
**FAIR USE DOCTRINE IN PARODY AND SATIRE: ANALYSING THE BOUNDARIES
OF CREATIVE EXPRESSION IN INDIAN LAW**

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ABSTRACT

This paper examines the evolution and application of the doctrine of fair dealing, more commonly known as 'fair use.' A specific focus is placed upon Indian copyright law and its treatment towards parody and satire as forms of art and an exercise of free speech and expression. India's stance regarding the balance between fair use doctrine and freedom of expression is analysed through provisions and precedents, which are subsequently analysed alongside practices followed in the legal system of the United States of America. Through analysis of case laws and constitutional considerations, this paper aims to assess whether the current Indian legal system, equipped with its copyright regulations, is able to adequately protect the freedom of expression of its citizens, and more importantly its creators, for their usage of satire and parody. It concludes with suggestions that, if research is done keeping a larger scope in mind and implemented, can help tailor clearer guidelines for interpretation across the country.

KEY WORDS: fair use doctrine, copyright law, parody, satire, freedom of expression.

¹Intern, Lex Lumen Research Journal.

CHAPTER I: INTRODUCTION

INTRODUCTION

Copyright law is designed to protect the rights of creators over their original work, allowing them to control the use and distribution of said work. It fosters innovation and creativity among artists and creators by ensuring they reap the fruits of their labour.² In many countries across the world, copyright law includes provisions detailing about fair use of copyrighted material, where under certain circumstances such material can be used without prior permission of the owner.³ The concept of fair use first evolved through English law principles under the Statute of Anne.⁴ Heavily influenced by British law, the Copyright Act of 1914 was introduced, which laid down limited exceptions to fair dealing.⁵ This doctrine, as enshrined under the Copyright Act of 1957⁶, is a vital legal concept that strikes a balance between holders of copyright and the freedom of expression of society at large. It is stated that the purpose of content's usage, nature of the content, amount of the content used and the effect the work has on the original content all determine the 'fair nature' of the content.⁷ The most significant amendment of the Act occurred in 2012, which expanded the scope of copyright to music and cinematography in line with the societal needs and technological advancements.

Harvard defines 'fair use' as '*the right to use a copyrighted work under certain conditions without permission of the copyright owner.*' According to this doctrine, it allows for development of a

² Stephen Breyer, The Uneasy Case for Copyright: A Study of Copyright in Books, Photocopies, and Computer Programs, 84 Harvard Law Review 281 (1970).

³ Mihir Wagh, Fair Dealings and Fair Use: Critically Analysing the Copyright Exemption Doctrines in Place in India and the United States, Manupatra Articles (2022)

⁴ Statute of Anne, 1710 (G.B.).

⁵ Ayush Sharma, Indian Perspective of Fair Dealing under Copyright Law: *Lex Lata* or *Lex Ferenda*?, Vol. 14, Journal of Intellectual Property Rights, 523-531 (2009).

⁶ Copyright Act, 1957.

⁷ Law Wire Team, Concept of Fair Use Doctrine Explained with Case Laws, Law Wire (July, 2023), <https://lawwire.in/concept-of-fair-use-doctrine-explained-with-case-laws/?noamp=available>.

concept or idea while preserving the rights and uniqueness of the original creator.⁸ This definition is heavily influenced by the manner the doctrine evolved internationally, specifically in the United States of America. It recognises that copyrighted material can be used without prior permission in certain cases where such created material would contribute to the public good.⁹

LITERATURE REVIEW

- (1) Prashant Singh & Meghna Sharma, Music Parody and Copyright: A Comparative Analysis of United States and India, Vol. 1 (01), E-JAIRIPA, 85-102 (2020)

This paper discusses and compares 'fair use' in US law and 'fair dealing' in Indian law. It examines the legal principles, jurisdictional differences and challenges in the two countries while analysing the defences established for the creators of content under right to freedom of expression. It provides insight into the differences between the two legal systems, with respect to the formation of the laws and their application.

- (2) Sadhika Gupta, Fair Use Doctrine: Legal and Ethical Considerations in Copyright Law and its Determination in Metaverse, Vol.5 (1), ISSN (O): 2582-7340, IJALR (2022)

In this article, the author explores the complexities of applying copyright law to digital spaces such as the Metaverse. The author suggests adaptation of legal principles to protect these intellectual property rights without stifling innovation and balancing the rights of content creators and users. This is in consideration of new challenges introduced in defining fair use via the digital space, especially with the lines of control blurring rapidly.

- (3) Rahul Saha & Sryon Mukherjee, Not So Funny Now Is It? The Serious Issue of Parody in Intellectual Property Law, INJIPLaw 4, IJIPL (2008)

⁸ Office of the General Counsel, Copyright and Fair Use: A Guide for the Harvard Community, Harvard University (2024).

⁹ Koushik Banerjee, Fair Use vs. Infringement: Understanding the Lines in the Digital Age, De Penning & De Penning (June 13, 2024).

This paper addresses the complexities surrounding parody in intellectual property law, specifically in the Indian context. It deals with the legal challenges posed by parody and argues about the limitation of law regarding parody, such as inconsistent rulings and unclear regulations that do not necessarily provide a balance of creators' rights and public freedom of expression.

- (4) Beth Wamken Van Hecke, But Seriously Folks: Toward a Coherent Standard of Parody as Fair Use, Vol. 77:465, Minnesota Law Review (1992)

The author of this paper described parody, copyright and fair use, and examined US Supreme Court cases involving the same. The paper went on to analyse precedents regarding fair use and evaluated the reasoning behind decisions of alleged infringement cases. They endorsed the utilitarian theory of copyright, that economic harm to the copyright holder is the primary test to deem fair use.

- (5) Ayush Sharma, Indian Perspective of Fair Dealing under Copyright Law: *Lex Lata* or *Lex Ferenda*?, Vol. 14, Journal of Intellectual Property Rights, 523-531 (2009).

The author examines the fair dealing concept in Indian law and the provisions providing the same under copyright law. there is a focus upon its application and the exercise of freedom of expression in the same regard. Indian legal system is compared with the United States. the author urges for legal reforms in India to make copyright laws more flexible concerning parody, criticism and education to promote public interest while preserving innovation.

- (6) Dr. Parikshet Sirohi, Parody, Pastiche and Satire: A Comparative Study of Copyright Law in US, UK, and India, Vol. 5, e-ISSN: 2582-4570, Delhi Journal of Contemporary Law, 33-46

The author examines the fair use doctrine in the context of parody, pastiche and satire under Indian, American and British legal systems. It addresses the gaps in the legal framework of

India and emphasises the need for balanced guidelines with regards to enforcement of copyright and preservation of free expression in India. A comparison is drawn between copyright laws and precedents of the U.S. and UK to offer potential reforms that can be adopted into the Indian legal system.

RESEARCH PROBLEM

The evolving nature of intellectual property law, especially in the Indian legal diaspora, presents a variety of challenges due to lack of specific guidelines and consistent legal precedents. With increased generation of content and subsequently its use for satire and parody, there is an urgent need for clear legal framework governing copyright in India. Despite the statutory framework, specifically under the copyright Act of 1957, there is considerable ambiguity in Indian jurisprudence with respect to parody and satire as forms of 'fair dealing.'

RESEARCH OBJECTIVES

- To analyse the scope of the fair use doctrine under Indian copyright law,
- To identify the inconsistencies and problems highlighted by Indian High Courts and the Apex Court,
- To compare Indian intellectual property law and draw comparison with international frameworks, such as with the American fair use doctrine,
- To assess the impact of fair use doctrine upon creative freedom of creators and public discourse,
- To propose recommendations for legal reform in copyright law for better alignment with constitutional rights.

HYPOTHESIS

There is an ambiguity in copyright law that specifically governs the application of the fair use doctrine with respect to satire and parody. This creates a legal grey area, which is further complicated due to varying application of laws and contrasting judgements across the country. This not only impacts one's freedom of speech and expression but also discourages innovation and creation of new content and ideas. A comparative model, such as the four-factor test employed and used by American law, could provide better guidance and legal certainty in this regard.

RESEARCH METHODOLOGY

This paper is curated through qualitative research to ascertain the reaction of existing laws presiding over copyright and fair dealing. This is doctrinal research involving an analysis and comparison of provisions, case laws, relevant legal doctrines and literature on copyright, fair use and freedom of speech and expression, specifically in the Indian context. Secondary sources include scholarly articles, law journal publications and legal commentaries. The study also employs a normative approach to propose potential legal reforms.

SCOPE AND LIMITATION

The scope of this research paper is limited to the interpretation and application of Indian legal provisions and precedents in regard to the fair use doctrine. Comparison is made to relevant international law and legal principles as applicable to evaluate the usage and evolution of the fair use doctrine with respect to parody and satire. It must be noted that this comparison is exhaustive and the specific legal intricacies of foreign jurisdictions is outside the scope of this paper. The fast-evolving nature of digital content and social media may lead to some information detailed herein time-sensitive.

CHAPTER II: UNDERSTANDING THE FAIR USE DOCTRINE

FAIR USE DOCTRINE IN INDIAN COPYRIGHT LAW

This concept of fair dealing is dealt with under Section 52(1a) of the Indian Copyright Act of 1957, while the remaining provisions of the Section provide exemptions to infringement.¹⁰ These include, but are not limited to, personal use, research, criticism, reporting of current affairs, judicial proceedings, government reports, public libraries and educational trusts, and fair dealing. Under the umbrella term of fair dealing are the acts of satire and parody. This Section, therefore, permits the usage of copyrighted materials in specific contexts, to prevent undue restriction of information and content.¹¹ In *Civic Chandran – Blackwood and Sons Ltd. And Ors. v. AN Parasuraman*¹², the Madras High Court laid down essentials to define the term ‘fair’ in ‘fair dealing’ as “*the quantum and value of the matter taken in relation to the comments or criticism, the purpose for which it is taken, and the likelihood of competition between the two works.*” *Civic Chandran v. Ammini Amma and Ors.*¹³ gave the precedent that if a copyrighted work has been substantially copied, it can come under the ambit of fair use if it has been done for public interest.

The Copyright Act of 1976¹⁴, under Section 107¹⁵, provides what we know as the fair use doctrine. It outlines several purposes that may qualify fair use of copyrighted content. Fair use is analysed through a four-factor test. They are:

- (i) Purpose and character of the use,
- (ii) Nature of the copyrighted work,
- (iii) Amount of work used, and

¹⁰ *supra* note 5., §52(1a).

¹¹ Equitable Access and Creative Rights: Doctrine of Fair Use, Brainiac Group, <https://brainiac.co.in/equitable-access-and-creative-rights-doctrine-of-fair-use/>.

¹² *Civic Chandran – Blackwood and Sons Ltd. And Ors. v. AN Parasuraman*, AIR 1959 Mad 410 (India).

¹³ *Civic Chandran and Ors. vs. C. Ammini Amma and Ors.*, 1996 (16) PTC 670 (Ker HC) 675-677 (India).

¹⁴ Copyright Act, 1976.

¹⁵ *Id.*, §107.

(iv) Effect the work has on market value.

Therefore, factors that are looked into to deem fair use of original work is whether the work was used for commercial or educational purposes, whether it is factual or creative, the quantity of work so used, and impact it has on the market value of the original work.

Under Article 13 of the Trade-Related Aspects of Intellectual Property Rights¹⁶, more popularly known as ‘TRIPS’ in short, the foundation for the fair use doctrine has been established.¹⁷ It states that all member-states shall only have limited exclusive rights, which are also restricted to specific cases. Such cases must not be exploiting a person’s work and not undermine the ‘legitimate interests’ of the right holder. India signed the agreement in 1994, and the agreement took effect in 1995.¹⁸ It allowed for some flexibility in fostering institutions within a developing country to support and foster economic development.¹⁹ The TRIPS agreement is applicable to almost all the countries in the world, except a few African and Middle eastern nations. The Doha Declaration is a result of the TRIPS agreement, when developing nation-states initiated talks to clarify the scope of TRIPS to prevent narrow interpretation by developed countries.²⁰

DEFINING PARODY AND SATIRE

Parody, based upon Oxford Dictionary’s definition, is “*an imitation of the style of a particular writer, artist or genre with deliberate exaggeration for comic effect.*”²¹ By nature, it requires the usage of original work to strike a sense of familiarity and recognition among the audience, making

¹⁶ Trade-Related Aspects of Intellectual Property Rights, 1995.

¹⁷ *Id.*, art. 13.

¹⁸ Wipo, Advice on Flexibilities under the TRIPS Agreement, Policy and Legislative Assistance, https://www.wipo.int/ip-development/en/policy_legislative_assistance/advice_trips.html.

¹⁹ *supra* note 10, art. 1.1.

²⁰ Department of Commerce, The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), Ministry of Commerce and Industry (2023), <https://www.commerce.gov.in/international-trade/india-and-world-trade-organization-wto/the-agreement-on-trade-related-aspects-of-intellectual-property-rights-trips/>.

²¹ Parody Definition, Oxford Dictionary (3rd ed. 2010).

it heavily dependent upon pre-existing, original work.²² It often includes humour, imitation, and cultural commentary. Satire, on the other hand, often employs the use of ridicule, criticism or exaggeration to mock individuals, institutions or societal norms. It often employs the use of sarcasm to make powerful commentaries upon political situations and social welfare of a nation.²³

There is often confusion regarding the permission of fair use doctrine for the purpose of parody or satire. Parody and satire, while being two different terms, collectively are used to critique societal happenings or political figures through a variation of existing media or content. This allows ‘churning’ of thoughts and promoting discussion in public discourse about pertinent matters.²⁴ While parody focuses on specific works or genres of work for the purpose of imitation, satire involves broader social issues with a heavy undertone of commentary. Therefore, parody may be limited to a form of ‘imitative humour’ while a satire’s scope extends much beyond that. Delhi High Court’s stance in the case of *Tata Sons Limited v. Greenpeace International and Anr.* strengthened the Indian legal diaspora with regards to parody and its possible infringement of trademark.²⁵

COMPARATIVE PERSPECTIVES

In the United States, Courts have stated that the term ‘fair use’ is so ambiguous, ‘it virtually defies definition.’²⁶ In the landmark judgement of *Folsom v. Marsh*, Justice Story attempted to define fair use as one whose usage does not greatly discourage progress of art and science while outweighing any ‘detriment’ caused to the artist or owner of borrowed work.²⁷

²² Tanya Saraswat, Parody under Copyright Law, IP & Legal Filings (June, 2023), <https://www.ipandlegalfilings.com/parody-under-the-copyright-law/>.

²³ Dr. Sean, Parody and Satire, Dr. Sean’s Blog (Feb. 2024), <https://seanmiller.us/blog/satire-in-parody/>.

²⁴ *Id.*

²⁵ *Tata Sons Limited v. Greenpeace International and Anr.*, IA No.9089/2010 in CS(OS) No.1407/2010, 2011 (India).

²⁶ *Dellar v. Samuel Goldwyn, Inc.*, 104 F.2d 661 (1939) (U.S.).

²⁷ *Folsom v. Marsh*, 9 F. Cas. 342 (C.C.D. Mass. 1841) (U.S.).

They have also deemed that there are four factors that are used to determine whether a particular use is 'fair use', similar to Indian Courts. According to US Courts, the effect such 'fair use' has on market of the copyrighted work holds the most importance. An example is a negative review of a product or work. The focus is not placed on the negative comments made but how the review as a whole has affected the content's potential market.²⁸ In *Sony Corp. of America v. Universal City Studios, Inc.*²⁹, the US Supreme Court ruled that companies such as Betamax among other VCR makers are not guilty of violating copyright when used to make recordings at home of scheduled televised programs. This is fair usage of distributed content. The Court ruled in another case that if original content is used for 'transformative' purposes such that it is used in a different way or to satisfy a different goal, it falls under the ambit of fair usage of copyrighted content.³⁰

CHAPTER III: PARODY AND SATIRE UNDER INDIAN CONSTITUTIONAL LAW

RIGHT TO FREEDOM OF SPEECH AND EXPRESSION

The right to freedom of speech and expression is enshrined as one of the fundamental rights in the Indian Constitution³¹ under Article 19(1)(a).³² It guarantees the right to express one's opinions freely through any medium of their choice to foster democratic societies, bring to light voices of dissent and critique authority. In a legal context, Courts have favoured for parody over satire when evaluating with respect to claims of fair use and freedom of speech. Considering that parodies form an important role in India's cultural discourse, Courts have ruled in favour of artists who critique work to protect creative expression.³³ Since satire does not depend on specific works per se to be

²⁸ Forsgren Fisher McCalmon DeMarea Tysver, Fair Use in Copyright Law, BitLaw, https://www.bitlaw.com/copyright/fair_use.html.

²⁹ Sony Corporation of America v. Universal City Studios, Inc., 464 U.S. 417 (1984) (U.S.).

³⁰ Campbell v. Acuff-Rose Music, Inc., 510 U.S. 569 (1994) (U.S.).

³¹ Constitution of India, 1950.

³² *Id.*, art, 19(1)(a).

³³ Anushka Iyer, Parody as Fair use under Indian Copyright Laws, The IP Matters, (May, 2022), <https://www.theipmatters.com/post/parody-as-fair-use-under-indian-copyright-laws>.

imitated, it does not qualify under the fair use doctrine unless it has changed the meaning of the work or the context under which it is observed.³⁴

The judgement of *Tata Sons Limited v. Greenpeace International and Anr.*³⁵ provides us with the Delhi High Court's commentary regarding trademark infringement, allegedly under the guise of parody. It stated the following, supporting the use of copyrighted work for the 'public good':

"The issue, which the defendant's game seeks to address, is also one of public concern. The court cannot also sit in value judgment over the medium (of expression) chosen by the defendant since in a democracy, speech can include forms such as caricature, lampoon, mime parody and other manifestations of wit."

While the Trade Marks Act of 1999³⁶ does not expressly state parody as an exception under fair use, Indian courts have established it through precedents. The fair use doctrine, in this regard, helps develop an interplay between right to freedom of speech and expression and parody and satire as a form of commentary. The distinction between parody and satire must be clearly studied so as to clarify ongoing intellectual property rights debates and their impact upon contemporary society as we know it. They can both be deemed an 'extension' of one's right to freedom of expression, providing artists with a platform to engage in discourse about important socio-political matters of moder-day society.

RESTRICTION ON FREEDOM OF EXPRESSION

Restrictions placed upon freedom of speech and expression in matters of satire and parody raise important considerations. The fear of legal repercussions, at times, may deter creators and even

³⁴ Why is Parody Considered Fair Use but Satire Isn't?, Copyright Alliance, <https://copyrightalliance.org/faqs/parody-considered-fair-use-satire-isnt/>.

³⁵ *supra* note 22.

³⁶ Trade Marks Act, 1999.

laymen to engage in parody and/or satire, limiting their ability to criticise and voice out their concerns against important figures of authority. Courts must find this delicate balance between the interplay of parody and satire with their fundamental rights to ensure that one's freedom of speech and expression is retained without infringing upon innovators and creators of new content.

ROLE OF INDIAN COURTS

(i) *Ashutosh Dubey v. Netflix, Inc. & Ors.*³⁷

The plaintiff sought a permanent injunction against defendants for a particular episode of their show due to alleged derogatory remarks made against 'legal fraternity', with comparison drawn between thieves and lawyers. The Delhi High Court held that one must take note of the distinction between humour and defamation. In the instant case, the words were spoken by the protagonist of the show, who was a standup comedian, while performing on stage. Therefore, if a comedian as such exaggerates a particular point to make it a satire or comedy, it must not be considered statements of truth and should be 'taken with a grain of salt.'

(ii) *Rupendra Kashyap v. Jiwan Publishing House*³⁸

The appellant had an exclusive license granted to him by CBSE with regards to publishing and distribution of past examination papers. The suit was brought against Jiwan Publishing House on grounds of copyright infringement due to them reproducing said papers. The Court held that under Section 13 of the Copyright Act³⁹, the appellant had the right to sue and granted an interim injunction to prevent further reproduction

³⁷ Ashutosh Dubey v. Netflix, Inc. & Ors, AIR ONLINE 2020 DEL 652 (India).

³⁸ Rupendra Kashyap v. Jiwan Publishing House, 1996 (38) DRJ 81 (India).

³⁹ *supra* note 5, §13.

by the respondent. These examination papers were considered ‘original literary works’ due to the appellant’s position as the ‘exclusive licensee.’

(iii) ***Pepsi Co., Inc. and Ors. v. Hindustan Coca Cola Ltd. And Anr.***⁴⁰

A suit against Coca Cola was brought by Pepsi Co. when they released a parody version of Pepsi’s tagline ‘*yeh dil maange more.*’ The Court stated that a parody of Pepsi’s tagline, as illustrated in the instant case, cannot be considered an infringement of copyright, more so because Coca Cola had not used the tagline itself to advertise its products.

(iv) ***India TV Independent News Services Pvt. Ltd. V. Yashraj Films Pvt. Ltd.***⁴¹

Two suits were brought against India TV by Yashraj films on two accords.

One: they had used a line from a popular song, whose copyrights were owned by Yashraj films, to advertise themselves, and

Two: that a part of another popular song they held the copyright to was sung during a live broadcast.

The Court ruled that a sound recording, which is a derivative copyright work, cannot be appropriated and by defence of *de minimis* the court held no infringement of copyright occurred.

CHAPTER IV: CONCLUSION

The lack of a clear stance with regards to protection for parody and satire under fair use impacts the freedom of expression of creators and the public at large. This discourages healthy discourse

⁴⁰ Pepsi Co., Inc. and Ors. v. Hindustan Coca Cola Ltd. and Anr., 2003 (27) PTC 305 (DEL) (India).

⁴¹ India TV Independent News Services Pvt. Ltd. V. Yashraj Films Pvt. Ltd., AIR 2013 (NOC) 315 (DEL.) (India).

regarding societal happenings and political issues in the country. Indian copyright law, in this regard, lacks an explicit framework for appropriate and consistent application of the fair use doctrine, as judgements in this regard have been all but united in their findings. Countries like the United States provide broader protections to their citizens and creators in this regard, further highlighting gaps in the Indian legal framework.

By implementing a unified, structured test similar to that of the United States, there can be some uniformity observed in the intellectual property sector. Judicial awareness and training can be provided to ensure judges are learned about the intricacies and differentiations of intellectual property law when hearing a case and delivering the judgement. Courts must weigh the value of a parody, in a socio-cultural manner, to prevent absolute restriction, while implementing safeguards to prevent abuse of the fair use defence in parodies. This value of the parody or satire must be such that it adds a new meaning or new point of view to the otherwise unchanged scenery and scope to hold any credence before the Court. The hypothesis has been proven true.

