

## BEYOND THE GAME: A LEGAL EXPLORATION OF COPYRIGHTING SPORTS MOVES

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### Abstract

*With the rapid growth of media, the audience for sports has expanded significantly, leading to athletes being elevated to the status of celebrities. Section 2(qq) of the Indian Copyright Act defines all the broad categories of individuals who fall under the classification of celebrities, granting them performers' rights under the Act. However, whether athletes, particularly sports players, fall within the ambit of this definition, and whether their sports moves can be copyrighted, remains a matter of debate. Famous examples, such as Dhoni's iconic "Helicopter Shot" or Ronaldo's signature celebration move, have gained widespread recognition even among those who do not follow sports closely. This raises an important question: can these distinctive sports moves be copyrighted? It is also critical to comprehend whether the sports celebrations are within the scope of sports moves. While celebration moves are merely demonstrations of a player's excitement to celebrate a successful game and have no influence on the outcome of the match, ordinary sports moves are standardised, frequently executed motions that have a functional role in a sporting competition. This paper aims to examine the copyrightability of sports moves under the Indian Copyright Act, specifically in light of the definition of "performer" and the legal protections available to them. By analysing Indian legal provisions alongside relevant international jurisprudence, the paper will assess the feasibility and potential consequences of recognising sports moves as copyrightable subject matter. The study also attempts to examine the potential impact of extending copyright protection to sports moves, focusing on striking a balance between*

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*safeguarding individual creativity and preserving the competitive spirit of sports.*

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## 1. Introduction

Sports are fundamentally based on creativity. Individuality is denoted by creativity, and that singular moment of brilliance is frequently the dividing line between remarkable athletes and the ordinary. To put it in context, Antonín Panenka's penalty kick in football introduced a new style of shot that has since become legendary in the sport. Nowadays, sports participation and spectatorship are linked to a wide range of corporate activities. The Indian Premier League (IPL) brand value has reached \$3.4 billion (₹28,000 crore) in 2024, a 6.3% increase from the previous year.<sup>1</sup> Twenty years ago, securing copyright protection for sports activities seemed unattainable. However, contemporary trends and evolving circumstances suggest that such protection could become a valuable right for athletes concerning their performances. Providing copyright protection may stoke the fire of competitive insolvency in sports, but copyrights are whose popularity most people inherit mostly, if not totally, in their financial value.

Section 2 (qq) of the Indian Copyrights Act, 1957 (the Act), providing definition for performer is an inclusive provision that includes any person that performs. This poses a question on what is performance. Section 2 (q) of the Act provides for the performance that includes both visual performance and acoustic performance by any single performer or a group of performers. This paper explores the nuances of whether sports moves can be copyrighted, considering relevant provisions, and examines the legal implications of such protections. It is also essential to analyse whether sports moves can be considered choreographed actions under the Copyright Act, especially when innovative plays are designed by football team managers. For example, the T-formation in American football was developed by the team manager and effectively executed by the players on the field.

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<sup>1</sup> Meenakshi Verma Ambwani, "IPL's Business Value Rises to \$16.4 Billion in 2024, CSK Most Valuable Franchise," *The Hindu BusinessLine*, June 12, 2024, <https://www.thehindubusinessline.com/news/sports/ipls-business-value-rises-to-164-billion-in-2024-csk-most-valuable-franchise/article68280495.ece>. (last visited on October 18, 2024)

### 1.1. Background

Prince Laodamas athletics achievements, as described by Homer about three thousand years ago in *Odyssey*, acts as a testimony for our obsession to athletic achievements. However, current sports exhibit variations from their ancient and mediaeval counterparts. Sports in the present change fundamentally from those of the 1980s. Sport has evolved as a big sector in India and around the world as a result of improved connection and globalisation, in addition to the emotional responses associated with the sports. “Sports is not just a game, but an emotion”, is a frequently used adage and the athletes who serve as a platform for the public to communicate or experience sports. Countless instances in the past and present showcase multiple athletes have artistically contributed to the game, performing above and beyond the laws that supervise sports. Subsequently with the lapse of time, their contributions become a component of their persona and charisma, similar to their marketability. The copyrightability of sports moves is a growing subject of Intellectual Property law that has gained traction as sports have become extremely commercialised and internationally renowned activities. Athletes frequently develop distinctive, signature techniques that become inextricably linked to their identities, such as Michael Jordan’s “slam dunk”, Ronaldo’s trademark “CR7” free kick, or MS Dhoni’s “helicopter shot” in cricket. These moves are viewed as artistic expressions that add to the excitement and attraction of the sport. This poses a key legal question: can these sporting actions be protected by copyright law?

In “He Shoots, He Scores...and Receives Copyright Protection: How the Current State of Intellectual Property Law Fumbles with Sports”,<sup>2</sup> the author examines the potential for granting copyright protection to sports moves, contending that distinctive with innovative moves, such as signature dunks, might satisfy the criteria of originality, creativity, and fixation under copyright law, drawing parallels to choreography. However, current U.S. Copyright law remains hesitant, as sports moves are often viewed as spontaneous, functional acts rather than “authored” works.

The U.S. Copyright Office explicitly denies copyright protection for sports moves, reasoning that competitive sports do not exhibit the fixed and organised structure

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<sup>2</sup> Giuliana R. Garcia, “He Shoots, He Scores... and Receives Copyright Protection? How the Current State of Intellectual Property Law Fumbles with Sports”, 11 *Denver Sports & Entertainment Law Journal* 81 (2011).

associated with choreographic works. Unlike a dance or theatrical performance, sports moves are often spontaneous and unpredictable, driven by game dynamics rather than a prearranged sequence. Research identifies the need to explore whether an adapted copyright framework could protect particularly creative moves without hindering the competitive nature of sports.<sup>3</sup>

Copyright law in India includes choreographic works, which might extend to some sports moves, particularly in aesthetic sports like gymnastics or figure skating. Such moves involve repeated, routine actions that may tell a story or convey a theme. However, Indian law has not formally recognised sports moves as “choreography”, leaving their copyright status unclear. The authors argue that purposive sports, such as cricket or football, are unlikely to meet this standard, given their functional and unscripted nature.<sup>4</sup>

Sports celebration moves are frequently characterised by their expressiveness and creativity, primarily aimed at entertaining rather than fulfilling a direct functional role within the game. While copyright law typically refrains from protecting functional elements of sports, this policy consideration is less applicable to celebration moves, which do not contribute any functional utility to the athletic event. Consequently, a gap remains in current legal practice since numerous athletes have yet to seek copyright protection for their celebration moves. This could stem from limited awareness of the potential commercial benefits such protections might offer.<sup>5</sup>

## 2. Sports Moves

The actions performed by sports persons and athletes hold considerable value, with various iconic moves associated with them. These moves, whether directly impacting the outcome of the sporting event or serving as expressions of creativity, contribute to the athlete’s unique identity. Such creative actions, often become closely associated with the player, evolving into recognisable signature moves. This distinctive expression can enhance the athlete’s brand and deepen the public’s association with their

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<sup>3</sup> F.F. Scott Kieff, Robert G. Kramer, *et.al.*, “It’s Your Turn, But It’s My Move: Intellectual Property Protection for Sports Moves”, 25(4) *Santa Clara High Technology Law Journal* 765 (2012).

<sup>4</sup> Shubhi Trivedi and Nidhi Buch, “Intellectual Property Protection for Sports Performances and Sports Moves: An Analysis Under the U.S., EU, and Indian Laws,” 27(4) *Gaming Law Review* 164 (2023).

<sup>5</sup> Henry M. Abromson, “The Copyrightability of Sports Celebration Moves: Dance Fever or Just Plain Sick?”, 14(2) *Marquette Sports Law Review* 571 (2004).

individual style. Sports moves can be categorised based on their purpose into ordinary sports moves and celebratory sports moves.

Ordinary sports moves are sports moves that have an impact on the outcome of the game, executed primarily to achieve a strategic or competitive advantage within the game, directly influencing its outcome or enhancing the player's performance. These moves are integral to the competitive aspect of the sport and are often repeated due to their effectiveness. Beyond the standard ordinary moves required in a sport, players may create their own unique moves, often referred to as signature styles.<sup>6</sup> These signature moves are distinctive, creative, and original, typically associated with a particular player who performs them more frequently or with greater effectiveness than others. For example, in cricket, basic moves such as the cover drive, straight drive, and sweep are considered foundational shots, often referred to as textbook cricket shots.<sup>7</sup> However, unlike these standard shots, Mahendra Singh Dhoni's helicopter shot has become a signature move, uniquely designed to counter yorker-length deliveries and distinguishable by its distinctiveness and creativity. This paper specifically examines the copyrightability of such unique and original sports moves, as opposed to basic, ordinary moves that are commonly utilised within the sport. Another notable example is Ravichandran Ashwin's carrom ball, a unique style he developed in spin bowling. This distinctive technique has led to numerous successful outcomes, such as his notable achievement of taking three wickets in a match against New Zealand.<sup>8</sup>

On the other hand, celebratory sports moves are executed by sports persons to express their emotions and celebrate their achievements, without influencing the outcome of the game. Often, sports persons devise their own unique celebratory moves, which ultimately become integral to their identity. A prime example of this is Imran Tahir's exuberant run around the field after taking a wicket, and Ravindra Jadeja's creation of the

<sup>6</sup> Jacqueline Kett, "In a League of Its Own: Should Intellectual Property Law Protect Sports Moves?", 72(4) *Case Western Reserve Law Review* 1019 (2022).

<sup>7</sup> "Batting Basics," available at: <http://news.bbc.co.uk/sport2/hi/cricket/skills/4177934.stm> (last visited on November 02, 2024).

<sup>8</sup> "Ball of the Series? R Ashwin's Carrom Ball Outfoxes Glenn Phillips", *India Today* (Nov. 02, 2024), available at: <https://www.indiatoday.in/sports/cricket/story/ind-vs-nz-ravichandran-ashwin-glenn-phillips-ravindra-jadeja-shubman-gill-2627068-2024-11-02> (last visited on November 02, 2024)

Sword Dance to commemorate his half-century.<sup>9</sup> Both of these celebratory acts demonstrate a significant level of creativity and innovation. These moves are not merely spontaneous expressions of emotion; rather, they are distinctive performances that reflect the athlete's individual personality. Tahir's celebratory run has become a hallmark of his on-field persona, while Jadeja's Sword Dance draws upon his Rajputana heritage, infusing his celebration with cultural significance.<sup>10</sup> These acts highlight the intersection of athletic performance and personal expression, turning them into memorable, signature moves that resonate with fans and contribute to the athletes' public identities.

### 3. Principles of Copyright

The law of Copyrights fails to provide any specific provision that directly address the sports moves. Nonetheless, under the current framework of the Copyright Act 1957, there is potential for such moves to be interpreted as eligible for protection. The criteria laid down under Section 13 of the Copyright Act defines, types of works eligible for copyright protection. One of the key criteria is originality, which mandates the work to be original product of the author or composer or the producer's independent creativity and not just a mere reproduction of existing works.

#### 3.1. Originality

Section 13 of the Copyright Act states that "original literary, dramatic, musical, and artistic works"<sup>11</sup> are eligible for copyright protection. However, the term originality itself is not explicitly defined within the Act, leading to the need for judicial interpretation. One relevant doctrine is the Sweat of the Brow doctrine, which asserts that a work should be granted copyright protection based on the effort, time, and skill the author invests in its creation, even if the work does not involve a high level of creativity or originality. This doctrine is especially relevant in cases where the work is a compilation of existing elements, as in the case of databases or collections. Under this doctrine, the mere effort involved in compiling or organising pre-existing materials may be sufficient

<sup>9</sup> "Ravindra Jadeja Unleashes New Sword-Dance, Watch Video", *The Indian Express* (Nov. 12, 2024), available at: <https://indianexpress.com/article/sports/cricket/ravindra-jadeja-unleashes-new-sword-dance-watch-video-4576456/> (last visited on November 02, 2024)

<sup>10</sup> Ankit Mishra, "Watch: Ravindra Jadeja Dances His Bat Like the Rajput Sword on Reaching his Half Century", available at: <https://www.crictracker.com/watch-ravindra-jadeja-dances-his-bat-like-the-rajput-sword-on-reaching-his-half-century/> (last visited on January 17, 2025).

<sup>11</sup> The Copyright Act, 1957 (Act No. 14 of 1957), s. 13(1).

to warrant copyright protection for the resulting compilation.<sup>12</sup> Similarly, the Delhi High Court in *Burlington Home Shopping Pvt. Ltd. v. Rajnish Chibber*<sup>13</sup> held that compiled works are copyrightable. When the sweat of the brow doctrine is applied in the context of sports moves, it suggests that these moves could be granted copyright protection based on the significant effort, skill, and practice the players invest in perfecting them. This interpretation could extend to other aspects of the sport as well, such as sports formations or field setups. For example, in cricket, a specific field setup designed by a player or captain to counter a particular batting technique could be considered a result of careful planning, effort, and strategy. Under the sweat of the brow doctrine, such a field arrangement may be eligible for copyright protection, as it represents the player's or coach's creative efforts in organising the field to maximise effectiveness.

However, the sweat of the brow doctrine was not upheld in Indian copyright jurisprudence for long, as the Supreme Court later shifted to the modicum of creativity doctrine.<sup>14</sup> According to this doctrine, a work must not only be original and independently created but also should demonstrate a minimal level of creativity to qualify for copyright protection. This shift was solidified in the landmark case of *Eastern Book Company v. D.B. Modak*,<sup>15</sup> where the Hon'ble Supreme Court introduced the concept of a flavour of minimum creativity. The Court held that copyright protection requires more than mere effort or labour; it mandates that the work reflects some degree of creativity. For a work to enjoy the shelter under copyright protection, it must be both independently originated, and exhibit a marginal degree of creative expression that sets it apart from a simple aggregation of facts.

Ordinary sports move created by a sportsperson can fulfil the criterion of originality, as they are independently crafted and embody a unique approach developed by the player. These moves are not merely repetitions of standard techniques but rather novel, distinctive actions that involve a creative thought process. As stated above, the helicopter shot was Created specifically to counter yorker deliveries effectively, this

<sup>12</sup> Hailshree Saksena, "Doctrine of 'Sweat of the Brow'" *SSRN Electronic Journal* 32 (2009), available at: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1398303](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1398303) (last visited on November 02, 2024).

<sup>13</sup> *Burlington Home Shopping Pvt. Ltd. v. Rajnish Chibber*, 1995 IVAD (Delhi) 732.

<sup>14</sup> Adarsh Ramnujan, "Infringement Analysis in Copyright Law", available at: <https://www.lakshmisri.com/newsroom/archives/infringement-analysis-in-copyright-law/#> (last visited on November 02, 2024).

<sup>15</sup> *Eastern Book Company v. D.B. Modak*, 2002 PTC 641.



move is Dhoni's own inventive solution and demonstrates a clear level of creativity similar to Ashwin's carrom ball move. However, standard field formations or generic moves that lack distinctive creativity may not qualify, as they may not meet the minimum level of creativity required under this doctrine. Celebratory sports move also exhibit a certain level of creativity, as seen in the example of Ravindra Jadeja's Sword Dance. This move, performed by Jadeja to celebrate his achievements on the field, reflects more than mere emotion; it embodies a creative expression that is both personal and culturally significant, drawing upon his Rajputana heritage.

### **3.2. Fixation**

Under the Copyright Act, mere ideas or abstract thoughts are not eligible for copyright protection. For copyright to apply, ideas must be expressed in a tangible, material form, such as written, recorded, or otherwise documented, allowing the work to be fixed in a way that establishes ownership and legal rights. Modern sports broadcasting provides extensive live telecasts, with matches recorded and readily available for future viewing. This widespread accessibility ensures that unique moves or techniques can be fixed in a tangible form through recordings, solidifying them as expressions of creativity that belong to the players who created them. This fixation enables athletes to assert ownership over their unique contributions, thereby making it possible for these original moves to meet the criteria for copyright protection under the Act.

### **3.3. Subject Matter of Copyright**

The Indian Copyright Act categorises choreography as dramatic works under section 2(h), which include movements and steps performed in a sequence.<sup>16</sup> Since sports moves are often a combination of steps and actions, they can be compared to choreographic works. For example, sports formations, which involve a strategic arrangement of players, can also be seen as akin to choreographic works and may be eligible for copyright protection. A noteworthy case that supports this idea is the registration of the I-Bone football formation in 1985 by a sports coach from Texas with

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<sup>16</sup> The Copyright Act, 1957 (14 of 1957), s. 2(h) "dramatic work".



the U.S. Copyright Office. This formation, similar to a choreographed sequence, was recognised as a creative expression and granted copyright protection.<sup>17</sup>

However, in the case of *Institute for Inner Studies & Ors. v. Charlotte Anderson & Ors.*,<sup>18</sup> the Delhi High Court dismissed the claims of the plaintiffs that Pranik Healing techniques were choreographic works eligible for copyright protection. The plaintiffs argued that they were original compilations of postures and asanas. The defendants countered that these techniques lacked originality and were traditional knowledge. The Court ruled that mere compilations of yoga poses or exercises do not qualify as choreographic works under the Copyright Act, 1957, and dismissed the claim.<sup>19</sup>

Celebratory sports moves, such as Dwayne Bravo's "champion dance", are often a combination of dance steps and spontaneous actions created by the players. These moves are not pre-existing but are distinct expressions invented by the athletes to celebrate their achievements. Such moves, including signature sports moves like MS Dhoni's helicopter shot, fulfil the two-step test formulated in the case. The first criterion is met, as these moves can be performed as part of the game and celebration, making them integral to the sport. The second criterion is also fulfilled, as these moves can be fixed in tangible form, such as through videos or recordings, enabling them to be preserved and shared. As a result, these celebratory and unique sports moves could be argued to be eligible for copyright protection, similar to choreographic works.

### 3.4. Functionality Test

The functionality test asserts that purely functional works cannot be granted copyright protection, as copyright law is intended to protect creative expressions rather than utilitarian methods. In the case of *Fabrica Inc. v. El Dorado Corp.*,<sup>20</sup> the U.S. Appellate court reinforced this principle, ruling that functional works that are primarily designed for a specific purpose do not meet the criteria for copyright. The court emphasised that even if a work is original if its primary function is utilitarian, it cannot

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<sup>17</sup> William Patry, "Copyright and Athletics", available at: <https://williampatry.blogspot.com/2005/08/copyright-and-athletics.html> (last visited on November 03, 2024).

<sup>18</sup> CS(OS) 2252/2011.

<sup>19</sup> Arbaaz Hussain and Surbhi Sharma, "Pranic Healings: Its originality under copyright laws?", available at: [https://www.dailypioneer.com/2014/state-editions/pranic-healings-its-originality-under-copyright-laws.html?utm\\_source=chatgpt.com](https://www.dailypioneer.com/2014/state-editions/pranic-healings-its-originality-under-copyright-laws.html?utm_source=chatgpt.com) (last visited on November 03, 2024).

<sup>20</sup> 697 F.2d 893 (9<sup>th</sup> Cir. 1983).

be protected by copyright. Functional moves such as textbook cricket shots would not qualify for copyright protection, as their primary purpose is to facilitate the game rather than to express creativity. These moves are essential to gameplay and are considered standard techniques that do not exhibit the necessary originality to be protected by copyright. This is the established position concerning purely functional sports moves.

However, the position regarding functional yet creative and unique moves, particularly those that are innovations of individual sports persons, remains a grey area in copyright law. For instance, the way MS Dhoni executes the helicopter shot is unique. It is not just about the functional result (hitting the ball); it is about the specific way he holds the bat, the wrist movement, and the overall style of the shot. These elements while serving the function of hitting a yorker are distinctive to Dhoni and not inherently required by the mechanics of hitting the ball. Similarly, the carrom ball is a unique spin delivery that uses an unconventional grip and wrist action to generate a distinct spin. While its function is to deceive the batsman, the particular grip and wrist flick employed by Ashwin is not necessary for bowling in general. The way he executes this delivery involves aesthetic and innovative elements, making it more than just a functional technique. The functionality of both is clearly tied to their purpose within the game, but the style and creativity involved in their execution can be seen as distinct and separable from their functional roles and thus copyrightable.<sup>21</sup> Under the Indian Copyright Act, the key criteria for copyright protection are originality and creativity, but the Act does not explicitly address the functionality of works, especially in the context of sports moves. Thus, while routine functional moves may not be protected, innovative and distinctive moves that incorporate creative elements might warrant copyright protection.

Celebratory sports moves, unlike functional moves that serve a specific gameplay purpose, are performed primarily for entertainment, emotional expression, or to engage with fans. These moves do not have an impact on the result of the sport directly, as their purpose is to express joy, personal identity, or cultural significance, rather than to serve a strategic function within the sport. Since celebratory moves do not serve a gameplay function and instead express personal or artistic creativity, they are less likely to be classified as functional. Instead, they may be considered original expressions of

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<sup>21</sup> *Star Athletica v. Varsity Brands* 137 S. Ct. 1002.

creativity. This distinction makes celebratory moves more likely to meet the originality and creativity criteria under the Indian Copyright Act. These moves, being non-functional in nature, allow for greater creative expression and could be seen as unique to the athlete, further supporting the argument for their eligibility for copyright protection.<sup>22</sup>

#### **4. Performer's Rights and Personality Rights**

##### **4.1. Performers' right**

Performers' right also referred to as neighbouring right, being the only right that performers, like actors, singers, and dancers, have over their usage and reproducing their performances. These rights seek to protect performers' creative contributions and ensure that they are properly recognized and compensated for their efforts. Regarding the setting of sports, the rights of performers may extend to sportsmen and their unique sporting moves, especially those that require a high level of creativity and innovation. The scope of performers' rights varies across nations, depending on the legal framework adopted by each country, while also considering cultural diversity. For example, in India, snake charmers and jugglers are granted performance rights as their art forms are integral to the nation's heritage.<sup>23</sup> Performers can be found in a wide range of environments, such as theatrical productions, cultural events, film sets, and even on public streets. Under the Copyright Act of 1957, particularly Sections 38 and 57, performers are granted both commercial and moral rights, which are afforded a broad scope.

However, Section 2(q) of the Act appears to conflict with Article 2 of the Rome Convention, which defines a "performance" as any live visual or aural presentation by one or more artists. Upon examining the definition of "performance" in this context, it becomes clear that it refers to any live visual or aural presentation. The Act does not provide further clarification of these terms. According to Article 3 of the Rome Convention, "presentation" is defined as the distribution of reproductions of a phonogram to the public in a reasonable quantity. The Oxford Dictionary defines "presentation" as the manner in which something is provided, shown, or discussed with others. This implies that any creative process, whether visual or auditory, conveyed to an audience qualifies

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<sup>22</sup> Ramya Aggarwal and Sanya Kapoor, "Copyrightability of Sports Celebration Moves Under the Indian Law," *available at*: [https://www.mondaq.com/india/copyright/1392362/copyrightability-of-sports-celebration-moves-under-the-indian-law#\\_ednref39](https://www.mondaq.com/india/copyright/1392362/copyrightability-of-sports-celebration-moves-under-the-indian-law#_ednref39) (last visited on November 08, 2024).

<sup>23</sup> The Copyright Act, 1957 (14 of 1957)

as a performance. In this regard, a sportsperson who contributes artistically to a sport whether through unique movements during the game or celebratory dances afterward should be recognised as a performer under the Copyright Act.<sup>24</sup>

In the instance of *Star India Pvt. Ltd. v. Piyush Agarwal and Ors.*,<sup>25</sup> it was observed by the court that a playing a cricket game can be regarded as a performance under performers' rights. In the interpretation of the term 'performers', the principle of *ejusdem generis* can be applied to interpret 'sportsperson', who contribute by creating his own unique sports moves within its scope. They are individuals who have contributed their skills creatively to a field and have presented them specifically for the enjoyment of spectators, similar to the creative efforts of athletes. Performer's rights can be obtained by athletes, but every athlete, regardless of whether they demonstrate any creativity, may hold the rights, defeating the very objective of safeguarding the players' innovation.

#### 4.2. Personality Rights

A celebrity refers to a widely recognised or famous person — someone who is frequently discussed or well-known to the public.<sup>26</sup> Personality rights are the rights that a person enjoys because of his name, persona, or other indicators of his personality, such as his personality feature, signature, voice, and so on.<sup>27</sup> It is not that no one should sell their identity; rather, the famous personality should have the right to determine when and how their identity is exploited. The right to govern the commercial use of an individual's identity is synonymous with one's right to publicity.<sup>28</sup> The United States Court of Appeals has acknowledged sports figures as celebrities.<sup>29</sup> In the present day, sportspersons are celebrated as icons, with their talent and achievements inspiring millions of fans globally. Therefore, it is vital to ensure the protection of a sportsperson's personality.

The Hon'ble Delhi High Court emphasised the importance of a celebrity's right to recognition, noting that it serves as a significant source of income. This right cannot be undermined by permitting the unauthorised distribution and commercialisation of

<sup>24</sup> *Servewell Products Pvt. Ltd & Anr. v. Dolphin*, 2010(43) PTC 507. Del.

<sup>25</sup> *Star India Pvt. Ltd v. Piyush Agarwal and Ors.*, 2013 (54) PTC 222 Del.

<sup>26</sup> *Titan Indus. Ltd. v. M/s Ramkumar Jewellers*, No. 2662/2011 (Delhi High Ct. Apr. 26, 2012).

<sup>27</sup> *ICC Dev. (Int'l) Ltd. v. Arvee Enters. & Anr.*, 2003 VII AD (Delhi) 405.

<sup>28</sup> Rohan S. Gowda and Ssowmiya Narayan, "Performance Action of Sports Moves: Copyright in India", 7(2) *International Journal of Law Management & Humanities* 2914 (2024).

<sup>29</sup> *Martin Luther King v. Am. Heritage Prod*, 694 F.2d 674.

products featuring the celebrity's image or likeness without their proper consent.<sup>30</sup> Using a sportsperson's identity by imitating his or her celebratory moves will also violate his or her right to publicity. Being affiliated with a sport provides a sportsperson with identification and worth in his persona. For example, Cristiano Ronaldo's legendary 'Sui' celebration has piqued the interest of the entire sporting world. Players employ sui celebration to exhibit excitement, regardless of the sport they play. The term 'personality' has been defined to include 'impression', 'mannerism', and 'gesture'.<sup>31</sup> Celebration motions are gestures or characteristics that are unique to a sportsperson. The general public can identify a sportsperson by his or her inventive and unusual gestures, which are essentially celebratory actions. Famous sporting gestures include West Indian fast bowler Kesrick William's 'notebook' celebration, Ravindra Jadeja's Sword Celebration, Cristiano Ronaldo's Sui Celebration, and more. If a sportsperson can demonstrate validity and identifiability. The validity test is to verify that the right is in his identity, while the latter is to prove that such moves are identifiable enough to be associated with such a sportsperson. Hence, if a sportsperson can prove that their distinctive celebration moves, representing their identity or character, have been used without permission and lead to an association with them, the individual responsible should be liable for breaching the sportsperson's personality rights.

### 5. Ramification on Granting Copyright Protection

Providing protection under copyright to sporting moves may have serious consequences for the public realm. Enabling the protection of copyright for such acts may result in their removal from the broader public domain, restricting others' capacity to freely apply these strategies without risk of infringement. This would also have an impact on athletes' training and inventiveness, as junior athletes would have to obtain authorisation or incur royalties to use distinctive manoeuvres that have become legendary. It may result in legal arguments over whether a motion is adequately "original" to be protected by copyright, which would not only be expensive but also inhibit the organic growth and progress of sports activities. While certain sports moves may be eligible for

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<sup>30</sup> *Anil Kapoor v. Simply Life India & Ors*, CS(COMM) 652/2023, I.A. 18237/2023-18243/2023.

<sup>31</sup> Joshua L. Simmons and Miranda D. Means, "Split Personality: Constructing a Coherent Right of Publicity Statute," *available at*: [https://www.americanbar.org/groups/intellectual\\_property\\_law/publications/landslide/2017-18/may-june/split-personality/](https://www.americanbar.org/groups/intellectual_property_law/publications/landslide/2017-18/may-june/split-personality/) (last visited on November 12, 2024)

IP protection, athletes rarely protect their manoeuvres or sequences in order to preserve the integrity of the sport. The broad availability of motions and sequences benefits sports because unique actions that are replicated by others increase visibility and keep fans interested, who might lose enthusiasm if such actions were monopolised. In sports, the benefits of developing new sequences or manoeuvres are largely recognition and respect, rather than increased cash profit. In India, the greatest method to stimulate creativity and involvement in sports is to financially support athletes and provide them with excellent training, rather than through IP law, which risks interfering with the current position of law.<sup>32</sup>

## 6. Conclusion

The paper focuses on providing copyright protection to sportspersons. Upon examining the current legal framework, it becomes evident that sports celebration moves, being creative, expressive, and skilfully performed by sportspersons, and fulfilling the criteria of originality and fixation, may qualify for copyright protection under Indian law. However, there exists some implications for extending copyright protection to such moves as discussed above.

Therefore, after examining the Copyrightability of sports moves under the Copyright Act and evaluating the implications of extending copyright protection to such moves, the following recommendations are suggested to address potential legal challenges and provide clarity in the evolving field of Sports IP:

- The term ‘choreography’ lacks definition, particularly concerning whether it encompasses only comprehensive dance sequences or whether a smaller combination of dance steps also meets the criteria for choreographic protection. It is essential to amend Section 2 of the Copyright Act of 1957 in order to provide clarification to set a definitive threshold for copyright eligibility, especially regarding the protection of sports celebratory moves.
- To amend the fixation requirement under Section 2(h) of the Act and provide both clarity and flexibility, it is recommended that the Act explicitly recognise a range of fixation mediums, including but not limited to audio-visual recordings.

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<sup>32</sup> Sanjay Srivastava, “India Puts the Burden of Carrying National Pride on Its Poorest – But Doesn’t Care for Their Welfare”, *available at*: <https://scroll.in/article/1002750/india-puts-the-burden-of-carrying-national-pride-on-its-poorest-but-doesnt-care-for-their-welfare> (last visited on October 25, 2024).

- An amendment could clarify that copyright protection should be available for sports moves that demonstrate a sufficient degree of originality and creativity, even if these moves serve a functional or strategic purpose within the sport.

Thus, to seek protection for sporting moves within the Indian copyright system, essential changes should be made to the defining section so that it explicitly mentions the circumstances required to obtain protection from copyright for the same. Establishing sports moves as a subject matter under copyright protection is problematic because the Indian courts must also consider the interests of the public. Nonetheless, celebratory sports moves of players may be protected under the subject matter of copyright because they might be classified as choreographic work.