



Email: editorijless@gmail.com

Volume: 8, Issue 3, 2021 (July-Sept.)

**INTERNATIONAL JOURNAL OF LAW, EDUCATION,  
SOCIAL AND SPORTS STUDIES  
(IJLESS)**

*A Peer Reviewed and Refereed Journal*

DOI: 10.33329/ijless

<http://ijless.kypublications.com/>

ISSN: 2455-0418 (Print), 2394-9724 (online)

2021©KY PUBLICATIONS, INDIA

[www.kypublications.com](http://www.kypublications.com)

**Editor-in-Chief**

**Dr M BOSU BABU**

**(Education-Sports-Social Studies)**

**Editor-in-Chief**

**DONIPATI BABJI**

**(Law)**

©KY PUBLICATIONS





## **PROTECTION OF FASHION SHOWS IN INDIA**

**NAINY SINGH**

Assistant Professor (Law)

Dr. Ambedkar Government Law College, Puducherry, India.

[DOI: 10.33329/ijless.8.3.9](https://doi.org/10.33329/ijless.8.3.9)



**NAINY SINGH**

### **ABSTRACT**

Fashion industry has long witnessed fashion shows as a significant event transgressing from few customers to assuming a global character. In this article, the author has tried to analyse national and international intellectual property laws dealing with fashion shows. The author explores the possibility of protecting these shows through copyright and attempts to explain the intellectual property claims of models. It also seeks to comparatively analyse the protection given to fashion shows in countries like France and UK. This article mainly focuses on the possibility of protecting fashion shows and its contributors by copyright in India.

---

### **1. Introduction**

A fashion show is an event where a fashion designer along with other artists get an opportunity to display and show their upcoming clothing line and/or accessories. This event is based on seasons and may occur several times during a year. In a fashion show, the models are dressed in the clothing designed by the couture. They walk the runaways where various forms of special effects and lightings are used. The model's walking is planned and follows the sequence in which the designer wishes to show his collection. Nowadays, elaborate sets with theatrical constructions are also used in fashion shows. Other elements such as live music, etc. is also added to enhance the overall look and feel of the show. A fashion runway is a narrow space between sets of rows of chairs on both sides. The runway could have multiple catwalks.

Some of the famous fashion shows are Paris Fashion Week and New York fashion week. Lakmé fashion week is a famous fashion event held in India. It has also gained international recognition. Most of the runaways in fashion shows are indoors but they could also be outdoor. Some of the fashion shows may have themes or sets. For example, in 2016 in Paris Fashion Week, Chanel designed its hall like an airport. The guests sat as if they were waiting for the flight. Models walked to the ticket counters.

With these fashion shows, modelling industry came to be established. Modelling has become a professional career. There are modelling agencies from where models can be hired. Today they no longer belong to a specific company or couture.

With rapid technological advances, fashion designers today have also revolutionised the ways in which fashion shows can be presented. Live streaming of shows is another innovation which has been added to the presentation of a fashion show.

Fashion shows are highly significant as they reveal new trends in clothing and accessories every season. Fashion industry provides livelihood to millions of people worldwide. Fashion shows have also become digital with covid 19 pandemic. Through virtual reality, fashion shows can be hosted for consumers.

In this article, the aim is to suggest how fashion houses should protect their rights in fashion show. In particular, it will argue that, performer's rights within the copyright law should be extended to runway models. Models work has never gained the attention of policymakers for the purposes of legal protection. Therefore, it is crucial that India no longer ignore its IP obligations and take appropriate measures to ensure that models get adequate protection. The fashion companies and houses have an obligation to recognise their contribution as well as make fair compensation.

## 2. Fashion show protection in EU countries.

a. **Position in France:** The French Supreme Court in *Ashby v Gaulme, Kenzo et Lacroix*, decided that fashion shows are copyrightable.<sup>1</sup> This was based on the reason that the overall scenic arrangement of the show, the unique use of live music, colours, themes, lighting effects, clothing as well as the style of the runway are capable of copyright protection. In the aforesaid case, three photographers had posted some images and videos on an online streaming website. These photographers were accredited by the French Couture Federation. It was argued on behalf of the photographers that copyright does not apply if the photographs are published and reproduced online for information purposes. Since there was no immediate need to share such information, the argument was rejected by the court. The court said that even the photographers' personal accreditation did not give any privilege to publish the photographs on an unaccredited website.

The French Supreme Court was of the view that fashion house had an exclusive right to control the publication of the photographs as well as the show. Thus, the acts of the three photographers clearly amounted to copyright infringement. After this decision, the photographers were penalised for heavy damages. It also adversely affected their reputation. Therefore, if fashion shows are copyrightable, then runway models qualify as "performers" under the copyright law. Models can have performer's rights in the runway catwalk.

b. **Position in UK:** England follows closed system of copyright which requires that copyright works fall into certain specific categories. Thus, fashion show could be regarded as a copyright work if it falls in any of the specified works under copyright. It is generally argued that given the creativity involved in a fashion show, it best qualifies as "dramatic work" since it is performed before an audience. However, this is yet to be established by the English courts. UK Copyright, Design and Patents Act 1988 (CDPA Act), consists of specific categories of protectable works. Fashion show, at best, could either be interpreted as "dramatic work" or a "choreographic work". Fashion models walking the runway is dramatic when performed in sequence on the runway. The minimum requirement set out by English courts is that a dramatic work is not a random work or work left on chance.<sup>2</sup>

Since the models perform their walking in a sequence which is not random and other components are attached, their work can also be considered as a choreographic work.

Fashion shows are copyrightable or not under the CDPA Act is debatable. However, it can be argued that fashion shows can qualify as "dramatic works" or "choreographic works" under the English copyright law.<sup>3</sup>

---

<sup>1</sup> *Ashby v Gaulme, Kenzo et Lacroix*, French Court of Cassation, 5 Feb 2008.

<sup>2</sup> Magali Levaux, Diversity in fashion shows from the luxury sector: towards an evolution of practices?, *Université de Liège, Liège, Belgique*, 2021.

<sup>3</sup> Elena Varese and Valentina Mazda, The protection of fashion shows: An uncharted stage, *Laws* 8 (4), 29, 2019.

c. **Protection for fashion shows in India through copyright:** The Indian fashion industry has gained momentum and spotlight like never before. It now enjoys significant presence globally. To add to the industries grandeur, the top fashion designers are now showcasing their creativity in designing exceptionally beautiful clothing collections. Lakmé fashion week is one of the top fashion events along with Wills lifestyle India fashion week. Other prominent fashion shows include India bridal fashion week, Rajasthan fashion week, Van Heusen India Men's week, Delhi couture week, Bangalore fashion week amongst other major shows.

In spite of its significance, there is no judicial decision in India which establishes that fashion shows are copyrightable. All the above fashion shows are a rich experience with scenic effects and use of diverse artistic expressions. Today fashion sets are created with the help of artists and architects and use sound effects. The creativity stems out from the need to make a stupendous presentation of the designer's collections. These shows exhibit values. Yet, in India, there is no reported case which ever dealt with how fashion shows could be copyrightable. Perhaps it is not considered pertinent as the photographs and the broadcast of the show has to be released at a later stage. Therefore, after a comparative analysis of the French and English legal systems as described above, we will now consider the possibilities of copyright protection of fashion shows in India.

Some of the arguments against copyrightability of fashion shows is that they do not exhibit or showcase sufficient originality. However, this defeats the ultimate purpose. The creator of the fashion show is not compensated for his creativity and is deprived of the economic advantage. The originality is over emphasised. It does not take into consideration the ultimate purpose. The merits of the creation are not even considered. Since every fashion show is a unique combination of scenic and technical arrangements, costumes, sound and music, it qualifies for copyright under the Indian laws. This is a reasonable argument based purely on legal considerations.

Further, there is a requirement of fixation under the Indian copyright law. Fashion shows, in order to get legal protection, would require a certain degree of fixation under the Indian copyright law.<sup>4</sup> Thus, under section 13 of the Indian copyright Act 1957, fashion shows may qualify as "dramatic work" or "choreographic work". The justification to protect fashion shows through copyright is intended to protect and promote the creativity involved. It is also to ensure that the creator derives the economic advantage that he deserves. India follows a closed list of copyright system and therefore original fashion shows should be protectable either as "dramatic work" or "choreographic work". Therefore, under the Indian law, fashion shows can be treated as copyrightable works provided that they are original. The threshold provided for originality is not very high.

If fashion shows are copyrightable, then it becomes crucial to determine the Author. There are a number of people who contribute in making a fashion successful. To begin with, fashion models play a major role in running of the show. They occupy a central place amid other artists such as set designers, hairstylists, make up artists, etc. So when so many persons contribute towards making of the show, it becomes difficult to determine the authorship. Who deserves to be the rightful author of the fashion show? Should all the intellectual property rights in the show vest in the director who supervises the show? These are complex questions that largely remain unanswered. It is not clear if fashion shows qualify as "composite works" or "collective works" for the purposes of copyright. If fashion show is a collective work, the director is the author of the show. If it is a composite work consisting of separate contributions made by different individuals then the authorship is indeterminable.<sup>5</sup> Thus, in the event of uncertainty whether fashion show is a collective work or a composite work, the intellectual property

---

<sup>4</sup> *Barbara Taylor Bradford v Sahara Media Entertainment Ltd.* 2004 (28) PTC 474 (Cal)(DB), *Zee Telefilms Ltd.v Sundial Communications Pvt. Ltd.* 2003 (27) PTC 457 (Bom)(DB) § *Anil Gupta v Kunal Dasgupta* 2002 (25) PTC 1.

<sup>5</sup> *Marlena Jankowska, Copyright – an Ally for fashion in the IPR system?, Contemporary central & East European Law*, 64-74, 2019.

rights in fashion show may be retained by the fashion house with the assistance of a formal agreement. Therefore, intellectual property rights in creations of stylists, models, architects, etc. will vest in the fashion house in accordance with the terms and conditions of the contract.

d. **Models as “performers” under Indian Copyright Law:** Models deserve to be given performer’s right as they execute the fashion show through their unique set of movements in ramp walk on the runway. However, it is to be seen if, the catwalk could be considered of sufficient “originality” and would fall within the categories of copyright works.

The Policymakers have long neglected the recognition of performer’s rights for fashion models. Granting them intellectual property rights would ensure adequate compensation and a right to decide the performance for a fashion house. Runaway models occupy a central position in the fashion world which adds to their popularity and chances of commercial success. Their intellectual property rights should be recognised for the purposes of acknowledging the moral rights in their work.

The Beijing Treaty on Audiovisual Performances, 2012 grants rights of broadcasting, rights of communication to public and rights of fixation as economic rights to the performer. It also grants moral rights to performers with respect to unfixed (live) performances. Thus, in order to comply with international laws, runaway models should be given protection and their ramp walk be recognised as “work” within the Indian copyright Law.

India is also a signatory to WIPO Performances and Phonograms Treaty, 1996 and therefore, has an obligation to provide minimum standards of protection to performances that are interpretations of protectable works under the copyright law.

### **Conclusion**

Fashion shows can be protected under the Indian copyright law. But there is a fixation requirement for copyright works. India also follows a closed list system of copyright subject matter. In this respect, fashion shows can be compared to performance arts where the work is repeated within a given background subject to minor variations. If the fashion shows are “collective works” with number of contributors involved such as architects, hairdressers, seamstresses, make up artists etc., then the director is the author of the show. In case of fashion models, minimum standards laid down in international law should apply. Therefore, models role in a fashion show can be regarded as “performance” for guaranteeing conferment of performer’s rights. Countries which deny minimum protection would clearly be in breach of its international obligations.

Fashion companies should recognise the rights of models and all other contributors. They should execute an agreement transferring all economic rights of all the authors and performers to itself. Lastly, the other components of the show such as scenic backgrounds, look and feel of the show may be protected with the help of other intellectual property rights.