
RUNWAY TO RIGHTS: COPYRIGHT PROTECTION AND PERFORMERS' RIGHTS IN FASHION SHOWS

Shama Bhat, B.A. LL.B., PES University, Bangalore

ABSTRACT

This paper attempts to explore the extension of copyright protection to fashion shows and to analyze questions that are emerging in the fashion industry such as the copyrightability of fashion shows, the author of the said work and if models are considered performers thereby building on whether catwalk is a performance or not. It explores how fashion shows, often dismissed as commercial spectacles, embody elements of choreography, performance, and artistic coordination that align with the definition of a “dramatic work” under Section 2(h) of the Copyright Act, 1957¹. The author has further drawn parallels to the positions of UK and France with that of India's. International extension has been focused as well and the author has tried to make reasonable suggestions.

Keywords: Fashion shows, copyright protection, dramatic works, performer's rights, author, catwalks, moral rights.

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

Introduction

Fashion shows are much more than glitzy displays of clothes, they are intricate performances that blend artistry, design, and creativity. Nowadays, these shows are about more than just the clothes. These need extensive preparation and are performed in front of an audience. Art directors and sometimes an entire crew labor behind the scenes to make the production come to life. In an artistic set, every item of apparel and accessory is meticulously selected and coordinated with music. Some famous fashion shows are of Balenciaga's Fall/Winter 2020, "Flooded Runway"² where Models walked through ankle-deep water with storm projections above and Gucci's Fall/Winter 2018 -"Cyborg Show"³, where Models carried eerily realistic replicas of their own heads and baby dragons, also Chanel's Fall/Winter 2014- "Supermarket Show"⁴, where Karl Lagerfeld turned the Grand Palais into a fully stocked Chanel-branded supermarket. The intensity of these fashion shows often lead them to be called performance art. However, the question of whether these shows are protectable under copyright law remains largely unaddressed. In addition to being famous for presenting the newest styles, fashion shows also appear to serve as a hub for the many types of copying that take place in the industry, such as runway looks that are stolen before designers can get their production line into stores or a window into which designers are imitating one another. This paper will traverse through various Indian provisions, draw parallels to those of UK and France and touch upon the concept of authorship in a fashion show as well as performer's rights.

Legal Aspects of a Fashion Show

A Fashion Show is a heterogeneous mixture of models, designers, lights, visuals, clothes, choreography, singers, etc and involves several legal facets⁵. A lease for the location with required permits, plenty of contracts such as manufacturing, consignment, franchise, advertising, promotional, sponsorship, employment and outsourcing agreements with public relations agencies, photographers, designers, assistants, stylists, models and more. There can be music licenses for the background beats played during the shows as well.

² Balenciaga, <https://www.balenciaga.com/en-us/winter-2020?srsltid=AfmBOopoeS8XmxcsimbQuZM390yMUavzIJuwURldhmuGxETfo7O2jpRt> [(last visited Oct. 8, 2025)].

³ Vogue, <https://www.vogue.com/fashion-shows/fall-2018-ready-to-wear/gucci> [(last visited Oct. 8, 2025)].

⁴ The Guardian, <https://www.theguardian.com/fashion/fashion-blog/2014/mar/04/supermarket-karl-lagerfeld-chanel-collection-paris> [(last visited Oct. 8, 2025)].

⁵ Fashion Law Journal, <https://fashionlawjournal.com/legalities-involved-in-a-fashion-runway-show/> [(last visited Oct. 8, 2025)].

While the elements of what a show is made up of can be protected individually under different branches of intellectual property law, the question in safeguarding the show as a cohesive creative expression can be raised. Much like how a film is protected as a cinematographic work despite having numerous individually protected rights, the question arises as to whether a fashion show, as an orchestrated artistic performance deserves similar holistic protection.

The Catwalk, Performers' Rights and Runway Models

Walking the runway while displaying fashion is far from an ordinary walk. It requires a precise, practiced technique to showcase the garments' finest features. The element of creativity emerges when models subtly adapt their posture, pace, or gestures, ensuring that the audience's attention is drawn to the design in the most striking and effective manner. Social media has granted access to a great deal of fashion shows, designer clothing on the runway, supermodel'catwalks, each bit related to a fashion show is available to be watched on the internet. Thousands of instagram reels and posts with fan edits of these model's walks flow around. Naomi Campbell for her "Panther Walk", Yasmeen Ghauri for her "Tigress Walk", Kate Moss for her "Heroin Chic" style, Shalom Harlow and her balletic stride, Cindy Crawford for her athletic walk, and Gisele Bündchen for her "Horse Walk"⁶These signature catwalks/struts are highly idolized and seen as a performance by fashion's audience.

Performers' rights are defined quite vaguely under national and international law, which can make space for models as well to claim the neighbouring rights. Performer's rights are usually claimed by singers or actors, etc but that said the performance of these models do tick the boxes required for protection. A catwalk can be seen as a "dramatic performance" and it should not be acceptable for it to be seen as having a lesser artistic value than other performances. Present day laws need to be dynamic to be inclusive of models as performers.

The 2012 amendment to India's Copyright Act significantly enhanced performers' rights, introducing Section 38A⁷ (economic rights, including royalties) and Section 38B⁸ (moral rights, ensuring proper attribution and artistic integrity). It also extended the duration of performer's rights from 25 to 50 years from the end of the performance year and clarified that casual or incidental performers are not protected.

⁶ Barry Samaha, The 25 Top Supermodels That Dominated Fashion in the '90s, Harper's Bazaar [(accessed Oct. 8, 2025, 12:23 AM IST)], <https://www.harpersbazaar.com/fashion/models/g32754339/90s-supermodels/>

⁷ Copyright (Amendment) Act, § 38A, No. 12, Acts of Parliament, 2012 (Ind.).

⁸ Copyright (Amendment) Act, § 38A, No. 12, Acts of Parliament, 2012 (Ind.).

In the year 2005, Metinee Kingpayom and Sara Lane, two Thai supermodels, filed a copyright lawsuit against a well-known Thai fashion house and brand - Dapper. The facts of the case included a glamorous fashion show in Bangkok where supermodels catwalked the ramp wearing Dapper's designs. Photographers were hired exclusively to take pictures of the models on the runway. Subsequently, Dapper advertised its fashion show by featuring photographs in magazines showing various models on the runway during the event. The two supermodels tried to assert their performers' rights over Dapper's use of the images. The Intellectual Property and International Trade Court (IP&IT Court), acting as the court of first instance, ruled in favor of the plaintiff. It held that since they were modeling for Dapper, they qualified as "performers" under the law. Dapper appealed to the Supreme Court of Thailand. In 2012, the apex court reversed IP&IT Court's judgement and dismissed the case. The apex court went on to emphasise that performer's rights only comes into play when someone performs a copyrightable work, like musical, dramatic, or literary work. A performer's performance that could be protected must be the act of performing a copyright work, recognized by the Act. It can be taken to consideration that the Supreme court did not express that catwalk cannot be protected and only that the performance must fall within copyrightable works⁹.

Section 38 of the Indian Copyright Act¹⁰ defines a performer's rights, stating that "where any performer appears or engages in any performance, he shall have a special right to be known as the 'performer's right' in relation to such performance." Under Section 2(q)¹¹, a performance requires a live visual presentation by a performer. Runway models can fall within the scope of a "visual performance," as they actively showcase fashion designs protected by copyright through walks that demand skill, precision, and creative expression.

Position of EU Countries

UK

Under the CDPA Act 1988, 1(d)¹² defines what a "dramatic work" is and Section 2¹³ requires the work to be recorded or otherwise. Fashion shows clearly satisfy the latter category. The former requirement can be interpreted broadly and argues that fashion shows fall within this since it involves choreographed movements and stage directions, etc. "dramatic work", is

⁹ Srila Thongklang & Suebsiri Taweepon, Copyright on the Catwalk, Tilleke & Gibbins [(accessed Oct. 8, 2025, 12:23 AM IST)], <https://www.tilleke.com/insights/copyright-catwalk/>

¹⁰ Copyright Act, § 38, No. 14, Acts of Parliament, 1957 (India.).

¹¹ Copyright Act, § 2(q), No. 14, Acts of Parliament, 1957 (India.).

¹² Copyright, Designs and Patents Act, § 1(d), 1988 (UK).

¹³ Copyright, Designs and Patents Act, § 2, 1988 (UK).

defined as a ‘work of action’, ‘capable of performance’ which displays a modicum of dramatic unity so that the substance of the work is not left to chance or mere randomness. Runway modelling could arguably fit this rather broad definition as theirs : it involves action, elements of performance, holds an overall artistic and dramatic unity as it is directed and is not left to chance nor randomness”. In *Norowzian v Arks Ltd*¹⁴, involved a dispute over whether a short film titled *joy* was qualified for protection under dramatic work. This case touched upon the broader interpretation of what makes it a “dramatic work”.

Fashion models walking the runway are dramatic when performed in an order and pattern on the runway. The minimum standard set out by English courts is that a dramatic work is not a random work or work left on chance. Fashion shows are copyrightable or not under the CDPA Act is certainly up for debate. However, it can be argued that fashion shows can qualify as “dramatic works” or “choreographic works” under the English copyright law¹⁵.

France

Article L112-1 of the French Intellectual Property Code¹⁶, protects the rights of authors in all works of the mind, whatever their genre, form of expression, merit or purpose. Article L112-2¹⁷, provides a non-exhaustive list of types of works that are considered “works of the mind” under French law. Some of them include :

- Dramatic or dramatico-musical works
- Choreographic works, circus numbers and tricks, pantomimes, the implementation of which is fixed in writing or otherwise
- Cinematographic works and other works consisting of animated sequences of images, with or without sound, collectively referred to as audiovisual works
- Creations of the seasonal clothing and ornament industries. Seasonal clothing and ornamental industries are industries which, because of fashion requirements, frequently renew the form of their products, and in particular sewing, fur, lingerie, embroidery, fashion, footwear, glove-making, leather goods, the manufacture of high novelty fabrics or special fabrics for haute couture, the productions of paruriers and boot-makers and furnishing fabric factories.

¹⁴ *Norowzian v. Arks Ltd*, [Plaintiff] v. [Defendant], (No.2) [2000] EMLR 67.

¹⁵ Varese, E. and Mazza, V. (2019) ‘The protection of fashion shows: An uncharted stage’, *Laws*, 8(4), p. 29. doi:10.3390/laws8040029.

¹⁶ French Intellectual Property Code, Art. L112-1 (Fr.)

¹⁷ French Intellectual Property Code, Art. L112-2 (Fr.)

Affaire Ashby Donald et Autres v. France¹⁸

This case was a landmark judgement from the French Supreme Court and was a moment to behold for the fashion houses of France. This case held that fashion shows can be copyrightable, reflecting how fashion evolves, so must the laws to protect it. The case involves three photographers- Ashby Donald, Moraes and Claisse who took photographs at fashion shows in Paris 2003 and published these photos and videos on their website without prior permissions. A suit for copyright infringement was brought by the French Federation of Couture along with haute couture brands like Chanel, Christian Dior and Hermes against them. The Court of Appeal of Paris ordered them to pay almost 255,000 pounds.

The applicants claimed under Article 10 of the European Convention on Human Rights that protects your right to hold your own opinions and to express them freely without government interference and Article L 122-5 of French Intellectual Property Code, that allows in whole, or part of such mentioned work to be communicated to the public in a way of informing the public as long as the author is mentioned as well. At first, the photographers were not found liable but the Paris Court of Appeal reversed the decision and held them accountable for the copyright infringement of the fashion show¹⁹.

The photographers decided to take this to the European Court of Human Rights (ECHR). The court shed light on the intersection of copyright and freedom of expression, and such an intersection must be carefully justified. Such an occurrence must meet the requirements of being prescribed by law, pursuance of a legitimate aim and must be necessary in a democratic society. The photographers had allowed access to some of these photos and videos only upon a payment, thereby commercially exploiting it, the ECHR found them liable and upheld the French Court's decision and did not find any strong violation of article 10 of the convention.

It is to be noted that the French Courts considered Fashion shows as "works" under their Intellectual Property Code because it involved choreography, creative direction, lighting, music and artistic presentation²⁰.

¹⁸ Ashby Donald and Others v. France, Appl. No. 36769/08 (Eur. Ct. H.R.)

¹⁹ European Court of Human Rights, <https://hudoc.echr.coe.int/fre?i=001-115845> [(last visited Oct. 8, 2025)].

²⁰ Dirk Voorhoof & Inger Høedt-Rasmussen, *Case Law, Court of Human Rights, Ashby Donald v France, Copyright versus Freedom Expression, Inform's Blog* [(accessed Oct. 8, 2025, 12:23 AM IST)], <https://inform.org/2013/01/26/case-law-court-of-human-rights-ashby-donald-v-france-copyright-versus-freedom-expression-dirk-voorhoof-and-inger-hoedt-rasmussen/>.

Position of India

The Indian fashion industry has experienced a lot of recognition and revolution and now enjoys a notable global presence. The bi-annual Lakmé Fashion Week (LFW) in Mumbai, the India Bridal Fashion Week (IBFW) for wedding couture, the India Couture Week for high-end designer collections, and the India Fashion Week (IFW) (also known as Lotus Make-up India Fashion Week) organized by the Fashion Design Council of India (FDCI)²¹ In Delhi are some extravagant fashion shows in India the enthusiasts look forward to. Indian fashion shows are not as sensational and out of this world as the Paris Fashion Week or the Milan Fashion week, of the global luxurious brands who involve innovative artistic direction, performance art, and groundbreaking theatrical elements, like the Alexander McQueen's Spring/Summer 1999 "No. 13"²² show with its robotic paint sprayers, Thierry Mugler's Fall 1984²³ show with its robot woman and Venus in a shell outfits, and Gucci's Fall 2018 show that featured models carrying hyper-realistic severed heads. That said, the recent Gateway of India fashion show by the British fashion house Vivienne Westwood on April 1, 2025 involved that creative element²⁴.

However, there are no reported cases in India addressing whether fashion shows could be protected under copyright law. There are no reported cases that dealt with the question of whether or not fashion shows are copyrightable in India.

The claim that fashion shows lack enough originality is one argument against their copyrightability. But this negates the ultimate goal. The fashion show's originator is denied the financial benefit and is not rewarded for his inventiveness. The emphasis on originality is excessive. The ultimate purpose is not taken into account. Not even the creation's virtues are taken into account. Every fashion show is eligible for copyright under Indian law as it combines distinct technical and scenic arrangements, costumes, sound, and music. This is a valid argument only grounded in legal considerations.

²¹ India Intimate Fashion Week, Top 5 Fashion Shows in India | IIFW Highlights, https://iifw.co.in/?page_id=1711 [(last visited Oct. 8, 2025)].

²² Andrew Bolton, Dress, No. 13, The Costume Institute Blog [(accessed Oct. 8, 2025, 12:23 AM IST)], <https://blog.metmuseum.org/alexandermcqueen/dress-no-13/>

²³ Hannah Militano, In Memoriam: Thierry Mugler's Most Outrageous Runway Moments, Grazia Magazine [(accessed Oct. 8, 2025, 12:23 AM IST)], <https://graziamagazine.com/us/articles/in-memoriam-thierry-muglers-most-outrageous-runway-moments/>

²⁴ Mayu Saini, Vivienne Westwood Shows Indian Textile-Based Collection at Iconic Gateway of India, WWD [(accessed Oct. 8, 2025, 12:23 AM IST)], <https://wwd.com/fashion-news/designer-luxury/vivienne-westwood-indian-textile-gateway-of-india-1237073366/>

Section 2(h) of the Indian Copyright Act, 1957²⁵, which defines “*dramatic work*” as: “any piece for recitation, choreographic work or entertainment in dumb show, the scenic arrangement or acting form of which is fixed in writing or otherwise, but does not include a cinematograph film.” At the heart of a show lies fashion show choreography, an often under-appreciated art form that orchestrates the movement of models on the runway, just like a dance performance this involves a formation and patterns, varying paces according to the music and poses for each model- this needs to be considered as choreographic work. Along with this, Scenic arrangement can be considered too, because nowadays fashion shows are not limited to monochromatic stages with studio lights and a basic ramp, fashion houses are efficiently using creativity and involving stage design, background visuals or scenes and effects for an immersive experience. The notion is not just to showcase the clothes but rather an idea to *put on a show* and make it an experience.

Following the *Ashby* jurisprudence, it can be argued that Indian copyright law can also be interpreted to include fashion shows as dramatic works and therefore copyrightable. Indian courts have stressed on ‘skill and labour’ test in the beginning, and as seen in *Eastern Book Company v. D.B. Modak*²⁶ established a ‘modicum of creativity’. In *Academy of General Education Manipal v. B Malini Mallya*²⁷, the court reasoned that Dramatic works include choreography, sequences, arrangements, and acting. The term ‘copyrighted’ refers to a product that is created by the author using his own efforts, labor, and capital investment. The choreography, scenic arrangements, lighting, directions, visuals, audio and music effects and also considering a model’s performance, and this being fixed or recorded in any form can contribute to fashion shows being copyrightable in India.

Author

Fashion shows are complex creative productions that bring together the efforts of numerous contributors that includes designers, music composers, choreographers, set and lighting designers, models, and other professionals. Under Indian copyright law, such works may be understood either as composite works or collective works. The former is a work where multiple contributors create interdependent elements that cannot be separated, for instance, a staged performance with music, choreography, lighting, and costumes forming a single work. Here

²⁵ Copyright Act, supra note 1, § 2(h).

²⁶ *Eastern Book Company v. D.B. Modak*, 2008 (36) PTC 1 (SC) (India).

²⁷ *Academy of General Education, Manipal v. B. Malini Mallya*, AIR 2009 SC 1982 (India).

each contributor owns copyright in what they have contributed. Co-authors have rights in the composite work jointly, meaning the work cannot be used without mutual consent unless assigned in writing. By contrast, a collective work brings together autonomous contributions coordinated by a single person, such as a show director appointed by the fashion house, who is considered the author of the work as a whole, while contributors retain copyright in their individual creations. Thus, in line with the terms and circumstances of the contract, the fashion company will acquire the intellectual property rights to works created by stylists, models, architects, and others²⁸.

International Regime

India is a signatory to several international treaties that can be proven favourable to the argument of fashion shows being copyrightable. Under Article 2(1) and 14(1) of the Berne Convention²⁹, which India has ratified, works such as dramatic and choreographic can be argued to be protected. TRIPS (1994) Agreement³⁰ is a minimum standards agreement, which allows Members to provide more extensive protection of intellectual property if they so wish. India is also a signatory to WIPO Performances and Phonograms Treaty, 1996³¹ and therefore, has an obligation to provide minimum standards of protection to performances that are interpretations of protectable works under the copyright law. Article 3 and 7 of The Rome Convention (1961)³² grants performers the right to prevent unauthorized fixation and reproduction of their performances. Lastly, Article 9 states "Any Contracting State may, by its domestic laws and regulations, extend the protection provided for in this Convention to artists who do not perform literary or artistic works," Therefore, this clause gives the contracting states the ability to create laws that grant performers rights even if their work is not conventionally or socially regarded as a "performance." However, India has never ratified the 1961 Rome

²⁸ Tania Phipps-Rufus, Alexander Wang's Accuses Philipp Plein of Copying His Fashion Show, HuffPost UK Style [(accessed Oct. 8, 2025, 12:23 AM IST)], https://www.huffingtonpost.co.uk/tania-hippsrufus/alexander-wangs-accuses-p_b_14866376.html

²⁹ Berne Convention for the Protection of Literary and Artistic Works, Arts. 2(1), 14(1) (1886, as revised) (Berne Convention).

³⁰ Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), Annex 1C to the Marrakesh Agreement Establishing the World Trade Organization, April 15, 1994, Marrakesh, Morocco, 1869 U.N.T.S. 299, 33 I.L.M. 1197

³¹ WIPO Performances and Phonograms Treaty (WPPT), Dec. 20, 1996, S. Treaty Doc. No. 105-17, 36 I.L.M. 76 (1997).

³² International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations art. 3, Oct. 26, 1961, 496 U.N.T.S. 43, International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations art. 7, Oct. 26, 1961, 496 U.N.T.S. 43.

Convention. India must either enact laws extending artists' rights domestically or ratify the Rome Convention.

Conclusion and Suggestions

Fashion shows can be copyrighted in India through the provisions relating to dramatic work and if the laws of the country are not evolved, this might have to be dealt on a case to case basis. Fashion shows fall within the category of “collective works” and, although they are the result of the work of a number of contributors such as architects, set designers, sound and light technicians, hairdressers, makeup artists, seamstresses, etc., the author has to be considered the director, who is in charge of devising and organizing such work. Typically, fashion maisons appoint well-known art directors to create and coordinate fashion shows. Lastly, Performer’s rights will help the models with bargaining power³³. The ability to obtain access to an income stream is made possible by performers' rights. These rights grant the authority to manage and, consequently, to profit from the reproduction and dissemination of one's performance, such as a runway walk by a model. Additionally, they provide the right to fair compensation for the use of these performances. It also confers moral rights as a sort of protection. Models' unions would have unheard-of negotiating power with other industry participants if performers' rights were granted. With respect to this, international law sets a minimum standard whereby as long as a performance is the interpretation of a copyrighted work, performers’ rights shall apply. India and more countries need to develop more specific laws to address the evolving complexities of fashion shows, ensuring comprehensive protection for both collective works and individual contributors to keep pace with emerging creative and commercial practices in the industry.

³³ Mathilde Pavis, Runway Models, Runway Performers? Unravelling the Ashby Jurisprudence Under UK Law, 13 J. Intell. Prop. L. & Prac. 1 (2018), <https://ssrn.com/abstract=3239367>