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IS PARODY A CRIME OR A CRITIQUE? RETHINKING FAIR DEALING UNDER INDIAN COPYRIGHT LAW

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Introduction

A close reading of Section 52(1)(a) of the Copyright Act, 1957⁴²² ('Act' hereinafter) reveals a narrowly constructed approach to 'fair dealing', unlike the more accommodative 'fair-use' recognised in the US⁴²³. It considers fair-dealing to be used only for any personal use, criticism or to review and report current events and leaves parodies and satire out of its purview, making them exposed to legal threats and forceful takedowns even when the work is socially valuable.⁴²⁴

Keywords – Copyright Law, Fair Dealing, Parody and Satire, Freedom of Expression, Indian Copyright Jurisprudence



⁴²² The Copyright Act, 1957, § 52(1)(a), No. 14, Acts of Parliament, 1957 (India).

⁴²³ Sufiya Ahmed, Fair Dealing in Indian Copyright Law, 26 J. Intell. Prop. Rts. 96 (2021).

⁴²⁴ Soutik Biswas, Munawar Faruqi: Is It Dangerous to Crack a Joke in India?, BBC News (Nov. 30, 2021).

Inconsistent Judicial Interpretations Of Parody As A Fair-Dealing Exception

In *Civic Chandran vs. Ammini Amma*⁴²⁵, there was an interlocutory injunction restraining the staging of a counter drama, wherein the injunction was issued by the Additional District Judge on the ground that the counter drama prima facie infringed the copyright of the famous drama "Ningal Enne Communistakki,"⁴²⁶ whose legal representatives are the plaintiffs. The plaintiffs claimed that the counter drama copied a substantial portion of the original drama without consent, thereby violating the Act, and sought injunctions against publication and staging, as well as damages. The defendants opposed the injunction, asserting that the counterdrama was a legitimate critical work constituting fair dealing under the Copyright Act. After a scene-by-scene analysis of both plays, the court held that the intent of the parodical play was not to misappropriate or copy the originality of the play but merely to criticise its ideology. In this regard, the Kerala HC in para. 9 of the judgement laid down a three-fold test to determine the validity of works like parodies, "(1) the quantum and value of the matter taken in relation to the comments or criticism; (2) the purpose for which it is taken; (3) the likelihood of competition between the two works." Therefore, as per the Kerala HC's interpretation of parody, it is covered under 'fair dealing' if it is done as a criticism, as long as there is no improper use.⁴²⁷

Therefore, there is an understanding by the courts that, from the very definition of a parody, it involves some level of imitation of an existing work, unlike other forms of fair dealing, which is why it has been considered to fall within the scope of fair dealing. However, in *Pepsi Co. vs Hindustan Coca Cola*⁴²⁸, involving Coca-Cola's

parody of Pepsi's Yeh Dil Maange More commercial, wherein the advertisements were nothing more than a parody and were aimed at poking fun at the advertisement of the plaintiffs. However, the court held that the defendant's commercial copied the plaintiff's commercial, amounting to copyright infringement and therefore prohibited its broadcast.

This shows a stark departure from the Delhi High Courts earlier ruling in the case of *Wiley Eastern Ltd v. Indian Institute of Management*⁴²⁹ wherein it held that, "the basic purpose of Section 52 is to protect the freedom of expression under 19(1) of the Constitution of India so that research, private study, criticism or review or reporting of current events could be protected. Section 52 is not intended by the Parliament to negatively prescribe what is infringement." Furthermore, in *Shri Ashwani Dhir v The State of Bihar*⁴³⁰, the Patna High Court held that Article 19(1)(a) of the Constitution⁴³¹ upheld the rights of the producers of a television series that parodied the Chief Minister of Bihar, holding that any restriction on broadcasting such a series would violate the fundamental right to freedom of speech and expression. The court held that a creative artist is entitled to depict society, the political system or political figures in any manner they see fit, as long as the expression does not threaten public order, morality, amount to defamation, or incite an offence. The state cannot censor a strong, sharp satire of a political leader merely because it provokes intolerance among certain sections of society or attracts a hostile audience. The judge in that case rightly stated, "I would rather opt for full freedom to the creative artists to project the society seen through their eyes with all the dangers involved in wrong use of that freedom, than to suppress their creativity."

Further complicating the matter is the judgment issued by the Delhi High Court in the case of TV

⁴²⁵ *Civic Chandran v. Ammini Amma*, 1996 PTC (16) 329 (Ker.).

⁴²⁶ Thoppil Bhasi, *Ningalenne Communistakki* [You Made Me a Communist] (1952) (Malayalam play).

⁴²⁷ *Civic Chandran v. Ammini Amma*, 1996 PTC (16) 329, ¶ 9 (Ker.).

⁴²⁸ *Pepsi Co., Inc. v. Hindustan Coca Cola Ltd.*, 2003 (27) PTC 305 (Del.).

⁴²⁹ *Wiley Eastern Ltd. v. Indian Inst. of Mgmt.*, 61 (1996) DLT 281 (Del.).

⁴³⁰ *Shri Ashwani Dhir v. State of Bihar*, AIR 2005 Pat 101.

⁴³¹ INDIA CONST. art. 19, § 1, cl. (a).

Today Network Ltd. vs. Newslandry Media Pvt. Ltd.⁴³², where it becomes evident that the issue regarding the implementation of fair dealing as it applies to satire and parody continues to elude the Indian courts of justice. The suit was initiated against the defendants who used clips from the plaintiff's news programmes with the purpose of criticising other media sources. Despite the Court recognizing the fact that the provisions in Section 52 of the Copyright Act, 1957 allow the reproduction and publication of material as part of the criticism and review process, and therefore protect the same under Article 19(1)(a) of the Constitution of India, the determination of what constitutes fair dealing is always dependent on a specific set of facts.⁴³³

Moreover, the court refused to recognise any doctrine of "transformative use" independently of Sec. 52's narrow and purpose-driven interpretation, indicating a preference for adhering to a statute which makes no provision for parody and satire, thereby limiting the scope for doctrinal evolution.⁴³⁴ In addition, the judgment imposed an extra condition by distinguishing criticism from insult. Thus, according to the court's reasoning, derogatory statements such as "shit reporters" and "shit show" can be considered either defamation or disparagement of business. This results in further limitations on fair use of satire because it places limitations on the language used. It should be noted that such a requirement contradicts the nature of parody since, in most cases, parody entails exaggeration and sharp language to criticise.

A Comparative Perspective with the U.S.A.'s Fair Use and Parodic Expression

Campbell v. Acuff-Rose Music Inc.⁴³⁵, a landmark decision of the United States Supreme Court, wherein it was held that the commercial nature of a work does not by itself make the use of a copyrighted work unfair. The court clarified

that even copying the "heart" of the original work may be permissible where such copying is necessary for a new work.

In this case, the respondent, Acuff-Rose Music, filed a suit against the members of a rap music group and their record company, claiming that their song "Pretty Woman" infringes Acuff-Rose's copyright in Roy Orbison's rock ballad. "Oh, Pretty Woman"⁴³⁶ The USA Supreme Court ruled that the music parody can qualify as fair use under Section 107 of the US Copyright Act. Section 107 provides that "the fair use of a copyrighted work.....for the purposes of such criticism or comment.....is not an infringement".⁴³⁷

It was held that parody, like other comment and criticism, can qualify as fair use. The main inquiry in such cases is focused on whether the new work merely replaces the original or instead transforms it by adding new expression, meaning or message. The more transformative the work, the less importance is given to other factors like commercialisation, which might be opposing the finding of fair use.

Recommendations

The most direct reform is to amend § 52(1)(a) of the Copyright Act, 1957, to explicitly include parody, satire and caricature as protected categories of fair dealing.⁴³⁸ The proposed draft language is as follows: "Fair dealing with any work for criticism, review, parody, satire, caricature, or other transformative use that adds new expression, meaning, or message shall not constitute infringement."

At present, the provision adopts a narrowly framed purpose-based approach that limits fair dealing to private use, criticism, review and reporting of current events, thereby excluding parody in express terms and leaving it vulnerable to inconsistent judicial interpretation. This ambiguity has resulted in a fragmented jurisprudence where courts have alternately

⁴³² TV Today Network Ltd. v. Newslandry Media Pvt. Ltd., FAO(OS) (COMM) 268/2022 & 303/2022 (Del. H.C. Mar. 20, 2026).

⁴³³ INDIA CONST. art. 19, § 1, cl. (a); The Copyright Act, 1957, § 52, No. 14, Acts of Parliament, 1957 (India).

⁴³⁴ The Copyright Act, 1957, § 52(1), No. 14, Acts of Parliament, 1957 (India).

⁴³⁵ Campbell v. Acuff-Rose Music, Inc., 510 U.S. 569 (1994).

⁴³⁶ Roy Orbison, *Oh, Pretty Woman* (Monument Records 1964).

⁴³⁷ 17 U.S.C. § 107 (2024).

⁴³⁸ The Copyright Act, 1957, § 52(1)(a), No. 14, Acts of Parliament, 1957 (India).

protected and penalised parody depending on subjective interpretations of criticism. To address this, Parliament must introduce language that goes beyond enumerated purposes and instead incorporates a transformative use standard, whereby a work that adds new meaning, message, or expression to the original is presumptively non-infringing. Such a reform would align Indian law with comparative jurisprudence, particularly the reasoning adopted in the Campbell case, while simultaneously grounding the provision within the constitutional guarantee of free speech under Art. 19(1)(a).⁴³⁹

Additionally, inserting a sunset review clause requiring Parliament to reassess fair dealing provisions every 5 years would be beneficial in this regard. This supports the rationale that Copyright must evolve with changing meme culture, AI-generated parody and Digital dissemination.

Beyond statutory reform, there is a compelling need to develop a constitutional override doctrine in copyright adjudication, particularly in cases involving parody and satire. Courts must recognise that copyright law operates within the broader framework of constitutional rights and cannot be applied in isolation from the guarantee of free speech. As observed in *Wiley Eastern Ltd. v. Indian Institute of Management*, § 52 is intended to protect, rather than restrict, freedom of expression.⁴⁴⁰ Accordingly, when a work is prima facie parodic, especially where it engages in political or social critique, courts should subject any restriction to a heightened standard of scrutiny. Injunctions against such works should only be granted where there is clear evidence of market substitution or where the expression falls within the permissible restrictions under Article 19(2). This approach finds support in *Shri Ashwani Dhir v. State of Bihar*, where the court prioritised artistic freedom over potential offence.⁴⁴¹ Institutionalising such a doctrine would prevent

the misuse of copyright law as a tool to suppress dissent and would ensure that creative expression is evaluated through a constitutionally informed lens.

Conclusion

This paper addresses the ongoing problem of parody and satire in Indian copyright law. This approach is restrictive, even though the courts have recognised parody as a form of criticism that is protected by free speech under the Constitution and falls under fair dealing. It prioritises commercial interests and self-interests such that creative expression takes the backseat. As a result, the legal position is ambiguous and inconsistent because the protection given to parody is derived solely from judicial interpretation instead of clear legal provisions.

The root cause is that Section 52 of the Copyright Act does not make a mention of parody or satire, which leaves less room for courts to interpret it broadly. Even in situations where Parody or satire employs a small amount of Copying, it should be understood as protecting the socially valuable form of expression. If this ambiguity is not resolved, it could demotivate creativity, especially when satire and parody are important for cultural critique and political commentary.

Thus, there should be a judicial change to align the copyright law with Article 19 (1) (a) or to specifically include parody and satire within the ambit of Section 52.⁴⁴² By ensuring that the copyright law serves its constitutional purpose while safeguarding opinion, humour and critique would create a balance instead of undermining copyright protection.

⁴³⁹ INDIA CONST. art. 19, § 1, cl. (a).

⁴⁴⁰ *Wiley Eastern Ltd. v. Indian Inst. of Mgmt.*, 61 (1996) DLT 281 (Del).

⁴⁴¹ *Shri Ashwani Dhir v. State of Bihar*, AIR 2005 Pat 101.

⁴⁴² INDIA CONST. art. 19, § 1, cl. (a); The Copyright Act, 1957, § 52, No. 14, Acts of Parliament, 1957 (India).



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