

CONTOURS OF FAIR DEALING IN INDIA: AN ANALYSIS ON JUDICIAL INTERPRETATIONS & DISTINCTIONS

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ABSTRACT

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*The doctrine of fair dealing constitutes one of the most critical yet contested exceptions to copyright protection under Indian intellectual property law. Section 52 of the Copyright Act, 1957 permits limited use of copyrighted works without the authorisation of the right holder, provided such use falls within statutorily prescribed purposes, including private research, criticism, review and reporting of current events. Unlike the open-ended 'fair use' standard adopted in the United States under 17 U.S.C. Section 107, Indian fair dealing operates as a closed, purpose-driven exception, a distinction of both doctrinal and practical consequence. This paper undertakes a comprehensive examination of the doctrine through the lens of Indian judicial interpretation, tracing its evolution from early colonial-era pronouncements to landmark contemporary decisions of the Supreme Court and various High Courts. Drawing upon decisions including *Super Cassettes Industries Ltd. v. Hamar Television Network Pvt. Ltd.*, *The Chancellor, Masters and Scholars of the University of Oxford v. Narendra Publishing House* and the Delhi High Court's analysis in *Civic Chandran v. Ammini Amma*, the paper critically maps how Indian courts have calibrated the tension between the proprietary interests of copyright holders and the constitutionally grounded public interest in access to knowledge, education, and free expression. The study also engages with the transformative use doctrine, the 'substantial part' test and the growing jurisprudence surrounding digital reproduction and educational exceptions. The paper concludes that while Indian courts have progressively liberalised the doctrine, significant interpretive gaps and structural rigidities remain, necessitating legislative reconsideration for the digital age.*

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1. Introduction

Intellectual property law is premised on a fundamental social bargain i.e the state grants creators exclusive rights in exchange for the public dissemination of their works, with the expectation that this incentive structure will ultimately

enrich the cultural and knowledge commons. However, an absolute and unqualified monopoly over intellectual creations would fundamentally undermine the very objectives that copyright is designed to serve. It would obstruct scholarship, suppress criticism, impede journalism and limit the transformative cultural dialogues through which civilisations advance. To prevent this outcome, modern copyright systems incorporate structured exceptions that carve out spaces of permissible use. In Indian law, the pre-eminent such exception is the doctrine of fair dealing, codified under Section 52 of the Copyright Act, 1957.¹

The doctrine of fair dealing traces its jurisprudential roots to English common law, specifically to the decision in *Hubbard v. Vosper*², in which the English Court of Appeal held that the concept of fairness depends on the degree to which the defendant's work competes with the plaintiff's. India, inheriting and adapting this tradition through its colonial legal legacy, has developed a distinctive jurisprudential framework that is structurally closer to the United Kingdom's 'fair dealing' model than to the more flexible American 'fair use' doctrine. Yet, as decades of judicial interpretation reveal, Indian courts have not been slavish followers of English precedent; they have fashioned a unique, context-sensitive body of law that reflects the country's complex educational needs, pluralistic cultural landscape and developmental imperatives.

The importance of fair dealing has grown in the digital age. The ease of reproduction, the global accessibility of digital content and the transformation of educational delivery through online platforms have placed unprecedented pressure on the doctrine's traditional boundaries. Questions about whether scanning textbooks for classroom instruction, uploading copyrighted material to educational portals, or using excerpts in online commentary constitute fair dealing are no longer peripheral; they are at the very heart of contemporary copyright discourse in India. The judicial interpretations of the last two decades have not merely been academic exercises; they have shaped the practical landscape for publishers, educators, journalists, researchers and technology companies alike.³

This paper seeks to undertake a systematic and critical analysis of the doctrine of fair dealing in India, with primary emphasis on its judicial evolution. It proceeds as follows: Part II surveys the historical and statutory framework of fair dealing under the Copyright Act, 1957. Part III analyses the conceptual distinctions between fair dealing and fair use. Part IV maps the trajectory of Indian judicial interpretation through key cases. Part V examines specific sectoral applications of the doctrine. Part VI addresses the challenges posed by the digital environment. Part VII offers a critical assessment and recommendations for legislative reform.⁴

2. OBJECTIVES OF THE STUDY

The research intends to achieve the following objectives:

1. To examine the concept, nature, and evolution of the doctrine of fair dealing under intellectual property law, particularly within the framework of Indian copyright law.
2. To analyse the statutory framework governing fair dealing under the Copyright Act, 1957, especially Section 52 and its scope of application.

¹ Cornish, W.R., Llewelyn, D. & Aplin, T. *Intellectual Property: Patents, Copyright, Trade Marks and Allied Rights* (9th edn., Sweet & Maxwell, 2019).

² [1972] 2 QB 84

³ *ibid*

⁴ Dhar, B. & Rao, S. *Copyright Law: A Handbook of Contemporary Research* (New Delhi: Eastern Book Company, 2009).

3. To critically examine the judicial interpretation of the doctrine of fair dealing by Indian courts through landmark case laws and evolving judicial tests.
4. To evaluate the balance maintained by the judiciary between copyright protection and public interest, including freedom of expression, education, research, and access to knowledge.
5. To study the impact of technological advancements, digital platforms, and artificial intelligence on the interpretation and application of the doctrine of fair dealing in India.
6. To identify the limitations, ambiguities, and challenges in the present fair dealing framework and suggest suitable reforms for a more balanced and contemporary copyright regime in India.

3. LITERATURE REVIEW

W.R. Cornish, David Llewelyn & Tanya Aplin

In *Intellectual Property: Patents, Copyright, Trade Marks and Allied Rights* (9th ed., 2019), W. R. Cornish, David Llewelyn and Tanya Aplin provide a comprehensive examination of intellectual property law with particular attention to copyright, technological developments, and digital innovation. The authors analyse copyright as a dynamic legal system shaped by economic interests, technological progress, and international harmonisation. Their work explains the interaction between copyright protection and emerging technologies, especially digital dissemination and internet-based infringement, while also discussing enforcement mechanisms and the balance between creators' rights and public access. The text is particularly valuable for understanding the evolution of copyright doctrine in the context of technological modernity and transnational legal developments.

Bibek Debroy Dhar & S. Rao

In *Copyright Law: A Handbook of Contemporary Research* (2009), Bibek Debroy and S. Rao analyse contemporary developments in copyright law from both legal and policy perspectives. The work focuses on challenges emerging from digital reproduction, access to knowledge, piracy, and technological dissemination in developing economies. The authors discuss the tension between private proprietary rights and public interest considerations while also examining India's obligations under international copyright regimes. Their work contributes significantly to understanding the changing nature of copyright governance in the digital age.

Mihály Ficsor

In *Copyright in the Digital Age: The WIPO Treaties and Other International Developments* (2002), Mihály Ficsor examines the transformation of copyright law through international treaties adopted under the framework of the World Intellectual Property Organization. The author analyses the impact of the WIPO Internet Treaties on digital rights management, technological protection measures, and online communication rights. Ficsor argues that digital technologies fundamentally altered the traditional contours of copyright protection and necessitated stronger international cooperation. The work remains foundational for understanding the legal architecture governing copyright in cyberspace and the emergence of globally harmonised digital copyright standards.

Paul Goldstein & Bernt Hugenholtz

In *International Copyright: Principles, Law, and Practice* (4th ed., 2019), Paul Goldstein and Bernt Hugenholtz provide a detailed analysis of international copyright principles and comparative legal systems. The authors explore the historical development of international copyright conventions, particularly the Berne framework, and examine

how national jurisdictions respond differently to technological disruption and digital dissemination. Their work highlights the growing importance of cross-border copyright governance and demonstrates how international harmonisation influences domestic copyright policy, enforcement, and limitations on exclusive rights.

S. Handa

In *Copyright Law in India* (2006), S. Handa offers a doctrinal and practical analysis of Indian copyright law with special emphasis on statutory interpretation and judicial developments. The author discusses the structure of the Indian copyright regime, including ownership, infringement, fair dealing, and remedies. The book is particularly significant for its treatment of Indian judicial trends and the adaptation of traditional copyright principles to modern technological realities. Handa's work serves as an important reference for understanding the Indian legal framework governing copyright protection and user rights.

William M. Landes & Richard A. Posner

In *The Economic Structure of Intellectual Property Law* (2003), William M. Landes and Richard Posner examine intellectual property law through the lens of economic efficiency and market incentives. The authors argue that copyright law functions as a mechanism to encourage creativity and innovation by balancing incentives for creators against social access costs. Their economic analysis critically evaluates overprotection, monopoly concerns, and the implications of expanding copyright duration and scope. The work is influential in demonstrating how economic reasoning shapes modern debates concerning digital copyright and information access.

Mark A. Lemley

In his article "The Economics of Improvement in Intellectual Property Law" (1997), Mark A. Lemley explores how intellectual property systems should accommodate incremental innovation and technological advancement. Lemley critiques excessively rigid protection regimes that may hinder future creativity and innovation. He argues that intellectual property law must maintain a balance between rewarding original creators and allowing subsequent improvements and transformative uses. His work contributes to broader debates concerning innovation policy, digital creativity, and technological adaptation within copyright law.

William Patry

In *Moral Panics and the Copyright Wars* (2009), William Patry critically examines the expansionist tendencies of modern copyright regimes. Patry argues that copyright industries frequently invoke "moral panic" narratives to justify stronger protection and stricter enforcement measures against technological innovation and digital sharing. The author critiques the increasing criminalisation of users and warns against the excessive commodification of culture and information. His work is particularly influential in debates concerning user rights, digital access, and the social consequences of aggressive copyright enforcement.

Sam Ricketson & Jane Ginsburg

In *International Copyright and Neighbouring Rights: The Berne Convention and Beyond* (2nd ed., 2006), Sam Ricketson and Jane Ginsburg provide an authoritative analysis of international copyright law and neighbouring rights under the Berne Convention framework. The authors examine treaty interpretation, enforcement standards, and the evolution of international copyright obligations in response to technological change. Their work is particularly valuable for understanding the relationship between domestic copyright systems and international legal harmonisation in the digital era.

Mark Sag

In “The New Legal Landscape for Text Mining and Machine Learning” (2019), Mark Sag analyses the legal implications of machine learning and data mining technologies within copyright law. The article examines whether automated computational uses of copyrighted works constitute infringement or permissible fair use. Sag argues that technological innovation in artificial intelligence and machine learning requires a reassessment of traditional copyright doctrines to accommodate research, innovation, and computational analysis. His work contributes significantly to contemporary debates on copyright and artificial intelligence.

R. Sengupta

In “Fair Dealing in the Digital Age: India's Copyright Framework at the Crossroads” (2020), R. Sengupta examines the adequacy of India's fair dealing provisions in addressing challenges posed by digital technologies. The author analyses judicial interpretations of fair dealing and argues that Indian copyright law must evolve to balance creator protection with public access and technological innovation. The article highlights the need for flexible user-oriented exceptions capable of responding to educational, technological, and informational demands in the digital environment.

S. Tiwari

In “User Rights and Copyright Exceptions: Revisiting the DU Photocopy Case” (2018), S. Tiwari critically evaluates the landmark *The Chancellor, Masters and Scholars of the University of Oxford v. Rameshwari Photocopy Services* and its implications for user rights and educational access in India. The author argues that the judgment reaffirmed the importance of copyright exceptions within educational contexts and resisted overly restrictive interpretations of copyright protection. The article situates the case within broader debates concerning access to knowledge, public interest, and the future of fair dealing in India.

4. STATUTORY FRAMEWORK: SECTION 52 OF THE COPYRIGHT ACT, 1957

The Copyright Act, 1957, is the principal legislation governing copyright protection in India. Section 14 of the Act confers upon the author or rights holder an exclusive bundle of economic rights, including the rights of reproduction, distribution, adaptation and public communication.⁵ Section 52, titled 'Certain Acts Not to Be Infringement of Copyright,' constitutes the primary safe harbour for users, cataloguing an exhaustive list of acts that do not amount to infringement despite engaging with copyrighted material.⁶

Unlike Section 107 of the United States Copyright Act, which sets out four open-ended factors for courts to weigh in determining fairness, Section 52 of the Indian Act is structured as a closed enumeration.⁷ The permissible purposes are specifically delineated and include, inter alia:

- a) fair dealing with any work, not being a computer programme, for private or personal use, including research,⁸
- b) fair dealing with any work for criticism or review, whether of that work or of any other work;
- c) fair dealing with any work for the purpose of reporting current events in a newspaper, magazine or other periodical or by broadcast or in a cinematograph film or by means of photographs.⁹

⁵ *Supra note 1*

⁶ *Supra note 4*

⁷ *ibid*

⁸ Lawrence Liang & Carl Malamud, *Controlled Lending by Public Libraries Under Indian Law* (2023).

⁹ RACOLB Legal, *Copyright & Its Infringement*, 2017

The Copyright (Amendment) Act, 2012, significantly expanded the ambit of Section 52, introducing new exceptions for persons with disabilities (Section 52(1)(zb)), for transient storage and caching in network operations, and critically, for educational institutions and libraries. Section 52(1)(i) now permits reproduction by a teacher or a pupil in the course of instruction.¹⁰ In contrast, Section 52(1)(j) permits the making of copies of any work for use in a judicial proceeding or for the purpose of reporting such a proceeding.¹¹

Crucially, the statute itself does not define 'fair dealing.' The determination of what constitutes a 'fair' dealing has, accordingly, been left to judicial elaboration, rendering the courts the principal architects of the doctrine's substantive content. This legislative silence has been both a source of flexibility and a generator of uncertainty, with different courts applying different analytical frameworks to reach conclusions that are not always easily reconcilable.

Table 1: Comparative Overview: Fair Dealing (India/UK) vs. Fair Use (USA)

Parameter	Fair Dealing	Fair Use
Legal Basis	Section 52, Copyright Act 1957 (India); CDPA 1988 (UK)	17 U.S.C. Section 107
Structure	Closed, enumerated list of permissible purposes	Open-ended, four-factor balancing test
Flexibility	Less flexible; courts cannot create new categories	Highly flexible; courts develop doctrine case-by-case
Transformative Use	Not a distinct legal standard; subsumed in 'fairness'	Key factor; <i>Campbell v. Acuff-Rose</i> (1994)
Commercial Use	Not per se prohibited; weighs against fairness	Weighs against fair use under Factor 1

5. FAIR DEALING VERSUS FAIR USE: A CONCEPTUAL DISTINCTION

The doctrinal distinction between 'fair dealing' and 'fair use' is not merely terminological; it reflects fundamentally different philosophies of copyright exception. Understanding this distinction is essential for situating Indian jurisprudence in its proper comparative context.¹²

The fair dealing model, operative in India, the United Kingdom, Canada, and Australia, proceeds from a presumption of exclusivity: all uses of copyrighted material are infringing unless they fall within an expressly enumerated category. The user, to avail of the exception, must first establish that the purpose of the use falls within a recognised category (research, criticism, news reporting, etc.), and then demonstrate that the dealing was 'fair' having regard to various factors. The restrictive structure of this model means that courts cannot recognise entirely new categories of permissible use,¹³ their role is confined to interpreting the statutory categories and applying the fairness standard within them.

¹⁰ *Supra note 8*

¹¹ Handa, S. *Copyright Law in India* (New Delhi: Butterworths, 2006).

¹² Sag, M. 'The New Legal Landscape for Text Mining and Machine Learning' (2019) 66 *Journal of the Copyright Society of the U.S.A.* 291.

¹³ Goldstein, P. & Hugenholtz, B. *International Copyright: Principles, Law, and Practice* (4th edn., Oxford University Press, 2019).

The fair use model of the United States, by contrast, is structured as an open standard. Section 107 of the US Copyright Act provides that 'the fair use of a copyrighted work... for purposes such as criticism, comment, news reporting, teaching... scholarship, or research, is not an infringement of copyright.'¹⁴ The phrase 'such as' signals that the list is illustrative, not exhaustive.¹⁵ Courts are directed to consider four factors:

- 1) the purpose and character of the use, including whether it is commercial or non-profit educational¹⁶;
- 2) the nature of the copyrighted work;
- 3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole¹⁷; and
- 4) the effect of the use upon the potential market for or value of the copyrighted work. This framework is vastly more flexible, enabling American courts to respond dynamically to new technological realities and use patterns.¹⁸

The Canadian Supreme Court in *CCH Canadian Ltd. v. Law Society of Upper Canada*¹⁹ introduced a seminal refinement to the fair dealing framework, holding that fair dealing is not a 'loophole' but a 'user's right' that must be given a 'large and liberal interpretation.' This characterisation of the user as a rights-bearer rather than a mere beneficiary of a reluctant exception has had significant normative resonance in Indian judicial thinking, as subsequent analysis will reveal.

6. JUDICIAL INTERPRETATION OF FAIR DEALING IN INDIA

A. Early Jurisprudence and the Fairness Standard

The early post-independence judicial landscape on fair dealing was sparse, with courts largely importing principles from English decisions. The primary analytical question courts addressed was the nature of the 'fairness' inquiry. In *Civic Chandran v. Ammini Amma*²⁰, the Kerala High Court delivered one of the earliest and most analytically significant decisions on fair dealing in India. The case involved a counter-drama that substantially reproduced portions of the plaintiff's original play while offering a politically contrary commentary. The court held that the reproduction constituted fair dealing for criticism and review, articulating that the critical question was whether the use served a genuinely critical purpose and whether the amount taken was no more than was necessary to serve that purpose. The court identified three cumulative requirements for the criticism/review exception: (a) the work must be reproduced for criticism or review; (b) the purpose must be genuine and not a mere pretence; and (c) sufficient acknowledgement of the source must be made.²¹

This decision established a purposive interpretive approach that has since become a cornerstone of Indian fair dealing analysis. It also confirmed that even substantial reproduction could be fair if it were genuinely in the service of criticism, a liberal construction that contrasted with the more cautious approach of some English courts of the same era.

B. The Oxford University Press Case: Research and Education

¹⁴ *Journal of the Copyright Society of the U.S.A.* (formerly *Bulletin of The Copyright Society of the U.S.A.*).

¹⁵ Ficsor, M. Copyright in the Digital Age: The WIPO Treaties and Other International Developments (WIPO, 2002).

¹⁶ Landau, M. (2002). Digital Downloads, Access Codes, and US Copyright Law. *International Review of Law, Computers & Technology*, 16(2), 149–170. <https://doi.org/10.1080/1360086022000003973>

¹⁷ *ibid*

¹⁸ *Supra note 15*

¹⁹ [2004] 1 SCR 339

²⁰ AIR 1996 Ker 910

²¹ *Supra note 9*

One of the most consequential decisions on fair dealing in the Indian educational context is *The Chancellor, Masters and Scholars of the University of Oxford & Ors. v. Narendra Publishing House & Ors.* [2008]²². The case arose from the defendants' reproduction of questions from Oxford University Press mathematics textbooks in their guidebooks. The plaintiff argued that the copying was verbatim and systematic, amounting to infringement. The defendants invoked fair dealing under Section 52(1)(a) for research and Section 52(1)(h) for reproduction by teachers.²³

The Delhi High Court undertook a rigorous analysis, drawing upon English, Canadian, and American authorities to supplement the sparse Indian precedent. The court held that the reproduction of examination questions in guidebooks was not fair dealing because: (a) the purpose was commercial publication, not private research; (b) the amount taken of entire question sets was qualitatively and quantitatively substantial; and (c) the use directly competed with and potentially substituted for the original textbooks in the educational market. The court's invocation of the 'market substitution' test, whether the allegedly fair use competes with or displaces the original in its primary market as a factor in the fairness analysis, was a significant jurisprudential development. It imported into Indian fair-dealing analysis an element more commonly associated with the fourth factor of the American fair use doctrine.²⁴

The Oxford case is notable for two further reasons. First, the court explicitly affirmed that Indian courts are not bound to apply English precedent on fair dealing and have the interpretive latitude to develop the doctrine in light of Indian socio-economic conditions. Second, it cautioned against an overly mechanical application of the statutory categories, emphasising that the fairness of a dealing must be assessed holistically in light of all circumstances, not merely the formal purpose for which the work was used.²⁵

C. Super Cassettes Industries: Broadcast and Current Events

*Super Cassettes Industries Ltd. v. Hamar Television Network Pvt. Ltd. & Anr.*²⁶ addressed the question of whether a news channel's reproduction of music clips in the course of news broadcasts constituted fair dealing under Section 52(1)(b) for reporting current events. The Delhi High Court held that news channels are entitled to reproduce brief clips of copyrighted musical works when such clips are organically connected to the reporting of current events, such as the death of an artist, the launch of a film, or a music-related controversy. However, the court placed a critical limitation: the reproduction must be incidental and ancillary to the news reporting function; it cannot become a primary vehicle for the audience's entertainment consumption of the copyrighted work.

This decision is analytically important for its articulation of the 'incidental' requirement, which holds that the use must be secondary and subordinate to the permitted primary purpose. Courts have since applied this principle in related contexts, including the use of screenshots and recordings in television journalism. The decision also underscored the practical significance of the 'sufficient acknowledgement' requirement, holding that failure to credit the copyright owner may, in itself, render a dealing unfair.²⁷

D. The DU Photocopying Case: Educational Exceptions in the Digital Era

²² 2008 Delhi High Court, FAO(OS) 121/2007

²³ *Supra* note 10

²⁴ *ibid*

²⁵ Tiwari, S. 'User Rights and Copyright Exceptions: Revisiting the DU Photocopy Case' (2018) 23 NUJS Law Review 45.

²⁶ 2010 (44) PTC 72 (Del.)

²⁷ Sengupta, R. 'Fair Dealing in the Digital Age: India's Copyright Framework at the Crossroads' (2020) 25 Journal of Intellectual Property Rights 123.

The most far-reaching decision on educational fair dealing in recent Indian legal history is *The Chancellor, Masters and Scholars of the University of Oxford & Ors. v. Rameshwari Photocopy Services & Ors.*²⁸, popularly known as the DU Photocopying Case. Academic publishers i.e. Oxford University Press, Cambridge University Press, Taylor & Francis, and others brought suit against a photocopying shop operating within the Delhi University campus and the University itself, alleging that the preparation and sale of 'course packs' (compilations of excerpts from multiple academic textbooks) for students constituted copyright infringement.²⁹

The Delhi High Court's Single Bench, in its landmark September 16, 2016, judgment, dismissed the suit. Justice Rajiv Sahai Endlaw held that Section 52(1)(i) of the Copyright Act, which exempts reproduction 'by a teacher or a pupil in the course of instruction,'³⁰ must be read broadly in light of India's constitutional commitment to the right to education under Article 21-A, and the directive principles relating to educational access. The court held that: (a) the preparation of course packs by the photocopy shop was done on behalf of and at the direction of teachers; (b) the purpose was unambiguously instructional; (c) the commercial nature of the photocopying service did not transform the act into a commercial exploitation of the copyright; and (d) given India's developmental context, an overly restrictive reading of the educational exception would be inconsistent with constitutional values.³¹

The Division Bench, on appeal in *The Chancellor, Masters and Scholars of the University of Oxford v. Rameshwari Photocopy Services*³², unanimously affirmed the Single Bench's conclusion, holding that the exception in Section 52(1)(i) is not limited to acts performed within the four walls of a classroom by a teacher holding chalk. It encompasses all acts genuinely in furtherance of instruction, including those performed by service providers acting as agents of the educational institution.

The DU Photocopying Case is the most consequential Indian decision on fair dealing and educational copyright. It reflects the court's willingness to subordinate proprietary rights to public-interest considerations of educational access, particularly in developing nations with vast student populations and limited resource bases.

E. Factual Matrix and the 'Substantial Part' Test

Indian courts have also grappled with the 'substantial part' test, the principle that copyright is infringed only if a substantial part of the original work is reproduced. In *R.G. Anand v. M/s Delux Films*³³, the Supreme Court held that the test of infringement is whether 'the reader, spectator or viewer after having read or seen both the works is clearly of the opinion and gets an unmistakable impression that the subsequent work appears to be a copy of the original.' While this was primarily a case of originality and infringement rather than fair dealing, its analytical framework, assessing similarity from the perspective of the ordinary reasonable reader, has been applied to determine whether an allegedly fair dealing constituted a 'substantial' portion of the original.

Courts have consistently held that the qualitative significance of what is taken is more relevant than its quantitative proportion. If the portion reproduced constitutes the 'heart' of the work, its most original, creative, or commercially valuable element, even a small quantitative taking may not be regarded as fair.³⁴ This principle, borrowed from

²⁸ Delhi High Court, CS(OS) 2439/2012

²⁹ *Supra note 19*

³⁰ *Supra note 8*

³¹ *Supra note 21*

³² (2017) 243 DLT 278

³³ AIR 1978 SC 1613

³⁴ *Supra note 4*

English and American jurisprudence, has been consistently applied in Indian decisions involving music sampling, literary quotation, and the reproduction of artistic works in advertising.

7. SECTORAL APPLICATIONS OF FAIR DEALING

A. Research and Private Use

The research and private use exception under Section 52(1)(a) is the broadest in scope, permitting fair dealing with any work (other than a computer programme) for private or personal use, including research. Indian courts have drawn a critical distinction between 'private' use and 'personal' use. While the former encompasses use within a closely defined group such as a research team, the latter is confined to the individual. Crucially, the research must be genuine and not commercial in character, and the dealing must be proportionate to the legitimate research purpose.³⁵

B. Parody, Satire and Artistic Comment

India does not have a specific statutory exception for parody or satire, unlike jurisdictions such as Canada and France. Indian courts, however, have addressed parody through the criticism-and-review exception. In *Blackwood and Sons Ltd. v. A.N. Parasuraman*³⁶, the Madras High Court held that a translation of parts of a copyrighted work for criticism was permissible, establishing an early precedent for a liberal reading of the criticism exception. Where a parody genuinely targets and comments upon the original work, courts have been willing to extend the protection of Section 52(1)(b); however, where the parody primarily appropriates the original's commercial value without engaging in genuine commentary, the exception has been denied.³⁷

C. Disability Access and Section 52(1)(zb)

A significant legislative intervention in the 2012 Amendment was the introduction of Section 52(1)(zb), which permits any person to make a copy of a published work in a specialised format for use by persons with visual, aural, or other disabilities. This exception reflects India's obligations under the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled³⁸, to which India acceded in 2014. While litigation directly testing this provision has been limited, it represents a normative expansion of fair dealing from a purely economic rationale to a human rights framework grounded in the right to equal participation in cultural and educational life.³⁹

8. FAIR DEALING IN THE DIGITAL ENVIRONMENT: EMERGING CHALLENGES

The digital revolution has profoundly disrupted the existing framework of copyright exceptions, and India has been no exception to this global phenomenon. The 2012 Amendment addressed some digital concerns, notably by introducing exceptions for transient storage, caching in the course of network operation, and computer-related exceptions. Still, the pace of technological change has outrun the legislative imagination, leaving significant doctrinal gaps.⁴⁰

³⁵ Wadhwa, V. & Sane, R. 'Educational Copyright Exception and the Public Interest: Lessons from the Delhi University Case' (2017) 22 *Journal of Intellectual Property Rights* 67.

³⁶ AIR 1959 Mad 410

³⁷ *Supra note 1*

³⁸ *Tetiksha Shree & Vipul Vaibhav, "Implementation of Marrakesh Treaty in India: A Critical Analysis of Section 52(1)(zb) of the Copyright Act in India"*, *Indian Journal of Law and Legal Research*, Vol. VIII Issue II, ISSN 2582-8878.

³⁹ *ibid*

⁴⁰ Ricketson, S. & Ginsburg, J. *International Copyright and Neighbouring Rights: The Berne Convention and Beyond* (2nd edn., Oxford University Press, 2006).

Three principal challenges have emerged in the Indian digital context. First, the question of text and data mining (TDM), the automated computational analysis of large bodies of copyrighted text to extract patterns, insights, or derive training datasets, has no clear statutory treatment in India. The European Union's Digital Single Market Directive (2019) introduced a specific TDM exception; no analogous provision exists in Indian law, leaving researchers and technology companies in legal uncertainty.⁴¹ The artificial intelligence industry, in particular, faces acute exposure, given that training large language models on copyrighted corpora could, in theory, constitute infringement without a clear TDM exception.

Second, the question of digital library lending and the right of first sale doctrine has been litigated internationally, but remains unresolved in India. The Bombay High Court has touched upon related questions of digital distribution, but a comprehensive judicial pronouncement on whether Section 52 exceptions apply in full to digital reproductions remains awaited.

Third, the application of fair dealing to user-generated content (UGC) on social media platforms, mashups, remixes, memes, fan fiction, and commentary videos is an area of growing practical importance that Indian courts have not systematically addressed. Given the scale of digital content creation in India, with hundreds of millions of active social media users, the absence of a clear UGC exception or a robust judicial framework for digital fair dealing creates significant chilling effects on online expression.⁴²

9. CRITICAL ASSESSMENT AND RECOMMENDATIONS

The trajectory of Indian judicial interpretation of fair dealing reveals a doctrinal evolution that is broadly liberal and context-sensitive, animated by a recognition that copyright exceptions serve vital public interests. The DU Photocopying Case stands as a high-water mark of this liberal approach, subordinating proprietary rights to constitutional values of educational access. The Civic Chandran decision established the purposive framework that has guided subsequent analysis. The Oxford and Super Cassettes decisions refined the boundaries of the research and news-reporting exceptions, respectively.⁴³

However, several critical weaknesses persist. First, the closed statutory structure of Section 52, while providing legal certainty, is ill-suited to respond to the pace of technological change. The absence of an open-ended 'flexibility clause' analogous to the Canadian 'such other similar purposes' introduced after *SOCAN v. Bell Canada*⁴⁴, or the EU's 'minor exception,' means that entirely new categories of beneficial use cannot be accommodated without legislative intervention.

Second, the absence of a codified multi-factor test for determining 'fairness' within the permitted categories creates unpredictability. Different courts have applied different factors to market harm, purpose, amount taken, and acknowledgement without a consistent hierarchy or weighting. A judicial or legislative codification of the fairness factors, drawing upon the best elements of the CCH Canadian analysis, would significantly enhance doctrinal coherence.

⁴¹ *Supra* note 19

⁴² *ibid*

⁴³ *Supra* note 4

⁴⁴ [2012] SCC 36.

Third, the treatment of commercial use remains inconsistent. Some decisions treat commercial purpose as a near-absolute bar to fair dealing; others hold that it is merely one factor among many. The latter approach is more doctrinally sound; many paradigmatic fair dealings, including journalism and critical commentary, have commercial dimensions and should be uniformly adopted.

On the legislative front, the following reforms are recommended:

- a) Introduction of a specific text and data mining exception for non-commercial research and AI development, modelled on Article 4 of the EU DSM Directive;
- b) A general user-generated content exception for non-commercial transformative remixes, following Canada's Section 29.21;
- c) Codification of the fairness factors within Section 52 to provide interpretive guidance to courts; and
- d) Expansion of the disability exception to explicitly cover digital formats and ebook lending.

10. CONCLUSION

The doctrine of fair dealing in India represents a jurisprudential achievement that is simultaneously impressive and incomplete. Impressive, because Indian courts, particularly the Delhi High Court, have demonstrated a sophisticated understanding of the doctrine's constitutional and social foundations, fashioning a body of precedent that gives genuine content and force to the exceptions in Section 52. Incomplete, because the statutory structure remains tethered to an analogue-era framework that is increasingly strained by the demands of the digital information economy.

The normative core of the doctrine is well-established: fair dealing is a user's right, to be interpreted liberally; its boundaries are determined by the purpose, amount, and fairness of the use in all the circumstances; and its principal justification lies in the public interest in education, research, criticism, and the free flow of information. What remains to be constructed is a comprehensive, technologically neutral statutory framework that can translate these values into clear, predictable rules for the twenty-first century.

The ultimate measure of any copyright exception regime is whether it successfully calibrates the tension between incentive and access, between the rights of creators and the needs of the public. Indian law, both in its judicial evolution and its unrealised legislative potential, is engaged in precisely this calibration. The outcome of that process will shape not only the future of intellectual property in India but also the country's capacity to harness knowledge as a resource for equitable development.

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Availability of Data: The present study is based on publicly available sources, including statutes, judicial decisions, books, journal articles, commentaries, and legal databases referred to in the references and bibliography.

Ethical Compliance: The study is doctrinal and analytical in nature and does not involve human participants, clinical data, or animal subjects. Therefore, ethical approval was not required.

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