

JUSTIFICATION FOR PROTECTING FOLK DANCE PERFORMERS AND THEIR PROTECTION UNDER INTERNATIONAL COPYRIGHT LAW

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Abstract

Folk dance is a type of dance where the performance reflects tradition, religion, culture, etc. Such dances depend heavily on their performers to continue existing. They pass on its legacy in inventive ways from generation to generation. India is renowned for its numerous varieties of climate, linguistic attire, way of life, eating habits, and tails, all of which are mirrored in their own music and dance. Folk dance performers bring the past to life, which is undoubtedly beneficial for preserving our culture. Additionally, it might be a beneficial way to combine dancing and exercise. The world praises and admires Indian folk dances, which can also make their performers famous and wealthy. Although there are different international and national effort for protecting performers covering folk dance performers under the definition, technology innovation has significantly altered our world. In our digital age, artists can be quick and current. Performers actually have relatively little control over their own work, which leads to rights violations. The paper defines the term performers of folk dance and the justification for the protection. Several International instruments which support the protection.

Keywords: Folk Dance Performers, Copyright, Intangible Cultural Heritage, Folklore, Folk Dance.

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INTRODUCTION

A folk dance is one that depicts the way of life of the citizens of a certain nation or territory. When highlighting the cultural origins of the dance, the labels “ethnic” and “traditional” are utilised. Nearly all folk dances are ethnic dances in this sense.¹ According to logic, the adjective folk should modify the noun dance to denote a particular type of dance and dancing, as well as possibly the style or another unique aspect of the dance or performance.

India has a diverse range of customs and cultures. The Indian culture is quite distinctive because of its diversity in all areas. Indian folk and tribal dances are a result of various socioeconomic conditions and long-standing traditions. In India, we celebrate and have festivals almost every day, and dances are performed to show joy and enjoyment. Indian culture is now more diverse as a result of this. Since festivities are a part of every event, folk dances are a crucial part of our social milieu. There are numerous tribal and folk dances, and almost all of them have experienced continuous evolution and improvisation.

Folk dances are done for every conceivable event, including weddings, festivals, the beginning of a new season, and the birth of a child. The folk dances have very few steps and very little movement. Indian folk dances are vibrant and full of life. Men and women dance together in some shows while they do some dances separately. Most of the time, musicians play instruments, and the dancers sing for themselves. Folk dances all have

¹ The Editor of Encyclopaedia Britannica, *available at*: <https://www.britannica.com/summary/folk-dance#:~:text=folk%20dance%2C%20Dance%20that%20has,and%20those%20of%20the%20aristocracy> (last visited on: 29.07.2022)

distinctive costumes and rhythms. The majority of the outfits used for folk dances are vibrant and feature elaborate designs and jewelry.

More controversially, others describe folk dancing as dancing for which there is neither a regulating organisation nor any professional or competitive institutions. Folk dance is a type of dance that is frequently done for fun and is a common representation of a previous or current culture. The terms “folk dance” and “folklore,” both of which have been in use since the late 19th century, are not as descriptive or undisputed as they might first appear to be.² Folk dance is not a global genre of dance, which is a point of considerable relevance and one that is essential to understanding it. Folk dances from different cultures cannot be compared because they do not have any common movement, figure, shape, style, or function. Furthermore, a dance cannot be classified as a folk dance based on a single movement, figure, form, style, or purpose. Saying that folk dances are those dances associated with and performed by folk dancers is perhaps the simplest way to define them. Folk dancers are defined as people who perform folk dances by the same logic. India is a country with many different customs and civilizations. Folk art is something that a community or specific location has in common. Although the creators’ identities are lost to time, the aesthetic has survived. India is renowned for its voluminous cultural legacy and customs. From earliest times to the wealthiest cultures, dance has been a component of daily life. Indian dance styles are typically divided into two groups: classical dance and folk dance. According to regional custom, these dancing styles have their roots in different regions of India.

² Joann W. Kealiinohomoku The Editor of Encyclopaedia Britannica, “Folk Dance” available at: <https://www.britannica.com/art/folk-dance> (last visited on: 30.12.2022)

The following characteristics may apply to some or all folk dances:

1. People with little to no formal training typically hold dances at folk dance meetings or social events, frequently to traditional music.
2. Dances that aren't typically meant to be performed in front of an audience or on stage, however they occasionally get set up and staged that way.
3. Despite the fact that folk traditions evolve over time, execution is controlled by inherited practices from diverse worldwide cultures.
4. New dancers frequently pick up their skills on the spot by watching others or asking for assistance.

Indian folk and tribal dances are typically straightforward and performed to express excitement at the change of seasons, a child's birth, marriages, and festivals. Folk art is something that a community or specific location has in common. Although the creators' identities are lost to time, the aesthetic has endured.³

Folk dances in Bihar

When we consider culture, music, art, and religion, an image of the sacred region of Bihar immediately forms in our minds. The history of Bihar goes all the way back to the dawn of civilization. A simultaneous fusion of culture, music, art, and religion, Bihar's folk dance, folk songs, and many dance forms serve as a depiction of the people's emotional upheavals as well as their values, hopes, beliefs, and traditions. Some of the Folk dances of

³ Shikha Goyal, "List of Folk Dances of Different States in India", *Jagran Josh*, Jan 03, 2022 available at: <https://www.jagranjosh.com/general-knowledge/lists-of-states-and-folk-dances-of-india-1466770456-1> (last visited on: 28.07.2022)

Bihar are:

1. Jat Jatin: The most well-liked folk dance in North Bihar, particularly in the Mithila and Koshi region, is Jat-Jatin. Man and woman perform it in tandem. A folk dance called Jat-Jatin was created by the same emigrant couple's husband and wife. This dance depicts a rainbow of the pleasant and emotional arguments additionally some grievances between husband and wife, aside from poverty and grief.
2. Karma: The Karma tree, which represents luck and fortune, is the source of the name of the traditional Karma Dance. The tree is planted first, and then the dance begins with circular forms all around it. Usually, there are an equal number of men and women dancing in this group dance. The movements of the dancers, who are arranged in a two-tiered structure, are often backward and forward, towards and away from one another. The dancers move to the beat of the drum and the women's clapping. Later, as the formation is broken, these dancers' thread in and out while bending their knees and waist. The dancers form semicircular rows by wrapping their arms around the waists of their neighbours. To the music of the Mandur and Timki, each row of dancers alternates between singing and dancing. Drums beat loudly and quickly as the dance comes to a joyful conclusion.
3. Kajari: Kajari is a dance about the wet weather. When heard with the rhythmic note of rain, the well-known beautiful tune of Kajari songs induces a delightful sensation in the body and is first heard at the beginning of the Shravan month.
4. Jhumar: Jhumar is a Bihar folk dance that is traditionally performed by rural ladies. This lovely dance style has no set season; it is a dance

that is done constantly with its stunning descent, spring fills the world with love and gladness.

5. Maghi Jhumar: The Magahi Jhumar dance is typically performed as a duet, in which a man and a woman dancer assume the roles of a husband and wife. They dance together, expressing their goals and desires. The lady requests from her husband nice clothes and lovely accessories. The wife is promised anything she wants by the husband. A lively folk dance is performed while soothing music plays in the background.
6. Jharni: The Julaha community performs the Jharni Dance as part of their tradition during Muharram. The bamboo sticks are split at one end by the dancers. Each dancer strikes his partner's stick as they travel around in a circular pattern. The dance's beat is provided by the sound that is created.
7. Jhijhi: The Indian subcontinent's Mithila region is known to the cultural dance known as jhijhiya. Most commonly, Jhijhiya is performed during Dusshera in honour of Durga Bhairavi, the goddess of victory. Women put clay lanterns on their heads and balance them while dancing in jhijhiya performances. When ladies execute this dance, it is said that negativity cannot affect them or their loved ones.

“Cultures are dying out faster than the people associated with them,” according to the IUCN Inter-Commission Task Force on Indigenous People. In less than a century, it is predicted that half of the world's languages-the repositories of peoples' intellectual legacies and the foundation for their distinctive ways of perceiving life-will be lost.⁴ In

⁴ Anurag Dwivedi & Monika Saroha, “Copyright Laws as a Means of Extending Protection

traditional cultures, knowledge, culture, and biological resources constitute a triad that makes up their heritage.⁵ Folk dancing is the culmination of human creativity and contributes to the survival of our culture. These folk dances are impromptu emotional outpourings from the common people of a place; they rarely consist of rigid, formal dance-form training and practice-derived steps and movements.⁶ By displaying the culture and social history of the community, these performers help individuals connect with their own culture and religious practises. To maintain the distinctiveness of the community identity, they must be protected from misappropriation and misuse. They aid in recognising the society.

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to Expressions of Folklore”, 10 *JIPR* 308 (2005)

⁵ T.C. James & Deepika Yadav, “Protection of Traditional Cultural Expressions in India”, available at: <http://ris.org.in/fitm/sites/default/files/Scooping%20Paper%20No%203.pdf> (last visited on: 27.09.2022)

⁶ All about Why Indian Folk Dances are Important Now, available at: <https://www.learnpick.in/blog/indian-folk-dances#:~:text=Folk%20Dances%20can%20bring%20harmony,and%20love%20their%20land%20deeper> (last visited on: 21.02.2023)

⁷ Ibid

⁸ All about Why Indian Folk Dances are Important Now, available at: <https://www.learnpick.in/blog/indian-folk-dances#:~:text=Folk%20Dances%20can%20bring%20harmony,and%20love%20their%20land%20deeper> (last visited on January 29, 2023).

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JUSTIFICATION FOR THE PROTECTION OF FOLK DANCE PERFORMERS

Indigenous cultures' values, traditions, and beliefs are expressed through traditional cultural expressions, often known as folklore. They can be categorised as works that incorporate distinctive components of the traditional cultural heritage that have been created and preserved by a community or by individuals, reflecting the traditional creative expectations of that community, according to the WIPO view.⁹

The following is a discussion of some theoretical bases for the defence of folk-dance performers:

Labour Theory

The theory of Locke, according to which an individual has a natural right to the products of his labour in transforming raw materials (viewed as including, for example, facts and concepts) that are "held in common" into a finished good of enhanced value, and the state has a duty to enforce the natural right that derives from the labour, provides the first justification for the protection of folk dance performers' rights.¹⁰ A person must have ownership rights over the results of their labour, he argued. The requirement for substantiation of performances as ones coming from creative or intellectual labour is the essential requirement that must be met

⁹ Intellectual property and traditional cultural expressions/folklore, WIPO Booklet 1, pp 6.

¹⁰ Neil Wilkof, "Theories of intellectual property: Is it worth the effort?", 9 *JiPLP* (2014)

to assert intellectual property rights for the performers' creative labour.¹¹ A folk dance performer could put in many years of practise to hone his or her performance skills. Through unauthorized adaptation, the community frequently benefits from this effort and expertise. They have very little influence over how, by whom, and how unauthorised fixations of their performances are commercialised and profitably enjoyed by others without them sharing in the advantages.

Natural Entitlement

Everyone has an inherent right to their own life, liberty, and property, according to Robert Nozick. This may also include the rights to the products of his labour or the ability to dispose of his own property, as well as the appropriateness of retribution for those who violate these rights. His approach is based on three key principles, including the "Principle of Justice in Acquisition," which explains the holder's original rights. According to this view, a person who justly acquires a holding is entitled to that holding, explaining how something might be gained by an individual that was previously not possessed by anyone.¹² The 'Principle of justice in transfer' follows, and it deals with a person's ability to give away, swap, or transfer any of his or her legally acquired possessions. This theory explains how possession and ownership of property may be afterwards transferred from one person to another, given that the transfer is fair and the recipient is entitled to the property (through a purchase, gift, etc.).¹³ The third and final principle of Nozick's entitlement theory is the "Principle of rectification of

¹¹ Richard Arnold, "Performers' Rights", 6 *ScM, London*, 1 (2021)

¹² Thomas C Grey, "Property and Need: The Welfare State and Theories of Distributive Justice", 28(5) *SLR* 877 (1976), available at: <https://doi.org/10.2307/1228147>

¹³ Eric Rakowski, "Transferring Wealth Liberally", 51 *Tax LR* 419 (1995)

injustice,” which deals with previous injustices that can be repaired due to improper application of the first two principles, i.e., failure to apply principles (a) or (b).¹⁴ This principle discusses people who violate the rights of others and how the victims may be compensated. Folk dancers have no idea how to safeguard their ownership interests in any property created with their labour, skill, and creativity. They are unable to transfer their property so they can receive financial rewards since they lack knowledge.

Creative Incentives

Copyright is granted because it encourages people to produce and businesses to spend in making things available. Unquestionably, one of the best institutional frameworks for promoting the development of a commercial creative economy, particularly in developing nations, is copyright. Incentives are routinely used through copyright laws to encourage the creation of new works for public use. The government rewards new works by granting the creators a temporary monopoly on them before allowing the general public to enjoy them. In the area of copyright, innovation and creativity are getting more attention. Originality and creativity are inextricably linked. Despite the fact that any item can easily show a component of uniqueness, a work that lacks originality is not protected by copyright. In folk dance, originality is determined by the physical set up, the composition, and the execution of the work. Folk dance performers' originality and ingenuity are displayed in the way various motions are blended to create combinations, which is typically but not always accompanied by music. These motion combinations make up the choreography of these dances.

¹⁴ Judith J. Thomson, “Some Ruminations on Rights” 19 *Ariz. L. Rev.* 45 (1977)

Personality Theory

Personality theory is an intellectual property notion that highlights the viewpoint of the individual inventor, author, or artist over that of society at large when analysing intellectual property rights. According to some, self-actualization in the form of personal expression gives the author inalienable moral rights to his or her works. The act of creation bearing the stamp of his individuality justifies the grant of the inalienable right to the folk dance artists' name and the right to decent treatment of their work, which is the product of their labour. A new framework that safeguarded the commercial interests of the artists was created as a result of the theory's influence on a change in contractual presumptions.

Human Rights

Folk dancers actively participate in preserving our culture by educating and delighting the audience with their valuable originality and talent. According to Article 27¹⁵ of the Universal Declaration of Human Rights (UDHR), people have the right to express their creativity. By displaying the culture and social history of the community, its performers help individuals connect with their own culture and religious practises. Folk dancers entertain us by displaying the history and culture of our nation, but their talent is exploited for another's financial gain. According to the UDHR, everyone who is a member of society, including folk dance artists, is protected by this law.

Constitution

Individuals' lives and personal liberties are safeguarded by Article 21¹⁶ of the

¹⁵ The Constitution of India, Art. 27

¹⁶ The Constitution of India, Art. 21

Indian Constitution. As their performance is the foundation of their survival, folk dance performers are likewise protected under the scope of this provision of the basic law of the land. The dancers are not specifically protected by the Constitution, but Article 29¹⁷ acknowledges the protection of minority cultures with unique languages, scripts, or cultures. The bulk of folk dances are, however, misapplied in India since it is hard to define their limits of creativity and exploration. Examples include using folk dancers' dancing gestures in computer games or using photographs of them frozen in mid-air in publications. The other clause of the Constitution is found in Article 51(A)(f)¹⁸, which imposes a fundamental obligation on every citizen to respect and safeguard the rich cultural heritage of our composite society. Folk dancers entertain us by displaying the history and culture of our nation, but their talent is exploited for another's financial gain.

PROTECTION OF FOLK DANCES UNDER INTERNATIONAL COPYRIGHT LAW

Folk dancers in particular and performers in general were not initially covered by copyright law. Before, people who helped authors communicate their work to the public were not rewarded. The journey starts in 1967 with an attempt to grant copyright protection for folklore on a global scale at the Stockholm Diplomatic Conference for the Reform of the Berne Convention for the Protection of Literary and Artistic Works.¹⁹ Folklore is described as a dynamic phenomena that changes over time; a fundamental component of our culture that reflects the human spirit; a window into the

¹⁷ The Constitution of India, Art. 29

¹⁸ The Constitution of India, 51 (A)(f)

¹⁹ Claude Masouye & Wallace William, *Guide to the Berne Convention for the Protection of Literary and Artistic Works (Paris act, 1971)* (World Intellectual Property Organization, Geneva, 1978) available at: <https://doi.org/10.34667/tind.28751>

cultural and social identity of a community; and its standards and values, which are passed down orally, through imitation, and other means.²⁰ Rather than being written down in books, folklore is often handed down by word of mouth and actions.

The Berne Convention was revised in Stockholm (1967) and Paris (1971), and one of the provisions which is Article 15(4)²¹ for the protection of unpublished works whose authors' identities are unknown. It's important to keep in mind that folk dancing has no creator. Through the performers of these dances, it simply develops from the culture and is transmitted down the generations.²² With the advancement of protection of rights of performers, their rights were recognized under Rome Convention, 1961 as Neighbouring Rights. The Rome Convention three categories of beneficiaries who are not technically called authors. These beneficiaries are performing artists, phonogram producers, and broadcasting organization. In accordance with the performers' rights, which include the right to stop others from communicating to the public via means other than broadcasting without their permission, Article 7²³ protects the performers. Additionally, it grants the right to stop anyone from recording their live performance without permission and from fixing their live performance without getting their permission. The Convention also recognises the right to prohibit the commercial use of their performance without their consent and for any

²⁰ Cathryn A. Berryman, Cabaniss Johnston, Gardner Dumas & O' Neal, "Towards More Universal Protection of Intangible Cultural Property", 1(2) *JIPPL* 293 (1994), pp. 293.

²¹ The Berne Convention, 1886, art. 15(4) reads as: In the case of unpublished works where the identity of the author is unknown, but where there is every ground to presume that he is a national of a country of the Union, it shall be a matter for legislation in that country to designate the competent authority which shall represent the author and shall be entitled to protect and enforce his rights in the countries of the Union.

²² *Supra* note 2

²³ The Rome Convention, 1961, Art. 7

other purpose. According to Article 19²⁴ of the Convention. According to this convention, performers' rights were protected for at least 20 years following the end of the year in which the performance took place. If the performer consents to the use of his performance in any audio-visual or visual production, these restrictions will not be applicable.

The TRIPS Agreement of the WTO, which spells forth the basic standard for protection of various forms of intellectual property, further strengthens the requirements of the Convention. Article 14²⁵ of Agreement gives right to the folk-dance performers to protect their work from broadcast and communication to the public by wireless means, to prevent reproduction of their live performances, to prevent the fixation of their live performance on phonograms.

In the post-TRIPS era, the WIPO Performance and Phonograms Treaty, 1996 (WPPT) supplements the Rome Convention, 1961 in terms of performers' rights. Particularly in the digital sphere, the WPPT deals with the rights of two groups of beneficiaries: first, performers, such as musicians, actors, and singers; and second, producers of phonograms, such as individuals or legal entities that take the initiative and are in charge of fixing sounds.²⁶ Unfortunately for the artists, discussions were only successful with regard to their audio performances. With respect to audio performances, the Treaty provides artists and manufacturers of phonograms with stronger rights than those provided under the Rome Convention. Both moral and economic rights of performers were recognized through WPPT

²⁴ The Rome Convention, 1961, Art. 19; Art. 7 shall have no further application.

²⁵ The TRIPS Agreement, 1995, Art. 14.

²⁶ WIPO, available at: <https://www.wipo.int/treaties/en/ip/wppt/> (last visited on: 29.07.2022)

but, this was only provided to the performers of audio performance. Performers should be compensated for their work, and they are also entitled to royalties if the material is utilised for reasons other than those for which an agreement has been made. This Treaty plays a very important role for the protection for performers but audio-visual performers are not protected. Folk dance and folk music seem to go together and traditional definitions of dance frequently depict it as a rhythmical activity involving a set of moves performed to music which make the performance of folk dance as audio visual character.

The Beijing Treaty, 2012 provides protection to audio-visual performers. Contracting governments debated ways to preserve the rights of performers in films, television shows, and short films, among other things. This treaty is concerned with audio-visual performers and protects their fixed as well as live performances. It protects folk dance performers of fixed audio-visual performance and gives rights including right to reproduce²⁷; right to distribution²⁸; Rental Right²⁹; right to make available³⁰; and right to communication to public.³¹ As to *unfixed (live) folk dance performances*, the Treaty gives performers three kinds of rights which are right of broadcasting (except in the case of rebroadcasting); right of communication to the public (except where the performance is a broadcast performance); and right of fixation.³²

²⁷ The Beijing Treaty, 2012, Art. 7

²⁸ The Beijing Treaty, 2012, Art. 8

²⁹ The Beijing Treaty, 2012, Art. 9

³⁰ The Beijing Treaty, 2012, Art. 10

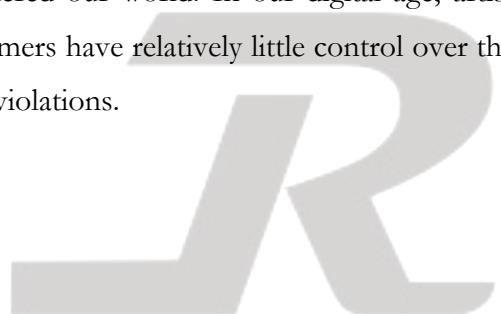
³¹ The Beijing Treaty, 2012, Art. 11

³² Summary of the WIPO Performances and Phonograms Treaty (1996), *available at*: https://www.wipo.int/treaties/en/ip/wppt/summary_wppt.html (last visited on: 17.07.2022)

CONCLUSION

Even though folk dances are becoming less appealing, Indian folk dances are still quite important. Folk dancers must be protected because if they are gone, cultural assets will be lost, and people will lose their identities, it will be impossible to resurrect different tribes' folk dances.

The world praises and admires Indian folk dances, which can also make their performers famous and wealthy. Although there are different international and national effort for protecting performers covering folk dance performers under the definition, technology innovation has significantly altered our world. In our digital age, artists can be quick and current. Performers have relatively little control over their own work, which leads to rights violations.



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