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From ‘Dev Anand’ to Digital Clones: A Critical Look at Performers’ Rights in India

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The paper traces the development of performers' rights in India, beginning with the Indian Singers’ and Musicians’ Rights Association’s (ISAMRA) recent efforts to secure equitable royalties for singers, and moving backwards through key legal and institutional milestones to the landmark Dev Anand case. While there has been progress in recognising performers as rights-holders, these rights remain predominantly governed by contractual arrangements often skewed in favour of producers and labels. The emergence of AI cloning technologies has intensified concerns around consent, misappropriation, and the boundaries between copyright and personality rights, highlighting legal ambiguities and enforcement gaps. The paper concludes that without clearer statutory interpretations, better-defined rights, and updated frameworks to address digital and AI-related threats, performers in India remain vulnerable to exploitation, both creatively and commercially.

Keywords: Performers’ Rights, AI and Synthetic Performances, Copyright, Contractual Practices

In the rapidly evolving landscape of the global entertainment industry, the rights of performers namely, singers, actors[1] and other creative contributors have increasingly come under scrutiny. As performers play a central role in the creation and dissemination of cultural products, their legal protection is vital not only to their artistic and economic agency but also to the broader functioning of creative industries.[2] In India, the legal recognition of performers' rights has developed incrementally through legislative amendments, international treaty obligations, and judicial interpretation. Yet, despite these advancements, the protection afforded to performers remains uneven, especially within the audiovisual sector, where contractual dominance by producers and record labels often overrides statutory guarantees.[3]

While international conventions such as the Rome Convention and the WIPO Performances and Phonograms Treaty (WPPT) have prompted legislative changes in India, most notably the 1994 and 2012 amendments to the Copyright Act, 1957, significant gaps in interpretation and enforcement persist.[4,5] Indian law now acknowledges both economic and moral rights for performers, yet these are frequently diluted in practice through standard-form contracts and lack of judicial clarity. Moreover, ambiguities around key terms such as “live performance” and “performance” itself continue to create uncertainty in the legal landscape, leaving scope for exploitation.[6]

Adding a new layer of complexity is the emergence of artificial intelligence (AI) technologies capable of cloning voices and replicating performances without the consent of the original artist.[7–9] As deepfakes, vocal synthesizers, and algorithmically generated performances become more sophisticated, performers face unprecedented threats to their autonomy, identity, and remuneration.[10] The lack of specific legislative guidance to address these developments underscores the urgency for a more robust and forward-looking legal framework.

For instance, deepfakes can be described as synthetic performances created using AI systems often neural networks that replicate or fabricate a performer’s likeness, voice, or expressions.[11,12] They may re-enact, replace, or simulate past performances, or even generate entirely new ones without any further participation from the original artist.[11,12] The technology is not only powerful and precise; it is also widely accessible, inexpensive, and increasingly mainstream.[13] In a legal system that still struggles to define the boundaries between live and recorded expression, the rise of non-performed, yet hyper-realistic synthetic performances introduce an even greater legal and regulatory void.

The paper traces the development of performers’ rights in India, beginning with a brief overview of key statutory reforms. It then examines the recent efforts

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of the Indian Singers' and Musicians' Rights Association (ISAMRA), formerly the Indian Singers Rights Association (ISRA), to secure equitable royalties through litigation, before turning to one of the earliest landmark cases on performers' rights in India - *Fortune Films International* v *Dev Anand* ("the *Dev Anand* case").[14] In doing so, the paper addresses three central research questions - (a) how have performers' rights evolved in Indian copyright law?; (b) what legal and institutional challenges do performers continue to face, especially in the audiovisual sector?; and (c) how do emerging technologies, particularly AI-based voice and performance cloning, complicate the existing rights framework?

By examining both historical developments and contemporary challenges, ranging from statutory interpretation to contractual practices and technological disruption this paper argues that India's copyright framework for performers remains structurally vulnerable. Without clearer definitions, enforceable rights, and modernised protections against AI-based exploitation, performers will continue to face systemic disadvantages, both creatively and commercially.

Research Method

This paper adopts a doctrinal legal research approach, focusing on the analysis of statutes, case law, international treaties, and scholarly commentary to trace the development and limitations of performers' rights in India. The research is primarily qualitative, aiming to interpret legal texts and judicial decisions in light of historical and contemporary challenges faced by performers, particularly in the audiovisual and music industries. In addition, institutional efforts such as those undertaken by the ISAMRA are reviewed to assess the practical enforcement of performers' rights in India. Comparative references to international practices are occasionally drawn upon to highlight gaps or potential models for reform. The scope of the study is confined to Indian Copyright law, but the implications of international legal developments and transnational technologies are considered insofar as they affect domestic regulation and enforcement. By combining doctrinal analysis with policy critique, this methodology enables a comprehensive understanding of the strengths and shortcomings of the current legal regime.[15]

Discussion

Performers' Rights in India: A Snapshot

To understand how contemporary challenges emerge, it is necessary to trace the evolution of performers' rights in Indian law. Until the 1994 amendments to the Copyright Act, 1957, Indian copyright law did not recognise performers as a distinct category of rights-holders.[16] Section 2(q), prior to 1994, defined "performance" broadly to include any mode of visual or acoustic presentation, including by way of exhibition of a cinematograph film, radio-diffusion, use of a record, or other means, and in relation to a lecture, its delivery. This definition did not create any independent rights for performers but rather described the act of performance in the context of copyright.[5] This omission stood in contrast to India's status as an early signatory to the Rome Convention, 1961, which provided for the protection of performers, producers of phonograms, and broadcasting organisations. India's failure to implement these protections domestically for nearly three decades reflects a broader institutional inertia in recognising creative labour beyond authorship.

The 1994 amendments[17] introduced, for the first time, a performer-centric definition of "performance" in Section 2(q), restricting it to *"any visual or acoustic presentation made live by one or more performers."* This narrower, live-focused definition was tied to the creation of performers' rights under Section 38, giving performers the ability to prevent unauthorised recordings or uses of their live performances.[16] However, these rights were primarily negative in nature, allowing performers to stop others from misusing their performances, but not granting them proactive control or economic benefit.[6]

This changed with the 2012 amendments, enacted after India acceded to the WPPT. These reforms significantly expanded performers' rights in two ways. First, Section 38A introduced exclusive economic rights, allowing performers to authorise or prohibit reproduction, distribution, communication to the public, and commercial exploitation of their recorded performances. Second, Section 38B introduced moral rights, including the right to be credited as a performer and to object to any distortion that could harm their reputation.

As shown in Table 1, performers' rights in India have evolved incrementally, from complete exclusion to the statutory recognition of both economic and

Table 1 — Evolution of Performers' Rights in Indian Copyright Law

Time Period / Amendment	Legal Development	Definition of "Performance"	Rights Recognised
Pre-1994	No recognition of performers as rights-holders	Section 2(q): Broad definition including any visual or acoustic presentation (e.g., radio, films, lectures)	No specific rights for performers
1994 Amendment	First legal recognition of performers' rights	Section 2(q) amended: Restricted to live visual or acoustic presentations by performers	Section 38: Negative rights – prevent unauthorised recording or use of live performances
2012 Amendment	Expansion of performers' rights	No change in definition of performance, but additional sections introduced	Section 38A: Exclusive economic rights (reproduction, distribution, communication to public);Section 38B: Moral rights (credit and protection against distortion)

moral rights following key amendments in 1994 and 2012. Despite these advances, the 2012 amendments are not without shortcomings. Notably, audiovisual performers such as film actors and dancers are subject to a crucial limitation under Section 38A(2), which provides that once a performer has consented in writing to the incorporation of their performance in a cinematographic film, they can no longer object to the producer's enjoyment of the performance rights, unless the contract states otherwise. This provision effectively nullifies performers' rights post-consent and reinforces industry practices that rely on broad contractual waivers.[5]

Furthermore, although Section 39A links performers' rights to royalty-sharing provisions under Section 18, the absence of judicial enforcement has meant that these provisions remain largely symbolic. In practice, many performers still receive only a lump-sum payment and are excluded from ongoing commercial benefits arising from the use of their performances particularly in high-revenue sectors like film and digital streaming.[18]

The ambiguity in defining key concepts such as "live performance" further complicates enforcement and the core of this ambiguity lies in the current definition of the term performance. On the surface, this definition appears to exclude studio recordings and other fixed media, which are not presented before an audience in real-time. While international treaties have struggled with defining "live" versus "recorded" performance,[19] Indian law offers little clarification except under Rule 68 of the Copyright Rules, 2013, which extends the definition of performance to include studio recordings, which could be interpreted as treating them as "live" performances for legal purposes.

A key case supporting this broader interpretation is the case of *Neha Bhasin* v *Anand Raj Anand*[20] *(*'the *Neha Bhasin* case'*)*, where the Delhi High Court stated that "*every performance has to be live in the first instance, whether it is before an audience or in a studio*." This decision was a significant step toward expanding performers' rights to include studio-recorded content, such as playback singing and instrumental contributions in film or music albums. The Court's reasoning aligned with Rule 68 of the Copyright Rules, 2013, which defines "performance" for the purpose of performers' societies as including studio-based visual or acoustic recordings. This rule implies that a performance need not occur in front of a public audience to qualify as protected so long as it originates from a human act of expression, it may fall under the scope of performer's rights.

Despite this progressive interpretation, Indian courts have not always been consistent. In particular, the Delhi District Court's decision in *Sushila* v *Hungama Digital Media Pvt Ltd ('Sushila')*[21] explicitly rejected the broader interpretation applied in the *Neha Bhasin* case. Instead, the court aligned itself with the narrower reasoning adopted by the Division Bench in *IPRS* v *Aditya Pandey ('Aditya Pandey')*,[22] holding that only performances conducted in front of a live audience qualify for protection under the performers' rights regime.

In *Sushila*, the court relied heavily on the dictionary definition of "live" as provided by the Oxford English Dictionary. It held that a "live" performance requires an immediate, unmediated connection between the performer and the audience, emphasising that performances conducted in a studio, despite their skill and creativity, did not meet this standard. The court noted - "*To put it otherwise the word 'live' connotes that there is a direct connect with the audience/viewers without there being any break or any intervention through any other medium - it should be performed directly in front of them. The*

skills or unique efforts being displayed by the performer should be directly seen or heard by the audience.”

This literalist interpretation raises two core concerns. First, critics have questioned the reliance on *Aditya Pandey*, which conflated the concept of “live performance” with the mode of communication specifically, transmission versus direct presentation. The underlying assumption in *Aditya Pandey* was that once a performance is broadcast or diffused, it loses its “live” character and, by extension, the associated legal protections. This has been widely challenged in the literature, which argues that the manner of transmission should not affect the legal value or character of the substance of communication itself.[5,16] As such, legal protection should follow the creative expression, not the technical form in which it is delivered. Therefore, a performance remains a performance, even if mediated through technology or delayed through recording, so long as it originates from the expressive effort of a human performer.

Second, the *Sushila* ruling was criticised for applying a restrictive and literal interpretation of statutory language, relying on dictionary meanings rather than engaging with the purpose and object of the legislation.[6] The purposive approach to statutory interpretation, well established in Indian constitutional and copyright jurisprudence, mandates that courts read statutes in light of their overarching goals. In this context, the Copyright Act 1957 is intended to protect creative expression and reward artistic labour, not to limit protection based on the real-time presence of an audience.

From this perspective, the inclusion of the term “live” in the 1994 amendment to Section 2(q) should be understood as an attempt to exclude purely mechanised or artificially generated outputs, not to disqualify studio recordings performed by human artists. Studio performances involve deliberate, skill-based human effort often under artistic direction and serve the same communicative function as traditional stage performances. Thus, they merit equivalent protection under the performers’ rights regime.

This broader understanding found reaffirmation in the Delhi High Court’s recent interim order in *ISRA* v *Dharma Productions Pvt Ltd*.[23] In this case, ISAMRA alleged that *Dharma Productions* had used songs featuring its members’ performances in a commercial film without proper clearance or royalty payments. The studio rebutted the claim, arguing that since these performances were recorded in a studio and not delivered in front of an audience, they did not qualify as “live” performances and hence were outside the scope of performers’ rights. The Court’s interim order made a critical observation: it referred back to the *Neha Bhasin* case and once again stated that “*every performance has to be live in the first instance whether it is before an audience or in a studio*.”[23]

This comment strongly suggests judicial endorsement of the view that studio-based performances though fixed are still born of real-time, live creative effort, and therefore generate enforceable rights under the law. The Court also described ISAMRA’s claim as raising a “*serious triable issue*,”[23] thereby affirming that the legal question of whether studio performances fall within the scope of performers' rights remains open and contested.

As such it appears that the cumulative effect of these decisions is a legal environment in which performers’ rights are both recognised and undermined depending largely on the forum, the facts of the case, and the interpretive stance of the presiding judge. The consequence is not merely academic; it directly impacts the ability of performers particularly singers and session musicians to receive ongoing royalties and assert control over the commercial use of their work. Yet, even as courts and lawmakers continue to grapple with the traditional boundaries of performance whether on stage, in studio, or through recorded media a more complex and disruptive phenomenon is reshaping the very notion of performance: synthetic performances generated by AI. These AI-generated outputs, mark a paradigm shift in how performance, authorship, and likeness are conceptualised, produced, and exploited.[13]

This raises a critical concern: if the Indian Copyright Act remains unsettled on whether a studio-recorded song qualifies as a “live” performance under Section 2(q) of the Act, the emergence of synthetic, non-performed yet hyper-realistic content threatens to widen an already existing legal and regulatory void. If the law cannot resolve that foundational question, it may be even less equipped to address scenarios where no human performance exists at all, only machine-generated imitations that closely resemble the original.[24]

Performers’ Rights* v *Contractual Practices

The statutory development of performers’ rights in Indian Copyright law reveals a pattern of partial

recognition but incomplete realisation. While synthetic performances and deepfake technologies challenge the very ontology of what a "performance" is, a more entrenched obstacle to the realisation of performers' rights lies in the legal and contractual structures that have governed the creative industries for decades.[25,26] Long before the advent of AI, performers in India particularly in the audiovisual sector were already operating within a framework in which their creative contributions were often undervalued, commodified, and ultimately controlled through standardised contracts.[5]

In the creative industries, particularly the audiovisual sector, performers' rights are heavily mediated, and often overridden, by contractual arrangements. These agreements, typically drafted by producers or studios, serve as the primary instrument through which the transfer and exploitation of rights occur. They not only shape the economic position of performers but also determine whether performers can meaningfully enforce their statutory entitlements.

Therefore, the importance of contracts in this context cannot be overstated. As noted in WIPO's *Review of Contractual Considerations in the Audiovisual Sector*, contracts serve as the legal foundation for facilitating the commercial exploitation of creative works. However, the report also highlights a persistent challenge: while performers may be granted exclusive statutory rights, these are frequently eroded or neutralised in practice through standard-form contracts that favour producers. The review points out that statutory rights may have "little practical effect" on performers' bargaining positions when the dominant industry practice involves blanket assignments or waivers of all rights.

This tension is clearly demonstrated in the landmark case of *Dev Anand* v *Union of India,* decided by the Bombay High Court in 1978. The case continues to be instructive in understanding how courts interpret contracts in the audiovisual sector and the extent to which they are willing or unwilling to enforce performers' rights that deviate from statutory norms. In this case, actor Dev Anand filed a suit to restrain the producers of the film *Darling Darling* from releasing the film in certain territories, claiming that he retained copyright in his performance due to the non-fulfilment of payment obligations under a written agreement.

The initial agreement between the actor and the producers included both a remuneration clause and a restriction on exploitation: the producers were prohibited from releasing the film in specific territories until payment had been made. At the trial stage, the Court granted an injunction in favour of the actor. However, this was overturned on appeal, where the Court scrutinised the written agreements and determined that, despite the contractual provision, the Copyright Act, 1957 did not recognise a performer's individual copyright in an audiovisual performance. The producers, relying on the statutory framework, argued that the copyright in a cinematograph film inherently vests in the producer and that no separate right could be claimed by an actor unless specifically provided by law.

Notably, the Court refused to consider oral agreements, holding that parties must be governed strictly by their written contracts, including any modifications made through written correspondence. While this reflects a logical application of contract law, it also underscores a structural problem within the industry namely, the inequality of bargaining power between performers and producers, which often leaves the former with little room to negotiate terms or protect their contributions beyond initial lump-sum remuneration.

Even more troubling was the Court's observation that even if the agreement had attempted to assign copyright to the performer, such an assignment might not have legal effect if the underlying right was not recognised by the Act. This points to a broader issue in Indian copyright law: when performers attempt to assert contractual rights not expressly codified in the statute, courts may prioritise statutory silence over industry practice, thereby limiting the legal value of such agreements.

The *Dev Anand* decision, though decades old, continues to reflect the current state of contractual governance in the Indian audiovisual sector. Performers' statutory rights under Section 38A and 38B, while conceptually promising, remain vulnerable to contractual waivers and overrides. This is particularly evident in Section 38A(2), which states that once a performer has given written consent to the incorporation of their performance into a cinematograph film, they shall not object to the producer's enjoyment of rights in that film unless otherwise agreed. The standardisation of contracts that include such waivers ensures that performers rarely benefit from the statutory protections afforded to them.

As noted by legal scholar *Dietz*, this dynamic is not unique to India:

"[W]here there is no special regulation of contractual rules at all, the wonderful rights granted to authors and performers so to say by the right hand (the hand of the legislator) are too often taken immediately away from them without adequate consideration by the left hand (the hand of the publisher or producers)."[27]

Thus, even though Indian copyright law ostensibly grants performers a suite of exclusive rights, these rights are often contractually surrendered, leaving performers without ongoing control or revenue from their work. The legal system's deference to contractual autonomy, coupled with a lack of statutory limitations on waivers or assignments, severely weakens the practical impact of performers' rights and entrenches existing power imbalances in the creative economy. This already precarious balance is now being further destabilised by advances in AI and digital technologies, which make it possible to replicate, simulate, or re-use performances without any contractual relationship or performer involvement at all.

Digital Clones and the Role of Performers' Rights

The proliferation of advanced synthetic media known as digital clones and deepfakes using AI has introduced a new class of legal and ethical challenges,[28] where a performer's likeness or voice may be copied, altered, or generated entirely from data, often without their knowledge or consent. These developments strain the limits of current performers' rights, which remain tethered to a framework built for human, embodied, and fixed performances not algorithmic simulations.

The growing sophistication and commercial viability of digital clones and deepfakes underscores the urgent need for reform. The Screen Actors Guild-American Federation of Television and Radio Artists ('*SAG-AFTRA'*) strike 2023 in the United States has brought public attention to the economic impact of synthetic cloning, particularly when studios seek to license likenesses for future use without additional compensation.[29] In other words, AI cloning risks transforming performances into a one-time transaction severing the link between the performer and their creative identity. This concern resonates globally: when a performer's voice or image can be digitally cloned and reused across platforms without ongoing payment or oversight, the concept of residual royalties or moral integrity becomes functionally obsolete.[13,28,29]

As such, the rise of AI-generated performances blurs foundational concepts of identity, and creativity. Unlike traditional performances, which are rooted in human intention and embodiment,[5] synthetic clones are generated from fragmented datasets, algorithmic inference, and probabilistic modelling. This disconnects the performance from the performer's agency, raising difficult questions about who, if anyone, can be said to "perform" the resulting work.[30] Furthermore, when a performer's likeness is replicated without their active participation, their identity risks becoming disassociated from self-expression, turning into a manipulable asset rather than a reflection of personhood.[30] Such simulations may also undermine the creative labour of live performance by offering cheap, infinitely reusable alternatives that mimic emotion and nuance without genuine artistic intent. In this context, AI does not merely replicate creativity, it reframes and potentially devalues it, challenging existing understandings of originality, attribution, and the moral significance of performance.

Pavis argues that performers' rights offer a potentially more balanced and future-proof legal tool, especially in regulating non-malicious yet unauthorized synthetic performances when compared to traditional legal remedies such as privacy law, defamation, or misappropriation of personality.[13] She suggests that performers' rights provide a framework that is not only of international standing, but also flexible enough to address both authorised and unauthorised uses of a performer's likeness in synthetic content.[11] This distinguishes them from most legislative responses to deepfakes, which narrowly target harm-based misuse without addressing legitimate concerns of consent and compensation in commercial contexts.[13]

However, this very flexibility also exposes a critical limitation: performers' rights were never designed with AI-generated content in mind. Their statutory formulation particularly in India's Copyright Act presumes a human-originated performance that is captured, stored, or broadcast. The possibility that a performance could be digitally generated, re-created, or re-purposed without any new human contribution was not foreseen by the drafters of the law. As a result, deepfakes occupy a legal grey area where the source material may be protected, but the resulting

synthetic output is neither clearly infringing nor explicitly regulated.[31,32]

This legal ambiguity is especially concerning because AI systems are now cheaper, faster, and more accessible than ever before. Unlike traditional CGI or VFX, which required skilled technicians and high-end infrastructure, deepfake tools are increasingly open-source and user-friendly, meaning that high-quality synthetic performances can now be produced by virtually anyone with minimal technical expertise.[13] This technological shift lowers the threshold for misuse, making the potential for exploitation of performers particularly those without institutional support or bargaining power even more acute.

Furthermore, concerns around the unauthorised use of performers' likenesses are not hypothetical. The growing trend of digitally resurrecting performers posthumously demonstrates the real-world implications of synthetic cloning.[28] For instance, in *Rogue One: A Star Wars Story* (2016), the late actor Peter Cushing was digitally recreated through motion-capture and CGI decades after his death.[28] While the estate's consent was obtained in this case,[27] the technology used showcases how easily a performer's image can be simulated with astonishing accuracy.[28]

This example, while from the U.S. context, raises urgent questions for Indian law, where performers' rights are time-limited, often waived contractually, and not always extended posthumously in a meaningful way. More alarmingly, Indian copyright law does not currently address digital re-creations of performances where the original performer is not actively involved in the creation of the content but whose likeness and voice form the basis of a synthetic product. In such cases, even when a performance is algorithmically derived from legally obtained input data, the resulting deepfake may fall outside the scope of enforceable legal protection.

This gap becomes especially problematic when considering Section 38B of the Indian Copyright Act, which recognises a performer's moral right to be identified and to object to distortion or misrepresentation. If an AI-generated performance falsely attributes actions, expressions, or speech to a performer, that may constitute a violation of this moral right. However, without a clear statutory basis, and in the absence of judicial precedent on AI-generated impersonations, performers in India may have no effective remedy to prevent or control such use.

Given the slow pace of statutory reform, the existing contractual framework already prevalent across the Indian entertainment industry may offer a more immediate and accessible mechanism for protecting performers from the misuse of AI. However, this approach can only succeed if guardrails and enforceable protections are built into contracts themselves. A similar point was made by Duncan Crabtree-Ireland (SAG-AFTRA's Chief Negotiator) in his statement published in the World Economic Forum.[33]

Duncan emphasised that studios and streamers cannot rely on vague or overly broad clauses to justify the use of a performer's likeness, voice, or image through AI technologies.[33] Instead, any intended use must be clearly detailed within the contract, ensuring that the performer fully understands and agrees to how their identity will be replicated or manipulated. This approach ensures that performers retain meaningful control over their digital likeness and protects them from post hoc misuse.[33]

In the context of AI regulation, such clauses offer a model for balancing technological advancement with the protection of individual rights, highlighting how well-crafted contractual provisions can serve as an immediate safeguard even in the absence of updated legislation. This model underscores the importance of specificity, transparency, and informed consent elements that should become standard in Indian performance contracts as well. Without such contractual reform alongside legal development, performers will remain exposed to increasingly sophisticated methods of commercial exploitation, with few tools to reclaim control over their digital identities.

Therefore, for India, the challenge is twofold. First, the existing performers' rights framework must be clarified with clearer definitions of "performance" and expanded to address AI-generated content, including detailed criteria for consent, authorship, and infringement in the context of synthetic media. To operationalise these reforms, the statutory definition of performance should be updated to explicitly include digital and AI-generated representations, with accompanying provisions to safeguard a performer's likeness, voice, and identity from unauthorised synthetic use. The legal framework must also account for postmortem rights and the unauthorised use of digital replicas, areas currently underexplored in Indian copyright law.

Second, the law must consider the introduction of minimum standards of contractual protection, particularly around non-waivable moral rights and guaranteed remuneration, to prevent complete alienation of future use. Performers’ contracts should incorporate standard clauses ensuring moral rights, royalty-sharing arrangements, and explicit, informed consent for any future or AI-driven use of their performance. These contractual safeguards should be supported by regulatory oversight to ensure transparency and prevent exploitation. The introduction of model contracts or minimum contractual standards by industry bodies or the government could also help level the playing field for individual performers negotiating with powerful production entities.

Conclusion

The development of performers’ rights in India has followed a trajectory of incremental recognition but limited realisation. While statutory amendments particularly those in 1994 and 2012 formally incorporated economic and moral rights into the Copyright Act, their implementation has been hindered by a combination of vague statutory definitions, inconsistent judicial interpretation, and the dominance of contractual arrangements that often strip performers of their entitlements. As illustrated by early landmark cases like *Dev Anand*, judicial reluctance to extend copyright protections to performers’ contributions especially in audiovisual works has reinforced a system where legal rights exist more in theory than in practice.

Even where courts have attempted to adopt more inclusive interpretations, such as in *Neha Bhasin* and *ISRA* v *Dharma Productions*, the legal distinction between live and recorded performances continues to produce conflicting outcomes, undermining certainty for performers and industry stakeholders alike. This doctrinal instability, when coupled with the lack of regulatory oversight over standard-form contracts, has allowed producers and record labels to circumvent performers' rights through blanket assignments and waivers often embedded as non-negotiable clauses in contractual agreements.

These longstanding challenges are now compounded by the emergence of AI-generated synthetic performances, which disrupt traditional notions of authorship, consent, and creative labour. Technologies like digital cloning and deepfakes are capable of re-creating a performer’s likeness, voice, or performance without any human input from the original artist, effectively bypassing the contractual frameworks that have traditionally governed the use of performance rights. The existing legal regime built on the assumption of a human origin for performance is inadequate to address these evolving threats.

As this paper has argued, the solution lies in a dual approach. On the one hand, the statutory framework must be revised and expanded to clearly define performance in the digital and AI context, including enforceable rights against unauthorised synthetic reproductions. On the other hand, the contractual landscape must evolve to include mandatory guardrails such as non-waivable moral rights, royalty-sharing obligations, and informed consent provisions so that performers are not left defenceless against both traditional and technological forms of exploitation.

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