

LAWFOYER INTERNATIONAL
JOURNAL OF DOCTRINAL LEGAL
RESEARCH

(ISSN: 2583-7753)

Volume 1 | Issue 4

2024

© 2024 *LawFoyer International Journal of Doctrinal Legal Research*

Follow this and additional research works at: www.lijdlr.com
Under the Platform of LawFoyer – www.lawfoyer.in

After careful consideration, the editorial board of LawFoyer International Journal of Doctrinal Legal Research has decided to publish this submission as part of the publication.

In case of **any suggestions or complaints**, kindly contact info.lijdlr@gmail.com

To submit your Manuscript for Publication in the **LawFoyer International Journal of Doctrinal Legal Research**, To submit your Manuscript [Click here](#)

INFRINGEMENT OF COPYRIGHT IN INDIA: A CRITICAL STUDY OF THE DOCTRINE OF FAIR USE AND IMPERATIVE NEED FOR REFORM

Prakash Kumar¹ & Kumari Diksha Chandra²

I. ABSTRACT

The creativity done by human intelligence in producing the incorporeal and intangible property can be called as an intellectual property. Copyright is one amongst the various other Intellectual Property rights where the copyright law provide the owner an exclusive right to reproduce or providing authority to others to reproduce the work in material form to the public so that owner/author can get reward for their work. The aim of every intellectual property is to contribute in the existing sea of knowledge side by side providing reward to the original author or the owner.

Apart from the ownership of the copyright the copyright Act provides certain kind of exception where the permission of the owner is not required while using the copyright protected work i.e. fair dealing. However the balance should be maintain between the right of the owner and the fair dealing. Copyright Act, 1957 gives only inclusive exception and not any concrete definition, the judiciary also have limited scope in India in comparison of fair use as in USA.

It is need of the hour to incorporate certain reform in the existing provisions so that a balance can be maintained between the rights of the owner and the general public so that it would not work as a barrier in the further research. The paper begins by highlighting the concept of property followed by the meaning and nature of intellectual property and then it moves on to demonstrate how fair use is essential in enriching the general domain of knowledge. Researchers have mainly gone through doctrinal way of research while writing this paper and came to the conclusion that Indian courts have yet to decide various nuances involoed in the doctrine of fair use such as role, purpose, meaning, and application. Some of the drawbacks include limited accessibility and confined

¹ LLM Student, (National Law Institute University, Bhopal).

² LLM Student, (Chanakya National Law University, Patna).

provisions, which create doubt and confusion about the scope and applicability of exclusions and protection.

II. INTRODUCTION

The term 'Property' has wider connotation it can be defined as an object on which the ownership right is extended by the owner which provide an exclusive right of the owner over the property and disposal at the sweat will of the owner. Further, it can be classified as corporeal and incorporeal whereas the Intellectual Property Rights are treated as incorporeal property. Intellectual property is the creation of human mind, labour, skill and judgments of the human beings. The main motive for securing the Intellectual Property Right is to confer a kind of reward to the author or the owner as the case may be. An intellectual property is said to be "knowledge goods"³

Copyright is one amongst the various other Intellectual Property rights where the copyright law provide the owner an exclusive right to reproduce or providing authority to others to reproduce the work in material form to the public so that owner/author can get reward for their work. However providing reward to the author is not only motive behind the copyright protection but is also to promote and help in the progress of the science and useful arts. However the IP Laws ae sometime treated as hindrance in the free flow of knowledge, ideas and innovative techniques due to its monopolistic nature. The copying of the protected work are prohibited unless due permission is taken from the author of the protected work. He may give licence or assignment to reproduce the same.

The concept of fair dealing is a kind of exception given as a defence of copyright infringement. The "Fair Dealing" term itself has not been define anywhere in the Copyright Act of 1957 but its references can be traced from the Copyright Act, 1957 under section 52 of the said Act. The rationale behind the fair dealing is that on some specific situation a kind of infringement (not in strict sense) can give greater public good than the

³ 2014 SCC Online SC 1709

absolute denial from copying. The main problem is to find out what the fair dealing exactly means? In the case of *Hubbard V. Vosper*⁴ it was said that it is not possible to give exact definition of the term “fair dealing” exactly, the degree and impression must be taken into consideration. Therefore it is realised that there is no thumb rule for defining fair dealing in India as it is narrower than the concept of fair use.

The researcher in this project work intended to critically analyse the concept of copyright infringement, the doctrine of fair dealing and the probable changes which ought to be taken place in India so that the balance should be created between the rights of owner and the public good at a large. Mainly the questions like how the concept of copyright evolved in India?, what are the exceptions given which are helping in further research and enhancing knowledge to public at large?, why there are certain reforms are needed in the concept of fair use? are intended to be answered in this paper. The objective of the researcher is to give certain effective suggestions which can make copyright Act, 1970 more balanced in the interest of both the owner as well as the general public.

III. EVOLUTION OF COPYRIGHT IN INDIA.

Copyright laws are a subset of the larger subject of intellectual property law. The issue of copyright was unknown in the ancient era since authors wrote for fame and reputation rather than for their livelihoods. The invention of printing made copyright protection necessary since it made it possible to reproduce books on a greater pace and in huge quantity. It eventually began to be seen as a property right and needed to be safeguarded as such. The development of copyright legislation in India and the United Kingdom are closely intertwined. The Crown of England offered stationers whom are treated as the

⁴ (1972) 2 QB 84; (1972) 2 WLR 389.

forerunners of contemporary publishers a limited level of protection from the entry of foreign products in the year 1534.⁵

The English Copyright Act of 1842 was the first copyright statute to be implemented in India by the High Court of Bombay in *MacMillan v. Khan Bahadur Shamsul Ulama Zaka*.⁶ The English Copyright Act of 1911 was then extended to include Indian territories. The Indian Copyright Act was enacted into legislation in 1914. There were approximately 15 sections in this Act. By adopting criminal penalties for copyright infringement, it made a risky move. 'Sole right' was first defined in Section 4 of the Act. This gave the author permission to create, copy, perform, or publish a translation of the work for a decade following the date on which it got published. This Act served as a sort of revision to the Copyright Act of 1911.

The post-independence era saw a considerable advancement in the development of copyright law in India. After India gained independence, the government of India enacted a new law, the Copyright Act of 1957, which is now the main piece of legislation governing copyright in India. This law underwent several significant amendments.

In India, copyright as well as the neighbouring rights are dealt by the Act of 1957 (as amended in 1999), the Rules promulgated thereunder, and the International Copyright Order, 1999. Five times, in 1983, 1984, 1992, 1999, and most recently in 2012, this Act has been changed. The Act has 79 sections organised into 15 chapters. Additionally, section 78 of this Act grants the Central Government the authority to create rules and publish them in the Official Gazette in order to carry out the Act's objectives.⁷

⁵ Dr. Vikas Vashishth, 'Law and practice of Intellectual property in India' Bharath Law House, II Ed, Pg 751 http://shodhganga.inflibnet.ac.in/bitstream/10603/20952/13/13_chapter_7.pdf. Accessed 09 October 2023.

⁶ ILR.(1895) 19 Bom. 557.

⁷ Justice Pratibha M Singh, 'Evolution of Copyright Law - the Indian Journey' (*IJLT*) <<https://www.ijlt.in/journal/evolution-of-copyright-law-%E2%80%93-the-indian-journey>> accessed 8 October 2023.

- **Copyright Act of 1914:** India's first Copyright Act was enacted in 1914, primarily based on the British Copyright Act of 1911. This law provided copyright protection for books, maps, and charts.
- **Copyright Act of 1957:** The modern copyright law in India was established with the Copyright Act of 1957. This Act broadened the scope of protection to cover a variety of artistic, theatrical, musical, and literary works. It also introduced the idea of copyrighted works being performed publicly.
- **Amendments in 1983:** The Copyright Act was amended in year 1983 in order to bring it in conformity with the developments in international copyright standards. These amendments strengthened the rights of authors and creators and introduced the concept of compulsory licensing for certain works.
- **Amendments in 1994:** In order to meet with the responsibilities under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) of the World Trade Organisation (WTO), the Act was further amended in 1994 to incorporate measures relating to computer software protection.
- **Amendments in 1999:** In 1999, significant amendments were made to the Copyright Act to address challenges posed by digital technologies. These amendments introduced provisions related to the Internet, digital rights management, and the liability of Internet Service Providers (ISPs).
- **Amendments in 2012:** The most recent major amendments were made in 2012 to bring the Act in line with international standards and to address issues related to the digital environment. The revisions contained clauses addressing intermediary liability in the virtual environment, rights management information, and technological protective measures.

As the amendment brought a wide coverage of performers rights and it incorporated proviso to section 2 (qq) meaning thereby the intention of legislature was to provide protection to the much extent. However it only protected those rights to whom the credit

is itself given in the cinematograph films and apart from those, rights are protected but under section 38B of the copyright Act, 1957. Apart from the various positive changes brought under the latest amendment but also created a dilemma like situation regarding the rights of third-party licencing organisations that do the licencing and awarding of licences for creative works, there is a legal void. Although the 2012 Amendment introduced a new sub-section (1) to Section 33, it did not eliminate the ambiguity; rather, it merely made matters more confusing. This provision now states that the only organisation authorised to handle the business of licencing the issuance or grant of a copyright with regard to any dramatic, artistic, literary, musical, or creative work included in a motion picture or sound recording is a copyright society. This clause puts organisations such as Novex in a limbo legally.⁸ These amendments reflect India's efforts to keep its copyright laws updated with technological advancements and international agreements, making sure that the nation's intellectual property rights are protected.

IV. INDIAN DECISION

The discussion is incomplete on Indian copyright law without giving the reference to one of the landmark decisions of the apex Court in *R.G. Anand v Delux Films*.⁹ The fundamental tenet of the idea-expression dichotomy is laid down in this case, namely that copyright does not reside in ideas themselves but only in their expression. In a case involving a "Hum Hindustani" play adaptation, the Supreme Court ruled that ideas, subjects, themes, plots, and historical or fabled facts cannot be protected by copyright and that, in these cases, copyright infringement only concerns the way the author of the protected work expressed the idea in its form, manner, and arrangement. The Copyright, Patents and Designs Act of 1911 was being interpreted by the court. The Court made further observations regarding the infringement test. The court held that

⁸ Akash Gupta, 'Copyright Societies And The Copyright (Amendment) Act, 2012 - Copyright - India' <<https://www.mondaq.com/india/copyright/750676/copyright-societies-and-the-copyright-amendment-act-2012>> accessed 17 February 2024.

⁹ *R.G. Anand v Delux Films* (1978) 4 SC 118.

“One of the surest and the safest test to determine whether or not there has been a violation of copyright is to see if the reader, spectator or the 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.”¹⁰

The Supreme Court thus established the stage for the establishment of copyright law by outlining the key concepts in a plain language. Over time, copyright law has developed to cover derivative works like sound recordings and cinematograph films that are valued for their commercial potential in addition to original works. These are compositions that mix elements from several different original works. Given that the copyright sector is expanding, the distinction made under the Copyright Act between original works and derivative works is significant.¹¹

V. COPYRIGHT INFRINGEMENT AND DOCTRINE OF FAIR DEALING

The benefits of the copyright only flow to the author if the rights are exclusively protected, with the exception of situations when the Act permits specific uses. Certain uses by third parties are permitted under Section 52 of the Copyright Act of 1957, while all other uses are prohibited. A violation is a trespass on a territory that is the sole property of the work's creator. While the Copyright Act of 1957's Section 51 deals with copyright infringement. The following are some examples of copyright violations that are widely known: making copies that are infringing and offering them for hiring, sale, or rental; allowing the public performance of works in any location where such performance would violate copyright; distributing unauthorised copies for commercial gain or in a manner that jeopardises the interests of the copyright owner; Trade-related public display of pirated works; importation of pirated works into India.¹² Copyright

¹⁰ Ibid

¹¹ n08

¹² 'Hand Book of Copyright Law' <<https://copyright.gov.in/documents/handbook.html>> accessed 7 October 2023.

infringement is trespassing on a private area that is owned and occupied by the copyright creator and, as a result, legally protected. Copyright infringement, often known as piracy, is the act of someone using another person's intellectual property without that person's permission to do something that belongs exclusively to that person and has been granted that right by law.¹³

Copyright violations include any method by which the subject matter of a work may be adopted, transferred, or replicated with more or less obvious adjustments to cover up the pirate. They are not just limited to literal and accurate duplication or copying.

VI. CRITERIA OF PROTECTION

There is no copyright for concepts, plans, strategies, or techniques. The essential tenet of copyright law is that it protects not ideas but rather the expression of ideas. Ideas are not protected by copyright, but events in a sequence are; the audience must be able to perceive the identity of the impression through their senses.¹⁴ It might be challenging to draw the crucial line between “idea” and “expression”. In his letter, Hand J stated bluntly, “Obviously, no rule can be stated as to when an imitator has gone beyond copying the idea and has borrowed its expression.” Only original expressions of ideas are protected under copyright. The fundamental requirement of copyright law is originality. Only original literary, dramatic, musical, and aesthetic works are covered by copyright, according to Section 13 of the Copyright Act of 1957.

Copyright law is more about protecting how people express their ideas, not the ideas themselves. To get copyright protection, your work needs to be genuinely original, meaning you put in your own creativity, effort, time, and skill. Copyright is all about safeguarding people's creativity. If someone copies your unique work without permission, that's when it becomes a copyright violation. The types of things that can be protected by copyright depend on how original they are. So, if you create something

¹³ *Bobs-Merrill Co. v Straus*, 52 L Ed 1086: 210 US 339 (1908).

¹⁴ *Shipman v Radio Pictures Inc.* 100 F 2d 533: 40 USPQ 211(2d Cir 1938).

original, like a book, song, artwork, or software, it can be protected by copyright. And when you create something original and put it into a fixed form, like writing it down or recording it, copyright protection automatically kicks in. In essence, originality is the key to copyright, and it connects the creator to their work.¹⁵

VII. FAIR DEALING

The cornerstone of copyright law is the fair dealing theory. It permits the usage of works with copyright protection without worrying about a breach. These uses are acceptable under the law. Originally, the defence of “fair dealing” was a notion of equity that allowed the use of some copyright-eligible works when doing so would have been against the law and would have been considered copyright infringement. This doctrine's main objective is to prevent the creative growth for which the law was meant from ceasing.

Black Law's Dictionary defines “Fairness” as “*The level of even-handedness used in dispensing justice where claims are recognized in the order of legal and contractual priority*”¹⁶.

The idea of fair dealing was developed essentially to establish a fair balanced path between the rights of the author and the general public without impairing the writers' rights. It was vigorously adopted by the various nations as a means of promoting in-depth research and studies as well as a tactical response to the global commercialization that was escalating at the time.

Before the English Act was specifically made applicable in India, the Bombay High Court ruled in *McMillan v. Khan Bahadur Shamsul Ulama M. Zaka*¹⁷ that it applied to India as well. Fair dealing was originally codified in a legislation that was issued in India in 1914. This law's fair dealing provision was essentially a replica of a provision with a like

¹⁵ Carys J Craig, ‘The Evolution of Originality in Canadian Copyright Law: Authorship, Reward and the Public Interest’ (SSRN, 4 April 2006) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=894081> accessed 8 October 2023.

¹⁶ Black's Law Dictionary (6th Ed. 1990).

¹⁷ 11 ILR (1895) Bom 557.

phraseology in the United Kingdom's statute.¹⁸ The cited legislation provision said that copyright would not be breached by any fair dealing with any work for the purposes of private study, research, criticism, review, or newspaper summary.¹⁹

The idea of “fair dealing” is explained in Section 52 of the Copyright Act of 1957 in India. According to this section, for something to be considered “fair dealing,” it should be used for specific purposes like personal use, research, criticism, or review, as mentioned in the law. The term “fair dealing” isn't specifically defined anywhere else in the Copyright Act of 1957, but this section mainly talks about what counts as “fair dealing” and when it's allowed. The purpose of this section is to clarify what actions don't break copyright laws. In 2012, the Copyright Act was updated to broaden these rules. They expanded the concept of “fair dealing” to include music and visual materials, but not computer programs. They also made changes to the requirements under Section 52(1)(a) to make it more flexible. Another new provision added by the 2012 amendment to S. 52(1)(w) states that creating a 3-D product from a 2-D blueprint does not violate the copyright.²⁰ Additionally, cl. (zc) of S. 52, which was inserted by the amendment Act of 2012, has been proposed to stipulate that the importation of literary or artistic works, such as labels, business logos, promotional materials, or explanatory materials that are incidental to the products or goods being imported, is to fall under the exceptions.²¹ Additionally, this paragraph supports the Trade Marks Act of 1999's parallel import clause. In addition to the aforementioned amendments, the 2012 amendment to S. 52 includes provisions (zb) and (zc) that address fair dealing in the usage of disabled people.²² In addition to facilitating the fair use of the work for the benefit of the disabled, it makes it possible for any work to be adapted, reproduced, issued as copies, or communicated to the public in

¹⁸ Narayan P., *Copyright and Industrial Designs* (3rd edn., Eastern Law House, Calcutta 2002).

¹⁹ Burrell Robert, Reining in copyright law : Is fair use the answer? 4 *Intellectual property Quarterly* 361-388 (2001).

²⁰ The Copyright Act 1957, S. 52(1)(w).

²¹ The Copyright Act 1957, S. 52(1)(zc).

²² The Copyright Act 1957, S. 52(1)(zb)(1).

any accessible format. It also permits people with disabilities access to works for research or educational purposes, as well as the freedom to share with any person with a disability for private or personal use. The listed goals made explicit under S. 52 have traditionally been interpreted as exhaustive, rigid, and conclusive because any use or dealing that does not obviously fall within the defined grounds as provided in S. 52 is considered to be a copyright infringement.

In Section 52 of the Copyright Act, it's crucial to understand that "fair dealing" is different from copyright itself. It's considered an affirmative defense. This means that when the owner of a copyright shows initial evidence of a significant violation of their copyright, the burden of proof then shifts to the person using the material to prove their use falls under "fair dealing."

However, it's worth noting that, as seen in the Civic *Chandran v. C. Ammini Amma*²³ case, in India, fair dealing cases don't always demand initial proof of copyright infringement before evaluating whether "fair dealing" applies. The idea presented above makes it obvious that fair dealing is a fundamental and vital component of law of copyright. It is also evident that the idea of "fair dealing" has not been sufficiently progressed in our country and is still in its infancy. Though "fair dealing" hasn't even been defined in the Act, indicates that the legislation in this area is still in its infancy. An investigation of the attitude, whether stringent or flexible, towards the entire issue related the idea of the concept of fair dealing is believed to be more necessary.

Three significant restrictions on an owner's rights are outlined in the fair dealing provisions: fair dealing for non-commercial research or private study; fair dealing for criticism or review; and fair dealing for news reporting.²⁴ However the restrictive approach in fair dealing is now a challenge to handle in digital age so it should be open

²³ US SC 14 : 78 L Ed 2d 574 : (1996) 16 PTC 670.

²⁴ 'Doctrine of Fair Dealing in Indian Copyright Law – SURANA & SURANA'
<<https://suranaandsurana.com/2022/09/02/doctrine-of-fair-dealing-in-indian-copyright-law/>>
accessed 17 February 2024.

or it should give “such as” provision so that the latest digital innovation can be accommodated like artificial intelligence.

VIII. CONCEPT OF FAIR USE

The U.S. Copyright Act²⁵ established the “Fair Use” Doctrine on logical, customary, and reasonable grounds that was to be applied on a “case by case basis”²⁶ in order to deal with the economic and social challenges as well as the anticipated technological advancement. Considering the reasonability and practicality of the doctrine, it was adopted by various nations in its purest form or on a modified standard, all over the world.

The doctrine is used in a more flexible manner. This notion has its roots in the United States and was popularized by the landmark “Fairness Abridgement” case of *Gyles v. Wilcox*.²⁷ Furthermore, the theory was deemed to be reasonable, ordinary, and customary in *Folsom v. Marsh*,²⁸ case, establishing the “Four-Factor test” rather than customarily defining a comprehensive list of activities that could be brought within the ambit. This “Four-Factor test” was established to evaluate whether a certain case was inside the purview of fair use or not, taking into account the case's numerous facts and circumstances. Additionally, it was made quite clear that an unpublished work would not be disqualified from asking for Fair Use.

Whether the test was the basis for the discovery. The Doctrine just specifies the following considerations as those that determine whether Fair Use is applicable:

- a) Purpose and nature of work; also known as the “Transformative test”
- b) The copyrighted work's nature;
- c) The quantity as well as quality of the piece utilized; and

²⁵ U.S. Copyright Act, 1976.

²⁶ *Lewis Galoob Toys v. Nintendo Inc.* 964 F.2d 965.

²⁷ *Gyles v. Wilcox* (1740) 26 Er 489.

²⁸ *Folsom v. Marsh* 9 F. Cas. 342 (CCD. Mass. 1841).

d) The impact on the original's market value.²⁹

It was a more adaptable and inclusive strategy that, due to its useful and efficient protective approach, was adopted by numerous nations. Furthermore, because the countries are getting older and more complex, the Doctrine's application can be expanded to include newer and diverse circumstances.

IX. VIEW OF INDIAN JUDICIARY TOWARDS THE DOCTRINE OF FAIR DEALING

Before the last few decades, there weren't many cases in India involving this philosophy. Only a small number of cases involving this subject are brought before the courts even today. This section of the project looks at situations where the concept of "fair dealing" has been discussed and argued in Indian courts. Since every situation is different and depends on a different collection of facts and circumstances, the courts have repeatedly emphasized that it is totally impossible to construct a single "rule of thumb" that would apply in all situations of fair dealing. The public's interest, however, is viewed by the courts as being the most crucial issue.³⁰

In *Wiley Eastern Ltd. v. IIM*,³¹ the court noted and drew a parallel between the purpose of the Indian Constitution and the defence of fair dealing. The court made clear that S. 52 of the Copyright Act's main objective is to protect the freedom of expression that is granted by Art. 19(1) of the Indian Constitution, which allows for the protection of activities including research, private study, criticism, and reporting on current events. The court further stated that it is doubtful that S. 52 was intended by Parliament to define an act of infringement in an unconstructive manner.³²

²⁹ U.S. Copyright Act 1976, Sec. 107

³⁰ *Ashdown v. Telegraph Group Ltd* (2001) 3 WLR 1368 : (2001) EWCA Civ 1142.

³¹ 1995 Del 784 : (1996) 61 DLT 281 Para 19.

³² *Wiley Eastern Ltd. v. Indian Institute of Management* (1996) 61 DLT 281 Para 19.

*Blackwood v. Parasuraman*³³ is another well-known case where the fair dealing doctrine was examined providing guidelines for defining what constitutes “private use”. In this case, the defence of fair dealing was asserted for the declared purpose of study by private individual. The defendant in this case felt free to publish guides for the plaintiff's publications, but the court in this case denied that. The court also ruled that copying a book for one's own personal use falls under the definition of private study, but sharing copies with other students is undoubtedly not included. It is obvious that the court in this decision gave the term “fairness of the dealing” a restrictive definition. In this landmark case, the court ruled that the usage must fall inside the definition of “fair dealing” in the Act in order to be protected.³⁴ In essence, the Blackwood Case test is used to determine if a usage is likely to diminish the copyrighted work's value or prospective market.³⁵ The purpose of the alleged violator to take advantage of the efforts and effort of the copyright owner for his own gain can presumably be seen if major and significant works are copied.

The courts in India have ruled that a copyright violation cannot be tolerated just because it has been justified as being in the public interest.³⁶ The courts have emphasized that a provision in India that governs copyright law offers absolutely no redress for claims that a usage is in the public interest. Furthermore, it should be recognized that the defense of fair dealing is possible in cases of critics or review, as is obvious from S. 52's provisions. However, the fair dealing defense is only subject to scrutiny or criticism where the act is accompanied by the admission required by S. 52(1).

The court noted in the case *Associated Newspapers Group plc v. News Group Newspapers Ltd.*³⁷ that it is neither fair nor just to permit a business rival or a competitor to obtain and utilize copyrighted information for their own gain. The court further stated that the point that needs to be addressed is why the copy was created. The use should be for the purpose

³³ *Blackwood and Sons Ltd. v. A.N. Parasuraman* 1958 SCC OnLine Mad 62 : AIR 1959 Mad 410.

³⁴ *Ibid.*

³⁵ *Civic Chandran v. C. Ammini Amma*, 1996 Ker 63: ILR 1996 Ker 67.

³⁶ *Rupendra Kashyap v. Jivan Publishing House*, 1996 Del 4660 (1996) 38 DRJ 81 Para 24.

³⁷ (1986) 103 (19) RPC 515-520.

of criticizing or reviewing and not for any other purposes in order for the dealing to be fair in critique.

As was stated in *Reliance Petrochemicals v. Indian Express Newspapers*,³⁸ fair dealing material for the purpose of covering current events in print mode or broadcast media is also an exception under S. 52(1)(b) of the Copyright Act. This is because everyone has the right to information (as well as the freedom of speech and expression). The objectives outlined in the Copyright Act have been clearly accepted by Indian courts as being all-inclusive. The aforementioned case laws show that even though there aren't many cases addressing this issue that get up in court, Indian courts prefer to scrupulously maintain the Act's objectives and give the clause a limited interpretation.

The usual ruling of Indian courts is that copyright is not violated when copyrighted content is used for educational purposes. The Delhi High Court ruled in *Masters & Scholars of University of Oxford v. Rameshwari Photocopy Services*³⁹ that distribution of copyrighted materials, including academic course books, does not need a license from the publishers. Furthermore, the Delhi High Court stated that the basic purpose of Section 52 is to protect the freedom of expression under Article 19(1) of the Constitution of India so that research, private study, criticism or review or reporting of current events could be protected⁴⁰.

X. NEED FOR REFORM IN INDIAN COPYRIGHT LAW WITH RESPECT TO FAIR DEALING

To treat original content fairly and limit how much of it can be used by other users, the Indian Copyright Act, 1957 offers a few exceptions. A copy of a work made for private use, such as study, research, or criticism, is protected by Section 52 of the Act. However, it lacks the enumeration of exceptions or a broad ambit to cover all sorts of work in

³⁸ (1988) 4 SCC 592.

³⁹ MANU/DE/2497/2016.

⁴⁰ Wiley Eastern Ltd. v. Indian Institute of Management MANU/DE/0694/1995.

compared to copyright legislation in the United States and the United Kingdom.⁴¹ To make decisions in these matters involving copyright infringement, the Indian courts must, nevertheless, refer to prior decisions. The purpose of the law was to safeguard original content that was already in the public domain. However, when creating absolute rights under the legislation, the act did not take into account the interest of the general public in original work. This issue arises because Indian courts strictly read laws according to their plain language and do not construe their provisions in any other way. As a result, it provides the framework for restrictive interpretation, which is therefore relevant to circumstances in a limited way. This strict framework was unable to foster flexibility to take into account the country's current concerns.

To determine diverse modern requirements or modifications in numerous linked domains, a flexible approach is needed. Even Nevertheless, the law must be adaptable in order to take into account recent technological developments that are utilised to assess various aspects of copyright infringement. The utilitarian principle and natural law theory, which aim to completely protect author's work, are the foundations of the American idea of fair dealing. Indian Copyright, 1957 hence need additional improvements through modifications as the existing limited approach to provisions likely to undermine the Act's usefulness. The legislation should discuss potential revisions to the Indian Copyright Act of 1957 in order to bring it into line with U.S. copyright legislation, which will expand and broaden the Act's scope and leave some room for judges to interpret sections that go beyond the act. India should therefore anticipate enacting enabling adjustments in connection with fair dealing pursuant to the legislation.

It is clear that Indian courts prefer to adhere precisely to the language of the statute and, as a result, rigidly uphold the aims listed in the act, which results in a limited interpretation of the provision. Additionally, it should be stressed that the courts have

⁴¹ V.K. Ahuja, *Intellectual Property Rights In India* (1st edn, LexisNexis Butterworths Wadhwa, 2012).

neglected to consider additional crucial elements like need and necessity. The fair use theory found in American law, which allows for flexibility, has not been implemented by Indian courts due to their set and strict attitude. It should be noted that whereas the fair dealing doctrine is founded on the natural law theory, which prioritises the author, the fair use doctrine is grounded in utilitarian principles.⁴² The fair dealing provisions in the copyright regulations are regrettably so onerous that they are strangling the copyright system. Questions concerning the legitimacy and effectiveness of the laws addressing the issue are raised by such limited and restricted terms. A constrained approach raises questions about the applicability and efficacy of this exception.

Dependence on a flexible strategy is preferable to a codified system because it enables the courts to change the law if new concerns arise on a case-by-case basis. To make the rules better suited to the needs of the modern world, flexibility must be introduced. In order to establish the relation of the copyright laws and to ensure that the laws are in line with the needs and requirements of contemporary technological advancements, it is necessary to implement a more limited and open-ended fair dealing provision in the Copyright Act of India. Given the situation in India, the best course of action would be to try and make some changes to the fair dealing laws there in order to bring them more relative with the “fair use” philosophy that exists in the USA provided that as the fair use doctrine of the USA is likewise not perfect and undoubtedly contains some grey areas, an alternative “such as” approach or the enlargement of fair dealing should be implemented rather than the “fair use doctrine” in its entirety. Realizing that there is no general rule for handling cases of this nature and that each case depends on a unique set of facts and circumstances, it is necessary to leave room for some judicial discretion in order to monitor how the system is working and to prevent any abuse of the flexibility that the laws allow. India should therefore work to update the law of fair dealing in a way that ensures its

⁴² Harry N. Rosenfield, Customary use as “fair dealing” in copyright law, 25 *Buff. L. Rev.* 119 (1975-1976).

adaptability and applicability in the digital era, without disregarding the interests of right holder.⁴³

XI. CONCLUSION AND SUGGESTIONS

It is obvious that the copyright law includes fair dealing as a fundamental component. There is no question that “fair dealing” is a fundamental principle, not only in terms of copyright legislation but also in terms of enhancing the protection provided by Article 19 of the Indian Constitution. The fair dealing doctrine’s place in India’s overall copyright legal framework has yet to be determined, nonetheless. The Indian courts have yet to resolve a number of elementary and fundamental problems, such as its role, purpose, meaning, and application. Some of the drawbacks include limited accessibility and confined provisions, which create doubt and confusion about the scope and applicability of exclusions and protection.

The following are some of the findings from the earlier analysis of the fair dealing clauses in the Copyright Act of 1957: Although it can be highly challenging to distinguish between personal use of the work for the permissible purpose and use by third parties, the limitations incorporated in the fair dealing exceptions permit the copying of the material for personal use and not for third party use. More concerns such as:

- 1) There is a lack of distinction between commercial research and research done for academic purposes.
- 2) The time-shifting and format-shifting exceptions are not entirely obvious.
- 3) Legal interpretations of the conditions and reviews frequently failed to resolve the conflict between copying that constitutes infringement and copying that is allowed under fair dealing. As a result, it is more challenging to adhere to the precedents.

⁴³ *Ashdown v. Telegraph Group Ltd.*, (2001) 3 WLR 1368 : (2001) EWCA Civ 1142.

- 4) The extent of private use or personal use is one of the crucial questions. Personal productive use and pure personal use are incompatible, and the doctrine has not addressed this. Concern is raised by how easily the fine line between commercialization and profiting from personal use is crossed.

The author argues that such a restricted approach to fair dealing should not be employed in India due to sociological and technological change and that, by limiting the fair dealing concept to such a rigorous reading of the law, there would be no room for judicial innovation. As a result, the author suggests that a paradigm that is akin to the fair use model in the US be developed. However, it is only urged that the flexibility of the “fair use doctrine” be incorporated into Indian practise, not that the fair dealing laws be fully abolished.

In an economically developing country like India, there is a critical need to promote innovation and creativity in all spheres, including research and creative endeavours like literature, music, and theatre. The broadening of the doctrine's scope will encourage the global developments that India needs to properly engage in. And in order to broaden the same, a flexible and liberal approach like the U.S. doctrine must be taken within the current proviso in order to develop and put into practise a more believable, genuine, and balanced doctrine along the lines of the principles of justice, equity, and good conscience. Last but not least, the changes would create a strong copyright system and bring back the balance and legitimacy that the copyright regime much needs. They would do this by making the fair dealing defence flexible and open-ended while also giving confidence to the rights-holders. However as every coin has two faces, giving flexibility in the interpretation may cause some deviation from the basic principle of law because it will create a question of interpretation. A conflicting opinion may come from various high courts and ultimately the Supreme Court will have to decide the conflicting opinion if any. So a great care and caution must be taken while exercising the flexibility if any given in the law.

XII. BIBLIOGRAPHY

Statutes

- The constitution of India, 1950
- Indian Copyright Act, 1957
- U.S. Copyright Act, 1976.

Books

- Ahuja V K, *Law Relating to Intellectual Property Rights*, (3rd edn, Lexis Nexis. 2021).
- Bently L and Sherman B, *Intellectual Property Law* (3rd edn, Oxford University Press 2009).
- Sreenivasulu NS, *Law relating to Intellectual Property*, (2 edn, Lexis Nexis, 2020).
- Bouchoux DE, *Intellectual Property: The Law of Trademarks, Copyrights, Patents, and Trade Secrets* (4th edn, Delmar 2023).
- Bently L and Sherman B, *Intellectual Property Law* (6th edn, Oxford University Press 2002)

Articles

- Ahmed Sufiya, Fair Dealing in Indian Copyright Law, *Journal of Intellectual property rights* Vol 26, March 2021, pp 96-102.
- Gupta S, 'From Photocopiers to Pirates: Study on Concept of Fair Dealing in Indian Copyright Law with Brief Analysis of DU Photocopy Judgment' (2018) 4 pen acclaims.
- Kimberlee G. W, 'A Comment on the Copyright Exceptions Review and Private Copying' [2005] SSRN Journal.

Online Sources 'Copyright Societies And The Copyright (Amendment) Act, 2012 - Copyright - India' <<https://www.mondaq.com/india/copyright/750676/copyright-societies-and-the-copyright-amendment-act-2012>> accessed 17 February 2024

Craig CJ, 'The Evolution of Originality in Canadian Copyright Law: Authorship, Reward and the Public Interest'

'Doctrine of Fair Dealing in Indian Copyright Law - SURANA & SURANA' <<https://suranaandsurana.com/2022/09/02/doctrine-of-fair-dealing-in-indian-copyright-law/>> accessed 17 February 2024

Gupta S, 'BA.LL.B, Symbiosis Law School, Noida.' (2018) 4

'Hand Book of Copyright Law'

<<https://copyright.gov.in/documents/handbook.html>> accessed 7 October 2023

'J_4_JIPL_2019_163_prakashkumarllm_nliuacin_20230819_225323_1_11.Pdf'

'J_41_RFMLR_2017_204_prakashkumarllm_nliuacin_20230819_225414_1_11.Pdf'

'J_2016_2_HNLU_SBJ_39_prakashkumarllm_nliuacin_20230819_225245_1_12.Pdf'

Singh JPM, 'Evolution of Copyright Law: The Indian Journey'

Weatherall KG, 'A Comment on the Copyright Exceptions Review and Private Copying' [2005] SSRN Electronic Journal <<http://www.ssrn.com/abstract=815328>> accessed 22 August 2023