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SKY AND RIGHTS: ANALYZING THE POSSIBILITY OF COPYRIGHT PROTECTION FOR AIRSHOWS AS DRAMATIC WORKS IN INDIA

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ABSTRACT

With the conduct of Asia's biggest civil aviation exhibition, Wings India 2026, at the Begumpet Airport in Hyderabad from January 26 to 31st, 2026, airshows have gained worldwide recognition as a source of entertainment. The entertainment industry being evergreen, the advent of this form of entertainment raises pertinent question in relation to its interplay with intellectual property rights, especially copyright, since the precision planning of these coordinated manoeuvres along with their visual aesthetics, require creative intellectual effort and skill. These aspects alone make it eligible for copyright protection under the Indian Copyright Act, 1957 and relevant Indian instruments such as the Berne Convention and the Rome Convention, which protects the performers right of the pilots.

The paper traces the historical evolution of airshows since as early as 1911, and tries to analyze the different aspects of airshows through the lenses of copyrightable subject-matter, originality, idea-expression dichotomy and fixation or tangibility. Further, this paper tries to analyze whether the preparation of airshows can fall under choreographic works and dramatic works, through its analogy with yoga and dance choreographies. The paper tries to assess the application of copyright frameworks to the different forms of choreographies and compilations through the judicial decisions of India and the United States. The paper also explores the applicability of performers rights to the pilots who actually perform in these shows, through the Indian statutory framework and the Rome Convention. Ultimately, the

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paper concludes with confirming whether copyright can be granted to airshows after assessing the criteria, thereby contributing to the contemporary legal debates on copyright law.

INTRODUCTION

Airshows have now gained worldwide recognition as a modern means of entertainment. The evolution of aviation from a scientific breakthrough to a spectacle akin to a dramatic performance signifies one of the most captivating interplays of technology and artistic expression. From the early aeronautical adventures by John Michael and Jacques Etienne² and later brought to a success by the Wright Brothers³, to the spectacular airshow performances demonstrating precise flying, synchronized manoeuvres, visual formations, and thematic storytelling combined with music and colour coordination is no less than a spectacular dramatic performance on stage. Modern airshows by Aero India⁴ and the recent Wings Air 2026 are no longer mere exhibitions of aircraft capability but are far beyond them, manifesting themselves as well-curated performances involving meticulous planning, creative sequencing, choreographic structuring and brilliant execution. The most recent example of the same is the Asia's biggest civil aviation exhibition, Wings India 2026, held at the Begumpet Airport in Hyderabad from January 28 to 31, 2026.⁵

This widely broadened scope demands an extended examination of such shows within the framework of intellectual property law, especially from the angle from copyright, which is aimed to be discussed in this paper. The central issue or question which arises in this discussion is whether airshows are eligible to be granted copyright protection under the Copyright Act of 1957? If so, under which subject-matter should they fall under? Through this paper, it has been tried to analyze whether airshows can be granted copyright protection under the ambit of dramatic works, precisely as choreographic works, which falls within the ambit of dramatic works, as per Section 2(h) of the Copyright Act of 1957⁶.

²Joseph-Michel and Jacques-Étienne Montgolfier: Hot Air Ballon, Lemelson-MIT, <https://lemelson.mit.edu/resources/joseph-michel-and-jacques-etienne-montgolfier>

³The Wright Brothers, National Air and Space Museum. <https://airandspace.si.edu/explore/stories/wright-brothers>

⁴Sana Khan, The History of Aero India: A Milestone in Aviation and Defence Showcasing, Jetline Marvel, (8 January 2025). <https://jetlinemarvel.net/the-history-of-aero-india-a-milestone-in-aviation-and-defense-showcasing/>

⁵Wings India 2026 in Hyderabad from January 28-31; over 20 countries' delegations to attend, The Hindu, (18 January 2026). <https://www.thehindu.com/news/cities/Hyderabad/wings-india-2026-in-hyderabad-20-countries-january/article70521697.ece>

⁶The Copyright Act, 1957, No. 14, Acts of Parliament, 1957, Ch.1 § 2(h) (India).

The paper tries to analyze airshows as dramatic works under its threshold requirements of fixation, idea expression dichotomy and originality requirement- by taking insights from the statutory and judicial approach to granting copyright protection to dance choreographies and yoga sequences in India and the United States. In the Chapter I, the paper draws a background on the evolution of airshows since as early as the 1900s to their modern approach as well-curated thematic performances. In the Chapter II, the paper tries to analyze the aspect of granting copyright protection to airshows from a broader connotation by analyzing them as choreographic works and examining the statutory framework for granting copyright protection and the copyrightable subject matter in India and the United States. In the Chapter III, the paper tries to analyze airshows specifically in light of dramatic works under the Indian regime and the statutory threshold requirement of fixation, idea expression dichotomy and originality, where the author also tries to address the challenges that can be faced in granting copyright protection to airshows and the ways in which such challenges can be resolved. Finally, the paper concludes on re-affirming that airshows should be granted copyright and the changes in the interpretation which should be brought to grant copyright protection to airshows. It agrees with reiterating its argument that while the techniques individually are not eligible for copyright, the airshows as a whole demonstrate the sequencing, arrangement, synchronisation, meticulous planning, thematic integration and final execution, which requires application of creative mind, skill and effort, and therefore, satisfies the threshold requirements of original dramatic works and makes them eligible for copyright protection. It thus, places airshows within the broader debates of copyrightability of performance-based works and highlight the interplay of technology, art and intellectual property laws.

CHAPTER I: BACKGROUND OF AIRSHOWS

Although airshows as a source of entertainment have evolved quite recently, the concept of flights and aeroplanes have been there for a long time. The efforts of men at occupying the skies date even back, to as early as 5th century BC⁷. Kites were then used by the Chinese in religious ceremonies and some advanced ones were used to test the weather conditions. Later, they served as an inspiration in the invention of hot air balloons and gliders. In the 1480s, Leonardo Da Vinci made the first real studies of flight, where he demonstrated around 100 drawings illustrating his theories on flight.⁸ In 1783, Josph Michael and Jacques Etienne

⁷ First Kites, Guinness World Records, <https://www.guinnessworldrecords.com/world-records/760239-first-kites>.

⁸ The Physics of Flight: Leonardo da Vinci's Aerodynamic Theories, VCE Build, <https://vcebuildblog.com/the-physics-of-flight-leonardo-da-vincis-aerodynamic-theories/>

Montgolfier, two brothers, invented the hot air balloon, where they used the smoke from a fire to blow hot air into a silk bag, which then rose and allowed the balloon to be lighter than air. Its first passengers were a sheep, a rooster and a duck, and it climbed to a height of 6000 ft and flew for over a mile.⁹ This prompted George Cayley, who went on to invent different versions of gliders that used the movements of the human body to control its movements.¹⁰ In 1891, German Engineer Otto Lilienthal designed a more advanced version of the glider that could fly a human and could fly a long distance.¹¹ In the same year, Samuel P. Langley built a model of a plane which he called the aero dome, which also included a steam-powered engine.¹² The first known airplane was built in 1900 by the Wright Brothers, which was piloted by Orville Wright and left the ground on December 17, 1903, which was the first heavier-than-air flight to fly in the sky. They are regarded as the first and true inventors because they not only managed to perfect their technical skills and the craft of the plane but also managed to master the skill of piloting.¹³ This created the base for the airshows which were held in 1909.

The first ever airshow was conducted in 1909 in a racetrack in Rheims, France by the name of “Grande Samaine d’aviation de la Champagne” or “Rheims Aviation Metting”, which was a week-long spectacle, and attracted thousands of spectators and new aviation fans to watch it.¹⁴ The modern airshows comprise performers like the United States Thunderbirds and Air Combat Command A-10C Thunderbolt II Demonstration Team. “Airshows give us the opportunity to honour our past while inspiring a new generation of airmen to pay the way for the future” as was said by Lt. Col. Timothy Thoren, the wings director of the Wings Over Columbus, held in March 2022 in Columbus.¹⁵

In India, the event of airshows became popularized in 1996 with the conduct of first edition of Aero India, organized by the Ministry of Defence, Indian Air Force, Hindustan

⁹ Joseph-Michel and Jacques-Étienne Montgolfier: Hot Air Ballon, Lemelson-MIT, <https://lemelson.mit.edu/resources/joseph-michel-and-jacques-etienne-montgolfier>

¹⁰ Larry Dwyer, Sir George Cayley the Father of Aviation, The Aviation History Online Museum. http://www.aviation-history.com/early/cayley.htm#google_vignette

¹¹ Otto Lilienthal Advances in Heavier-Than-Air-Flight, Lemelson-MIT. <https://lemelson.mit.edu/resources/otto-lilienthal>

¹² Samuel Pierpont Langley (1834-1906), NASA Earth Observatory, (May 3, 2000). <https://science.nasa.gov/earth/earth-observatory/samuel-pierpont-langley/>

¹³ The Wright Brothers, National Air and Space Museum. <https://airandspace.si.edu/explore/stories/wright-brothers>

¹⁴ The First Air Meeting at Rheims, Wonders of World Aviation, Vol 1 Issue 2. <https://www.wondersofworldaviation.com/rheims.html>

¹⁵ Jessica Haynie, Wings Over Columbus’22 makes history, Columbus Air Force Base, (1 April 2022). <https://www.columbus.af.mil/News/Article-Display/Article/2986701/wings-over-columbus-22-makes-history/>

Aeronautics Limited, and various other defence agencies, contemporarily held biennially in Bengaluru, Karnataka at the Yelahanka Air Force Station. The 1998 edition witnessed the participation of leading aerospace companies from around the world like Boeing and Airbus, and showcased spectacular flypasts and static displays. The 2001 edition witnessed the latest military technologies. The scope of airshows have broadened multi-fold in the recent years and it has also demonstrated India's focus on 'Make in India' initiative, promoting India's self-reliance in defence manufacturing and collaboration with global aerospace leaders.¹⁶ The most recent Wings India 2026 held in January 2026 in the Begumpet International Airport witnessed active participation from around 1200 delegates and around 1.5 lakh general visitors. With the rapid advancement in technology, airshows are nothing less a dramatic performance, serving as a means of entertainment for the general public, and a portrayal of expression for the pilots performing them and the choreographers arranging the manoeuvres of the shows, which have opened the horizon for examining the possibility of granting copyright protection to the unique performances in the airshows and aviation meets.

CHAPTER II: COPYRIGHTABILITY OF AIRSHOWS

A. Copyrightable subject matter

The Copyright Act of 1957 is borrowed from the Berne Convention for Protection of Literary and Artistic Works, 1886 and the Universal Copyrights Convention.¹⁷ Section 13 of the Copyright Act of 1957 enunciates the categories of works in which copyright subsists, which are predominantly original literary, dramatic, musical and artistic works, cinematographic films and sound recordings.¹⁸ Copyright protection in these subject-matters of work is only given if it passes the standard of originality, threshold of protection and statutory scope of work defined under the Copyright Act. It is to be further noted that copyright only subsists in the part of the work which claims to be original, especially in the case of derivative works and not the work as a whole.¹⁹ The criteria of originality is mentioned only in section 13(a) and not in 13(b) and (c) because cinematographic works and sound recordings are more or less a combination of 13(a) and therefore, originality becomes a

¹⁶ Sana Khan, The History of Aero India: A Milestone in Aviation and Defence Showcasing, Jetline Marvel, (8 January 2025).

<https://jetlinemarvel.net/the-history-of-aero-india-a-milestone-in-aviation-and-defense-showcasing/>

¹⁷ Parvathy Ramachandran, Subject Matter of Copyright under Indian Copyright Act, A study on Judicial Developments in India, International Journal for Multidisciplinary Research, Volume 7 Issue 1, (Jan-Feb 2025).

¹⁸ The Copyright Act, 1957, No. 14, Acts of Parliament, 1957, Ch.1 § 13 (India).

¹⁹ Parvathy Ramachandran, Subject Matter of Copyright under Indian Copyright Act, A study on Judicial Developments in India, International Journal for Multidisciplinary Research, Volume 7 Issue 1, (Jan-Feb 2025).

naturally essential pre-condition in granting copyright protection in these, since compilations have to be original to be granted copyright protection.²⁰

Dramatic works under Section 13(a)²¹, which also includes choreographic works under its ambit under the Indian Copyright Act, is categorically defined under Section 2(h) of the Act, as a tangible original piece of work fixed in writing or otherwise, which does not include a cinematographic film.²² This can be said to be a form of divergence from the Berne Convention, which, by amendment, removed the qualifying phrase that choreographic works must be fixed in writing or otherwise, and thus, refers to the fact that Article 2(I) of the Convention extends protection to all works, whatever may be the form or mode of its expression. However, even the Convention was not clear on whether the form of protection granted to these oral or non-fixed forms of artistic and literary works will be the same as that which is granted to those which are in written or non-fixed form, which explains why India and the other countries like the United States digressed from this ambiguity of the provision. The United States said in a case involving copyright that common-law copyright may be claimed even if the work has never been reduced to written form.²³

B. Airshows as choreographic works

Choreographic works in India are, thus, protected under the realm of dramatic work, defined under Section 2(h) of the Copyright Act of 1957.²⁴ The US Copyright Office recognizes choreographic work as a separate subject-matter of copyright but allows the copyright registration of a choreographic work as a dramatic composition if it tells a story, develops a character or emotion, or otherwise conveys a dramatic concept or idea²⁵. However, the approach of the court still stands ambiguous on this stand since the court granted copyright to the skirt dance claiming that it portrayed the idea of a comely woman illustrating the poetry of motion, which is a vague description of an expression.²⁶ If we follow this US example, then airshows would qualify as choreographic works since they are conducted every year with a theme in mind, and each airshow has a specific expression of its own on the same theme. This approach to choreographic work is similar to the Indian approach of keeping it

²⁰ The Copyright Act, 1957, No. 14, Acts of Parliament, 1957, Ch.1 § 13 (India).

²¹ The Copyright Act, 1957, No. 14, Acts of Parliament, 1957, Ch.1 § 13 cl a (India).

²² The Copyright Act, 1957, No. 14, Acts of Parliament, 1957, Ch.1 § 2(h) (India).

²³ Melville B. Nimmer, Implications of the Prospective Revisions of the Berne Convention and the United States Copyright Law, 19 Stan. L. Rev. 499 (February 1967).

²⁴ The Copyright Act, 1957, No. 14, Acts of Parliament, 1957, Ch.1 § 2(h) (India).

²⁵ Gary D. Ordway, Choreography and Copyright, 13 Bull. Copyright Soc'y U.S.A. 225 (April 1966).

²⁶ Gary D. Ordway, Choreography and Copyright, 13 Bull. Copyright Soc'y U.S.A. 225 (April 1966).

under the dramatic work, since dramatic work in India is defined as original expression in tangible form either in writing or otherwise, with the only difference being that unlike the United States, choreographic work is kept under the head of dramatic work in India and not as a separate subject matter of copyright²⁷, wherein the difficulty also arises. The American and British copyright laws are more conducive to choreographers as there is no specific exclusion of cinematographic works from modes of fixation, making the scope of fixation broader in literary interpretation.²⁸

Airshows require a significant amount of planning and preparation in arranging the steps, and so cannot be said to fall under simple routines, therefore, it will fall under the general understanding of choreographic works.²⁹ The major challenge in classifying airshows as choreographic works lies in the mode of its fixation, and it has been tried to be addressed in the later chapters of this paper. In India, choreographic works are treated as dramatic works under the statute, however, till now, copyright was granted only in written forms of fixation of such works like dance notation books³⁰, and similar other forms. In this circumstance, airshows can be regarded as copyrightable works only if the planning and the compilation of the steps and other background exists in a somewhat written form since we are not yet very clear on what the legislature intended to include in 'otherwise' if it explicitly excluded a cinematographic film, which also includes visual recordings.³¹

CHAPTER III: ANALYZING AIRSHOWS AS DRAMATIC WORK UNDER THE THRESHOLD OF COPYRIGHT PROTECTION UNDER THE INDIAN COPYRIGHT LAW

A. Fixation

The major issue in respect of giving copyright protection to airshows arises in this aspect. Section 2(h) of the Copyright Act of 1957 enunciates that a dramatic work includes a choreographic work, form of which is fixed in writing or otherwise.³² The courts have rarely

²⁷ The Copyright Act, 1957, No. 14, Acts of Parliament, 1957, Ch.1 § 2 (h) (India) and Copyright Law of the United States and Related Laws Contained in Title 17 of the United States Code, § 102, December 2025 (United States).

²⁸ Diwanshi Rohatgi & Keshav Madhav, Copyright in Choreography: Examining the Legal Landscape for Dance Moves in India, 6 Int'l J.L. Mgmt. & Human. 669 (2023).

²⁹ Alexander Bussey, Stretching Copyright to Its Limit: On the Copyrightability of Yoga and Other Sports Movements in Light of the U.S. Copyright Office's New Characterization of Compilations, 20 Jeffrey S. Moorad Sports L. J. 1 (2013).

³⁰ Academy of General Edu., Manipal and Anr v B.Malini Mallya, AIR 2009 SUPREME COURT 1982, (2009). [Academy Of General Edu. Manipal & Anr vs B.Malini Mallya on 23 January, 2009.](#)

³¹ The Copyright Act, 1957, No. 14, Acts of Parliament, 1957, Ch.1 § 2 (h) (India).

³² The Copyright Act, 1957, No. 14, Acts of Parliament, 1957, Ch.1 § 2 (h) (India).

discussed the scope and extent of the word ‘otherwise’ in this context, but the section elaborates that such a fixation should not be in the form of a cinematograph film³³. The definition of cinematograph films, earlier included all motions pictures, but by the amendment of 2012³⁴, this was simplified by omitting some words from the definition of cinematograph films which elaborated visual recording and a new definition of visual recording was included under Section 2(xxa) of the Copyright Act of 1957³⁵. In the United States, dramatic work and choreographic works are treated as different categories of work to be protected under copyright³⁶. It provides for the protection of dance under the category of pantomimes and choreographic work. Even though the definition of choreographic work is not expressly given in the act itself, the US Copyright Office has later clarified that to be registrable, the choreographic work must contain at least a minimal amount of copyrightable matter in the form of dance steps and other movements in a coherent compositional arrangements, and should be capable of being submitted, implied towards its fixation³⁷, while also stating that such embodiment can be in the form of motion pictures as well³⁸. This is where it differs from the Indian law since in India, even recorded videos are considered to be cinematographic work, being visual recordings, and hence, cannot be protected in this form of fixation under the head of dramatic work under the Copyright Act of 1957³⁹. In the United States, dance choreographies can be easily protected if they are well-documented through video recordings, notes, diagrams and dance notations, which attribute to their originality and creation date⁴⁰. In the case of *Columbia Broadcasting System Inc. v. Documentaries Unlimited*, the New York Supreme Court even granted the plaintiff’s prayer for a summary judgment in a common-law copyright action for infringement of a “live” radio broadcast relating to the Kennedy assassination, although the broadcast has apparently not been based upon a written script, which was quite a detour from the traditional approaches to fixation issues in the copyright law.⁴¹

³³ The Copyright Act, 1957, No. 14, Acts of Parliament, 1957, ch.1 § 2 (h) (India).

³⁴ Alka Chawla, *Law of Copyright*, Chapter III: Development of Copyright Regime in India, Lexis Nexis (2022).

³⁵ The Copyright Act, 1957, No. 14, Acts of Parliament, 1957, ch.1 § 2 (xxa) (Amended in 2012) (India).

³⁶ Copyright Law of the United States and Related Laws Contained in Title 17 of the United States Code, § 102, December 2025 (United States).

³⁷ Copyright Office, *Compendium II, Compendium of Copyright Office Practices*, § 450.05, (1984).

³⁸ Copyright Office, *Compendium II, Compendium of Copyright Office Practices*, § 450.07 (a), (1984).

³⁹ The Copyright Act, 1957, No. 14, Acts of Parliament, 1957, Ch.1 § 2 (h) (India).

⁴⁰ Atreya Mathur and Beverly Osazuwa, *Dancing with Rights: Analyzing Copyright for Choreographic Works in the United States*, Centre for Law, (July 22, 2024) <https://itsartlaw.org/art-law/dancing-with-rights-analyzing-copyright-for-choreographic-works-in-the-united-states/#post-65938-footnote-2>

⁴¹ *Columbia Broadcasting System, Inc. v. Documentaries Unlimited, Inc.*, 42 Misc.2d 723, 248 N.Y.S.2d 809 (N.Y. Sup. Ct. 1964)

It is well-known that for dramatic works in India, the protection is usually granted in the script of such works, so one tangible way to grant copyright protection to airshows can be in its written plan, which will grant protection to the pre-planned and pre-structured modes of such aerial steps, movements, manoeuvres and sequences. However, it must be noted that the written plan should not merely demonstrate an idea of how the airshow will be conducted but a detailed draft demonstrating the takeoff sequencing, sequence of the manoeuvres, loops, spins and hammerheads along with each of their timings and time spans, the narrative elements including the minute by minute breakdown along with the background environment and music, speed coordination, and the instructions related to the synchronization of the moves. It can also include graphic elements describing the shape formations, either in two-dimensional or three-dimensional form, which will then be separately eligible for being protected under artistic work as well. In the case of *Institute for Inner Studies v Charlotte Anderson*, the Delhi High court held that the copyright protection in relation to books describing useful art, principle, or historical fact, shall vest in the language employed to describe the art in the book, the selection and manner of the facts or asanas and their presence in the sequential manner in the book.⁴² Therefore, a combination of all these in the form of a written plan, similar to a script or concept note⁴³ in a theatrical work, will enable it to be protected under dramatic work being a tangible original expression. Even if it is not in the form of script, it can be considered akin to the dance notations on which copyright is granted in dance choreographies⁴⁴ or concept notes which have been considered as copyrightable expressions by the Indian judiciary⁴⁵.

B. Idea expression dichotomy and merger doctrine

Another problem we are faced with is whether airshows can be considered as expressions or are mere ideas, because the Indian copyright law is clear on its stand that ideas are not protectable under copyright while expressions are.⁴⁶ While at an initial look, it might seem that the culmination of stunts is ultimately an idea because these stunts were merely

⁴² *Institute for Inner Studies v Charlotte Anderson*, High Court of Delhi, CS(COMM) 501/2017, (2024)/

⁴³ *Anil Gupta and Ors. V. Kunal Dasgupta and Ors.*, High Court of Delhi, ILR 1Delhi250 (2002) and *Zee Telefilms Ltd. and Ors. Vs. Sundial Communications Pvt. Ltd. and Ors.*, High Court of Bombay, 2003(5) BomCR404, (2003).

⁴⁴ *Academy of General Edu., Manipal and Anr v B.Malini Mallya*, AIR 2009 SUPREME COURT 1982, (2009).

⁴⁵ *Anil Gupta And Anr. vs Kunal Dasgupta and Ors.*, AIR 2002 Delhi 379, (March 2002) and *Zee Telefilms Ltd. And Film and Shot and Ors. vs Sundial Communications Pvt. Ltd. And Ors.*, 2003 (27) PTC 457 (Bom) (DB), (2003).

⁴⁶ *R.G. Anand v. Delux Films and Ors.*, Civil Appeal No. 2030 of 1968, AIR 1978 SC 1613 (1978),.

functional and a process or arrangement of steps like that in yoga⁴⁷, airshows differ from yoga because they are not merely functional, rather they are now seen as contemporary means of entertainment, akin to cinematographical works or music. Further, the main reason for refusing copyright to yoga was that the asanas are already in the public domain and all Mr. Bikram did was to arrange them in a functional sequence, which enhanced its efficacy.⁴⁸ However, in the case of airshows, the choreographer can come out with his own version of the manoeuvres and stunts and arranges them in an original manner, which requires creative effort and knowledge of the art of flying techniques and skills. India's approach to copyright is more aligned to that of the US approach, which says that ideas, systems or methods cannot be copyrighted⁴⁹, and therefore, shows greater affinity to common law principles codified through the Copyright Act of 1957.⁵⁰ In accordance with this approach, airshows should be considered as expression in the ultimate culmination or performance of its stunts or manoeuvres, similar to the dance expressions⁵¹.

It must be noted here that the copyright is being granted here in the written plan of the airshows, which can be considered akin to the concept notes prevalent in case of other dramatic or cinematographic works, and it has been considered as expression in a plethora of cases under the Indian copyright law.⁵²

C. Originality in the choreography and compilation

Airshows or aerospace plays portray a well-crafted combination of different basic sets of manoeuvres, which include horizontal and vertical movements, loops, spins, and stall turns, which are also known as hammerheads.⁵³ The question which arises is that whether copyright exists in such work, which can be considered a careful choreography or arrangement of such moves. This paper aims to analyze it from the perspective of two realms, dance and yoga. Firstly, discussing the prospect of granting copyright by drawing an analogy to dance, it can

⁴⁷ Bikram's Yoga College of India, L.P. v. Evolution Yoga, LLC, COURT OF APPEALS FOR THE NINTH CIRCUIT No.13-55763, MANU/FENT/2542/2015 (2015).

⁴⁸ Alexander Bussey, Stretching Copyright to Its Limit: On the Copyrightability of Yoga and Other Sports Movements in Light of the U.S. Copyright Office's New Characterization of Compilations, 20 Jeffrey S. Moorad Sports L. J. 1 (2013).

⁴⁹ Edward Samuels, The Idea-Expression Dichotomy in Copyright Law, 56 Tenn. L. Rev. 321 (Winter 1989).

⁵⁰ K. P. Abinava Sankar & Nikhil L. R. Chary, The Idea-Expression Dichotomy: Indianizing an International Debate, 3 J. Int'l Com. L. & Tech. 129 (2008).

⁵¹ Academy of General Edu., Manipal and Ors. Vs. B. Malini Mallya, Supreme Court of India, AIR 2009 SC 1982, (2009).

⁵² Anil Gupta And Anr. vs Kunal Dasgupta and Ors., AIR 2002 Delhi 379, (March 2002) and Zee Telefilms Ltd. And Film and Shot and Ors. vs Sundial Communications Pvt. Ltd. And Ors., 2003 (27) PTC 457 (Bom) (DB), (2003).

⁵³ Stall Turn (Hammerhead) Explained, Pilot Institute, (24 March 2025). <https://pilotinstitute.com/stall-turn-hammerhead-explained/>

be said that similar to airshows, dance is also a crafted combination of basic steps, which are choreographed into a performance with the right to make minor and unique alterations by the performer performing the dance. It is true that the dance choreographies are also inspired from preceding forms, but that does not preclude them from claiming originality in their own work. In the case of *Academy of General Education, Manipal and anr. v. B. Malini Mallya*, the court granted copyright to Dr. Karanth for his dance choreography, *Yaksha Ranga*, which was a creative extension of the traditional *Yakshagana* on the ground that he gave an entirely new look to the *Yakshagana* Ballets using his imaginative faculties. The court further held that where the same idea or theme can be presented and treated differently, the subsequent work becomes an entirely new work and that even if they are different, similarities are bound to occur considering they are from the same source.⁵⁴ Again, in 2015, the Kerala High Court opined in favour of the Kuchipudi dancer, Anupama Mohan, who challenged the unauthorized circulation of the performance of her choreographed by her students⁵⁵, without her or the performers consent, on the ground that it infringed her copyright which existed in the choreography.⁵⁶

Since it is now clear that dance forms can be choreographed, let's discuss the possibility of granting copyright to airshows from the other perspective, that is, yoga. Yoga, in contrast to dance, was held not to be copyrightable⁵⁷ on the ground that it is just a sequence of commonly used poses and breathing exercises, and beauty was not a criteria for originality in copyright protection, but this view is also debated by several scholars on the ground that the court did not give any reason as to why the compilation in yoga cannot be protected through copyright like the other compilations and merely stated that it violates the spirit of *yogasanas*⁵⁸, and on ground that not giving copyright to yoga simply by drawing an analogy to sports competitions saying that they are both functional in nature and saying that sports moves are not copyrightable is a very narrow view because there are now claims about granting copyright to sports celebration moves and football play formations.⁵⁹

⁵⁴ *Academy of General Edu., Manipal and Anr v B.Malini Mallya*, AIR 2009 SUPREME COURT 1982, (2009). *Academy Of General Edu.,Manipal & Anr vs B.Malini Mallya* on 23 January, 2009

⁵⁵ Diwanshi Rohatagi and Keshav Madhav, Copyright in Choreography: examining the Legal Landscape for Dance Moves in India, *International Journal of Law Management and Humanities*, Volume VIII Issue III, Pg. 669-673.

⁵⁶ *Anupama Mohan v. State of Kerala*, WP(C). No. 22790 of 2015 (W). *Anupama Mohan vs State Of Kerala*.

⁵⁷ *Bikram's Yoga College of India v. Evolution Yoga*, No. 13-55763 (9th Cir. 2015)

⁵⁸ Alexander Bussey, Stretching Copyright to Its Limit: On the Copyrightability of Yoga and Other Sports Movements in Light of the U.S. Copyright Office's New Characterization of Compilations, 20 *Jeffrey S. Moorad Sports L. J.* 1 (2013).

⁵⁹ Shannon M. Wise, Copyright Battles over Yoga's 5,000-Year-Old Tradition, 23 *Ent. & Sports Law.* 18 (Summer 2005).

If there is possibility of granting copyright to the choreographies or compilation of works in both these realms, airshows should also be protected under copyright because the order, arrangement and compilation of the basic sets of manoeuvres and turns to make it visually appealing to the public, which leads to it becoming one of the biggest international events, requires skill and judgment and would therefore, make it eligible to be protected by copyright by following the skill and judgment test, since it requires professional skill and creative judgment to choreograph the manoeuvres⁶⁰ and the modicum of creativity test⁶¹, which gives the copyright to a work based on the unique arrangement of ideas or a manifestation of the creator's personal touch, which is demonstrated through the whole performance and the works behind it, the way in which the order of flying is decided, the colours, the sound, and the background, or rather a combination of all of them together.

CHAPTER IV: PERFORMERS RIGHT IN AIRSHOWS: PILOTS AS PERFORMERS

Performers right, comes under the scope of neighbouring rights, and was borrowed by the Copyright Act, 1957 of India from the Rome Convention⁶², which dealt with the issue of neighbouring rights. It can be accrued to any actor, singer, musician, dancer, snake charmer, lecturer, acrobat, or any person who makes a performance.⁶³ Again, performance, in relation to performers right refers to any visual or acoustic presentation made live by one or more performers.⁶⁴ The rights of the performers, or the broader aspect of neighbouring rights, differ from traditional copyright in the way that the purpose of the performers right is to recognize and protect the contributions of certain individuals and organizations that play a crucial role in making creative works available to the public.⁶⁵ Before the amendments of 2012, India only granted negative rights to the performers in the way that it only prevented the unauthorized third party use, which was, however, expanded with the 2012 amendments to the Act, which added sections 38A and 38B to the Act⁶⁶, as a part of India's compliance to the

⁶⁰ Eastern Book Company and Ors. V. D.B. Modak and Anr., AIR 2008 SUPREME COURT 809. 912 December 2007).

⁶¹ Sayantani Ray, Analysis of the Modicum of Creativity doctrine under Copyright Law, Indian Journal of Law and Legal research, Volume VII Issue VI (18 January 2026).

⁶² Rome Convention, 12 World Bull. 175 (January-June 1996).

⁶³ The Copyright Act, 1957, No. 14, Acts of Parliament, 1957, Ch.1 § 2 (qq) (India).

⁶⁴ The Copyright Act, 1957, No. 14, Acts of Parliament, 1957, Ch.1 § 2 (q) (India).

⁶⁵ Karnika Bansal, The Stage of Law: Examining Performers' Rights in India and Australia's Entertainment Industries, 29 James Cook U. L. Rev. 109 (2023).

⁶⁶ The Copyright (Amendment) Act, 2012, Act No. 27, Acts of Parliament, 2012, § 27 (India)

WIPO Performers and Phonograms Treaty⁶⁷, thus, granting exclusive positive rights to the performers.⁶⁸

Considering the contemporary importance of this neighbouring right, the question now arises as to whether this right can be granted to the pilots as performers of the airshows, considering the contributions of the pilots in performing a well-executed performance of the airshows, including stalls, manoeuvres and turns, and matching it with the lighting and sound, which requires proficiency in managing airspeed, controlling attitude and timing. In order to be considered as a performance, the presentation has to be live in the first instance. The court in this regard addressed that in both cases of being recorded before a camera or presentation before an audience, it will be considered as a live performance.⁶⁹ In the case of *Star India Pvt. Ltd. v. Piyush Agarwal*⁷⁰, the Delhi High Court held a cricket match to be a performance under Section 2(q) of the Copyright Act, whose performers he considered to be the cricketers, umpires and commentators.⁷¹ Following this precedent, neighbouring rights can be granted, including moral rights to the performers, along with the right to broadcast the performance, produce a sound or visual recording, selling it for commercial rental and communicate the same to the public through different means and right against mutilation.⁷² However, he cannot later object to the same being included in the incorporation of a film if he has consented to such action by written agreement, but he is still entitled to royalties if it is commercially exploited.⁷³ Thus, pilots are entitled to performers rights in regards to the live performances done by them in the airshows.

CONCLUSION

The transformation in the nature of airshows from technical aviation achievements to choreographed aerial performances calls for a need to grant them copyright protection, since in their present form, they represent structured and well-choreographed performances involving thematic design, synchronized formations, curated planning, narrative, time coordination,

⁶⁷ WIPO Performances and Phonograms Treaty, (entered into force on 20 May 2002).

⁶⁸ S Sivakumar and Lisa P Lukose, 'COPYRIGHT AMENDMENT ACT, 2012: A REVISIT', 55(2) *Journal of the Indian Law Institute*, (2013).

⁶⁹ The Copyright Act, 1957, No. 14, Acts of Parliament, 1957, Ch.1 § 2 (q) (India).

⁷⁰ *Star India Pvt. Ltd. v. Piyush Agarwal*, High Court of Delhi, CS (OS) Nos. 2722/2012, 3232/2012 and 2780/2012, (2013).

⁷¹ Examining the Limits of Performer Rights of Sportspersons: The Copyright Act, 1957, *Our Legal World*, (11 June 2023)

<https://www.ourlegalworld.com/examining-the-limits-of-performer-rights-of-sportspersons-the-copyright-act-1957/>

⁷² The Copyright Act, 1957, No. 14, Acts of Parliament, 1957, § 38A cl 1 (India).

⁷³ The Copyright Act, 1957, No. 14, Acts of Parliament, 1957, § 38A cl 2 (India).

music coordination, colour coordination which require creative skill and effort and make them eligible to be granted copyright protection. The Copyright Act of 1957 requires dramatic works, which includes choreographic works, to be tangible original works, fixed in writing or otherwise, to be granted copyright protection. While fixation serves as a challenge to granting protection to copyright, it can be resolved through adopting approaches like detailed written plans or aerial choreography scripts, and do not render airshows inherently uncopyrightable. The idea expression dichotomy further clarifies that while the individual manoeuvres are unprotectable methods or techniques, their sequencing, arrangement and combination is protectable, provided it is original as is also evident from the judiciary's approach to granting copyright to Yakshagana ballet. Further, airshows differ from yoga sequences, which are deemed to be mere functional arrangements of public domain poses, since they are a thematic, creative performances that can be enjoyed and perceived by the general public, and the originality lies in such expressive execution. Ultimately, this paper concludes that airshows are capable of being granted copyright protection under the Copyright Act of 1957 if they are fixed in a tangible form, other than cinematographic film, and demonstrate sufficient originality in their compilation and choreography. But it must be balanced to make sure that such a protection does not extend to monopoly over aviation techniques, but only protects the original expressive element of such shows. As aviation shows continue to develop as performative platforms, airshows increasingly resemble large-scale performative art forms, which implies that copyright law must adapt interpretatively to accommodate the emerging expressions of artistic and dramatic works situated at the brink of technology and creativity. In doing so, the Indian jurisprudence has to accept that creativity in the contemporary world is not limited to traditional stage but may also unfold in the skies.