible to the eyes, it is in the intangible format, therefore for registration and as a proof of innovation it is extremely important for choreographer to produce his/her choreography in the fixed form that could be by audio and video recording.

Assignment of copyright:

In case the choreography is a team effort involving the efforts of the dancers, choreographer, set designers, costume designers, script writers, composers of songs, writers of the songs, the narrator, make-up artist, etc. then necessarily each member of the team must assign his/her rights in favour of the choreographer applicant. In case such assignment is not obtained, any artist may oppose the application of copyright over the particular choreography and claim joint rights.

When all the above criteria are fulfilled, Choreographer can file a copyright application either physically in the copyright office or through speed/registered post or through the e-filing facility available on the official website of <https://copyright.gov.in/>.

When choreographic work gets registered under the Act, the Choreographer automatically gets all the rights related to that choreographic work and any person other than his/her cannot use that work anywhere or in any form without Choreographer's consent unless such usage falls within the exceptions listed in Section 52 of the Act.

ANALYSIS OF JUDGEMENTS:

In the landmark judgement delivered by Supreme Court Justice S.B. Sinha in ***Academy Of General Edu., Manipal vs. B.Malini Mallya***³ the Supreme Court recognized the rights of the choreographer and also distinguished fair use and infringement.

³ Special Leave Petition (Civil) No. 15612 of 2008

In the above said case, Dr. Kota Shivarama Karanth ("Dr. Karanth"), was a novelist, play writer, essayist, encyclopedianist, cultural anthropologist, artist, writer of science, environmentalist and had developed a new form of 'Yakshagana' a dance ballet. He was also a director of the **Academy Of General Edu.,Manipal** ("Appellant Institute"). Through his will Dr. Karanth bequeathed the copyright of *Yakshagana* to **Malini Mallya** ("Respondent") by way of Will. Later, *Yakshagana*' a dance ballet was performed in New Delhi by the Appellant Institute and therefore, Respondent filed a suit for declaration, injunction and damages alleging violation of the copyright. District Judge, Udipi decreed the said suit by restraining Appellant Institute to perform the dance ballet as copyright is vested with the Respondent by a way of will. Appellant Institute filed an appeal in the Karnataka High Court, which was dismissed. Litigating further, Appellant Institute filed an appeal before the Supreme Court and claimed that the ballet was performed in the memory of Dr. Karanth without charging any fees. Appellant Institute also claimed that, Appellant Institute is entitled to use the dance ballet in terms of section 52 (1) of the Act, which creates an exception for fair usage of literary, dramatic, musical or artistic work, for private use including research, criticism or review, whether of that work or of any other work etc. cannot be considered as infringement of copyright.

The Supreme court held that, copyright with respect to the work is vested with Malini Mallya. However, the Academy could take the statutory benefit of fair use provision, especially if the dance is performed within the meaning of provisions of Section 52(1)(i), as the performance is conducted before a non-paying audience.

Anupama Mohan vs State Of Kerala⁴

In this case, a writ petition was filed by Anupama Mohan ("Petitioner"), a famous Kuchipudi dancer who had taught Kuchipudi to students who perform at Youth festival⁵. As per the contention of the Petitioner, the State Government had leaked video recording of dance performance set by the Petitioner and performed by the performance at the Kerala Youth School Festival. Petitioner was aware of the fact that recording of

⁴ WP(C). No. 22790 of 2015 (W)

⁵ The Kerala School Youth Festival is an annual event organised by the Kerala State Government that consists of students competing in art and literary competitions.

performances takes place by authorised third party for documentation purpose and to avoid complaints against the decision of the judges related to the performance. However, Petitioner claimed that video recording along with the original soundtrack were sold all over the internet without consent of the copyright holders (Petitioner and performers of the dance). Considering the seriousness of the issue, Kerala High Court directed to the Copyright Board to conduct an independent enquiry into the above mentioned matter. The Kerala High Court also ordered interim relief by keeping safe custody of videographic materials recorded to avoid any pilferage till the disposal of this case.

Internationally, especially under American legal system and United Kingdom legal system, Choreography is included as a separate concept. Under the American legal system, Choreography is included under the category of ‘pantomimes and choreographic works’.

In Indian laws, even though choreographic work is defined as a part of “dramatic work” under the Act and the Courts are also treating copyright infringement in choreography as a serious matter, there is still ambiguity when it comes to copyright of choreographic work with respect to its author’s capacity under which choreography is created.

As a first step, it is advisable for a choreographer to obtain copyright over all his/her choreographic work by following all the necessary procedure to protect his/her work under the Act even though the process of registration appears tedious.

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