



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL
ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

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REASSESSING FAIR DEALING UNDER INDIAN COPYRIGHT LAW: A CRITICAL ANALYSIS IN THE DIGITAL AGE

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ABSTRACT

The doctrine of fair use constitutes a central limitation on copyright protection, seeking to balance proprietary interests of authors with the broader public interest in access to knowledge and creativity. This paper offers a critical analysis of the fair use principle under the Copyright Act, 1957, with particular emphasis on its statutory formulation as “fair dealing” under Section 52. Unlike the open-ended, four-factor test employed in jurisdictions such as the United States, the Indian framework adopts a purpose-specific approach, enumerating permissible uses including private or personal use, research, criticism, review, and reporting of current events.

The paper interrogates whether this ostensibly restrictive structure adequately accommodates contemporary modes of content creation and dissemination, especially in the digital environment. It examines judicial interpretations that have, at times, infused flexibility into the doctrine—most notably through the expansion of “public interest” considerations and the recognition of transformative use in cases such as *Civic Chandran v. Ammini Amma* and *The Chancellor, Masters & Scholars of the University of Oxford v. Rameshwari Photocopy Services*. At the same time, inconsistencies in judicial reasoning and the absence of a clear doctrinal test raise concerns regarding predictability and coherence.

Further, the paper critically evaluates the tension between copyright enforcement and fundamental rights, particularly the right to freedom of speech and expression under Article 19(1)(a) of the Constitution of India. It argues that while the fair dealing provision has been interpreted progressively, its closed-list structure may inadequately respond to emerging issues such as digital sampling, user-generated content, and algorithmic reproduction.

Ultimately, the paper contends that a recalibration of the fair use framework in India—either through legislative reform or principled judicial standardization—is necessary to ensure that

copyright law remains responsive to technological change while preserving its foundational objective of promoting creativity and public access.

KEYWORDS: Fair Dealing Doctrine (India); Copyright Limitations and Exceptions; Transformative Use in Copyright Law; Digital Content, AI, and User-Generated Works; Freedom of Expression and Copyright Balance.

INTRODUCTION

Copyright law is premised on a fundamental tension between the protection of authors' proprietary interests and the societal need for access to knowledge, culture, and information. As an integral component of intellectual property law, copyright seeks to incentivise creativity by granting exclusive rights to creators, while simultaneously ensuring that such monopolies do not stifle further innovation or public discourse. It is within this balancing framework that the doctrine of fair use—referred to as “fair dealing” under the Copyright Act, 1957—assumes critical importance.

The doctrine operates as a limitation or exception to copyright infringement, permitting certain uses of protected works without the author's consent. In India, this principle is codified under Section 52 of the Act, which adopts a purpose-specific or “closed-list” approach by enumerating specific categories such as private or personal use, research, criticism, review, and reporting of current events.[1] This contrasts with the more flexible, open-ended fair use doctrine in jurisdictions like the United States, which relies on a multi-factor test to assess fairness on a case-by-case basis.[2] The Indian model, while providing statutory clarity, has often been criticised for its rigidity in addressing novel and technologically driven forms of content usage.

The increasing digitisation of information, coupled with the rise of user-generated content, artificial intelligence, and algorithmic dissemination, has placed unprecedented strain on traditional copyright frameworks. Activities such as digital sampling, meme culture, and platform-based content sharing frequently operate in legal grey areas, raising questions about the adequacy of existing fair dealing provisions. In this context, the judiciary has played a significant role in interpreting and, at times, expanding the scope of fair dealing to align with evolving societal and technological realities. Decisions such as *Civic Chandran v. Ammini*

Amma[3] and *The Chancellor, Masters & Scholars of the University of Oxford v. Rameshwari Photocopy Services*[4] reflect attempts to incorporate considerations of public interest, access to education, and transformative use into the Indian copyright landscape.

At the constitutional level, the fair dealing doctrine intersects with the right to freedom of speech and expression under Article 19(1)(a) of the Constitution of India. Copyright enforcement, if applied rigidly, has the potential to create a chilling effect on speech, creativity, and academic discourse. Conversely, an overly expansive interpretation of fair dealing may undermine the economic rights of authors. This duality necessitates a careful and principled balancing approach, one that is both legally coherent and responsive to contemporary realities. This study is situated within this broader discourse and seeks to critically analyse the scope, limitations, and evolving contours of the fair dealing doctrine under Indian copyright law. It aims to evaluate whether the existing statutory framework, as interpreted by courts, sufficiently accommodates the demands of the digital age while maintaining doctrinal consistency and predictability. By engaging in a doctrinal and comparative analysis, the paper further explores the potential need for legislative reform or judicial standardisation to ensure that the copyright regime continues to fulfil its dual objectives of incentivising creativity and promoting public access.

STATUTORY FRAMEWORK OF FAIR DEALING IN INDIA

The statutory architecture of copyright law in India is primarily governed by the Copyright Act, 1957, which delineates both the exclusive rights of copyright holders and the limitations imposed upon those rights in the interest of public welfare. Central to this limitation framework is Section 52, which embodies the doctrine of “fair dealing” and enumerates specific acts that do not constitute copyright infringement. Unlike jurisdictions that adopt an open-ended standard, the Indian approach is characterised by a closed-list model, whereby only those uses explicitly mentioned within the statute qualify for protection.[5]

Section 52(1) sets out a range of permitted acts, including fair dealing for purposes such as private or personal use, including research; criticism or review; and the reporting of current events.[6] The provision further extends to educational uses, judicial proceedings, and certain acts by libraries and archives, thereby reflecting a legislative intent to balance proprietary rights with broader societal interests such as access to education and dissemination of information.

However, the statutory language does not define the term “fair dealing,” leaving its interpretation to judicial discretion.

The absence of a precise statutory definition has resulted in courts developing interpretive criteria to determine what constitutes “fairness.” Indian courts have often drawn upon common law principles and comparative jurisprudence, particularly from the United Kingdom, where fair dealing similarly operates as a purpose-based exception.[7] At the same time, Indian jurisprudence has occasionally incorporated elements resembling the U.S. fair use doctrine, such as the consideration of the purpose, character, and impact of the use, thereby introducing a degree of flexibility within an otherwise rigid framework.

A critical distinction between fair use and fair dealing lies in their structural design. While fair use under the Copyright Act of 1976 employs a four-factor test—evaluating purpose, nature, amount, and market effect—the Indian model restricts permissible use to predefined categories.[8] This structural limitation has significant implications in the digital era, where new forms of content creation often do not fit neatly within traditional categories. For instance, transformative works such as parodies, remixes, and digital memes may struggle to find clear statutory protection unless they can be subsumed under “criticism” or “review.”

The legislative history of Section 52 reveals an incremental expansion of exceptions, particularly through amendments aimed at accommodating educational and technological developments. The Copyright (Amendment) Act, 2012 introduced provisions addressing digital storage, transient and incidental copies, and access for persons with disabilities, signalling a recognition of evolving user needs.[9] Nevertheless, these amendments have not fundamentally altered the closed-list nature of fair dealing, thereby preserving the underlying structural constraint.

In addition to domestic legislation, India’s fair dealing framework is influenced by its international obligations under instruments such as the Berne Convention for the Protection of Literary and Artistic Works and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).[10] These agreements incorporate the “three-step test,” which permits limitations on copyright only in certain special cases, provided they do not conflict with the normal exploitation of the work or unreasonably prejudice the legitimate interests of the author.[11] While Section 52 is broadly consistent with this standard, tensions may arise

where expansive judicial interpretations risk exceeding the boundaries of permissible exceptions under international law.

Overall, the statutory framework of fair dealing in India reflects a cautious and structured approach to copyright limitations. While it provides a degree of certainty through enumerated exceptions, its rigidity poses challenges in addressing the dynamic and rapidly evolving landscape of content creation and dissemination. This tension between certainty and flexibility forms the foundation for subsequent judicial interpretation and critical analysis.

JUDICIAL INTERPRETATION AND DOCTRINAL EVOLUTION

In the absence of a precise statutory definition of “fair dealing” under the Copyright Act, 1957, the judiciary has assumed a central role in shaping the contours of the doctrine in India. Courts have not only interpreted the scope of Section 52 but have also infused the provision with flexibility to address evolving social, educational, and technological contexts. This judicial engagement has led to the gradual development of a quasi-doctrinal framework, albeit one marked by inconsistency and case-specific reasoning.

One of the earliest and most significant contributions to the doctrine is found in *Civic Chandran v. Ammini Amma*, wherein the Kerala High Court articulated key factors for determining fairness, including the purpose of the use, the nature of the work, the amount and substantiality of the portion used, and the effect on the market.[12] Although the Indian statute does not explicitly prescribe such a test, the court’s reasoning closely mirrors the multi-factor approach found in U.S. jurisprudence, thereby introducing analytical flexibility into the Indian framework. Importantly, the court recognised parody as a legitimate form of criticism, thereby expanding the interpretive scope of fair dealing.

The Delhi High Court’s decision in *The Chancellor, Masters & Scholars of the University of Oxford v. Rameshwari Photocopy Services* further advanced the doctrine by foregrounding the role of public interest and access to education.[13] The case concerned the preparation of course packs by a university photocopy service, which reproduced substantial portions of copyrighted academic works. The court held that such use fell within the ambit of fair dealing for educational purposes, emphasising that copyright law must not impede the dissemination of knowledge. This judgment marked a significant shift towards a more user-oriented

interpretation of copyright limitations, particularly in the context of educational institutions.

Subsequent decisions have continued to reflect this trend of judicial innovation, albeit without a uniform doctrinal standard. Courts have occasionally invoked the concept of “transformative use,” assessing whether the secondary use adds new expression, meaning, or message to the original work.[14] However, the absence of explicit statutory recognition of this concept has resulted in uneven application and doctrinal ambiguity. In some instances, courts have prioritised the economic rights of authors, while in others, they have leaned towards broader considerations of public interest and freedom of expression.

The constitutional dimension of fair dealing has also gained prominence in judicial reasoning. Courts have increasingly acknowledged the intersection between copyright law and the right to freedom of speech and expression under Article 19(1)(a) of the Constitution of India. This is evident in decisions that caution against an overly restrictive interpretation of copyright, which could have a chilling effect on creativity, academic discourse, and democratic engagement.[15] At the same time, courts have recognised that this right is not absolute and must be balanced against the legitimate interests of copyright holders under Article 19(2).

Despite these progressive developments, Indian jurisprudence on fair dealing remains fragmented. The reliance on case-by-case adjudication, without a clearly articulated and consistently applied test, undermines predictability and legal certainty. Unlike jurisdictions with codified multi-factor frameworks, Indian courts operate within the constraints of a purpose-based statutory model, often stretching its interpretive boundaries to accommodate novel situations. This results in a hybrid doctrine that combines elements of rigidity and flexibility, but lacks doctrinal coherence.

In sum, judicial interpretation has played a transformative role in expanding the scope of fair dealing in India, bridging gaps left by the statutory framework. However, the absence of a unified analytical standard continues to pose challenges, necessitating either judicial consolidation or legislative intervention to ensure clarity and consistency in the application of the doctrine.

CRITICAL ANALYSIS AND CONTEMPORARY CHALLENGES

The statutory and judicial evolution of the fair dealing doctrine in India reveals an inherent tension between legal certainty and adaptive flexibility. While the framework under the Copyright Act, 1957 provides a structured set of exceptions, its closed-list approach has increasingly come under scrutiny in light of rapid technological advancements and shifting modes of content creation. This chapter critically evaluates the adequacy of the existing framework and its capacity to address contemporary challenges.

A primary limitation of the Indian fair dealing regime lies in its purpose-based design. By restricting permissible uses to enumerated categories under Section 52, the statute creates interpretive rigidity, particularly when confronted with novel forms of expression that do not fit neatly within traditional classifications.[16] Unlike the open-ended fair use doctrine under the Copyright Act of 1976, which allows courts to assess fairness through a flexible, multi-factor analysis, the Indian model often requires judicial creativity to extend existing categories to new contexts. This has resulted in doctrinal stretching, where courts subsume emerging uses—such as parody, satire, or digital remixing—within the ambit of “criticism” or “review,” sometimes without clear analytical justification.

The digital environment exacerbates these challenges. The proliferation of user-generated content on online platforms, the ubiquity of memes, and the increasing reliance on algorithmic systems for content dissemination raise complex questions about authorship, originality, and infringement. For instance, digital sampling and remix culture often involve the incorporation of copyrighted material into new works that are transformative in nature but may not clearly fall within the statutory exceptions. Similarly, artificial intelligence (AI)-driven content generation introduces additional layers of complexity, particularly in determining whether machine-assisted uses can be considered “fair” under a human-centric legal framework.

Another critical concern is the potential chilling effect of copyright enforcement. The lack of a clear and predictable standard for fair dealing may discourage individuals, educators, and creators from engaging in legitimate uses of copyrighted material due to fear of litigation.[17] This is particularly significant in the Indian context, where access to educational resources and the free flow of information are closely tied to broader developmental objectives. The decision in the *Rameshwari Photocopy* case illustrates judicial sensitivity to these concerns; however,

such progressive interpretations are not uniformly applied, leading to uncertainty in the law. From a comparative perspective, the U.S. fair use model offers a more adaptable framework, enabling courts to respond dynamically to technological change through its four-factor test. However, transplanting such a model into the Indian legal system raises its own challenges, including concerns about excessive judicial discretion and reduced statutory clarity. The Indian approach, while more predictable in theory, risks obsolescence if it fails to evolve in tandem with technological realities.

Furthermore, the interplay between domestic copyright law and international obligations adds another layer of complexity. The “three-step test” under the Berne Convention for the Protection of Literary and Artistic Works and the Agreement on Trade-Related Aspects of Intellectual Property Rights requires that exceptions be confined to certain special cases and not conflict with the normal exploitation of the work.[18] Expansive judicial interpretations of fair dealing, while socially desirable, may risk breaching these international standards if not carefully calibrated.

A further issue concerns the lack of doctrinal coherence in judicial reasoning. While courts have occasionally adopted factors resembling the U.S. fair use test, there is no consistent methodology or hierarchy of considerations. This results in a fragmented body of case law, where outcomes are often dependent on the specific facts of each case rather than a stable legal principle. Such inconsistency undermines the rule of law and complicates compliance for both rights holders and users.

In evaluating the adequacy of judicial innovation, it becomes evident that while courts have played a crucial role in mitigating the rigidity of the statutory framework, their interventions are inherently limited. Judicial expansion, in the absence of legislative backing, risks creating uncertainty and may not provide a sustainable solution to systemic issues. Therefore, a more coherent and forward-looking approach—either through legislative reform introducing a hybrid or open-ended model, or through authoritative judicial standardisation—is necessary.

In conclusion, the Indian fair dealing framework, while grounded in a well-intentioned balance between rights and access, faces significant challenges in the digital age. Its continued relevance depends on its ability to reconcile doctrinal clarity with functional adaptability, ensuring that copyright law remains both effective and equitable in a rapidly evolving creative ecosystem.

CONCLUSION AND SUGGESTIONS

This study has critically examined the doctrine of fair dealing under the Copyright Act, 1957, situating it within the broader tension between the protection of authors' rights and the imperatives of public access, free expression, and technological innovation. The analysis demonstrates that while the Indian framework provides a structured and enumerated set of exceptions under Section 52, its closed-list design imposes inherent limitations in responding to the complexities of the digital age.

A key finding of this study is that judicial intervention has played a pivotal role in mitigating the rigidity of the statutory framework. Through decisions such as *Civic Chandran v. Ammini Amma* and *The Chancellor, Masters & Scholars of the University of Oxford v. Rameshwari Photocopy Services*, courts have expanded the interpretive scope of fair dealing by incorporating considerations of public interest, access to education, and, to a limited extent, transformative use. However, this evolution remains fragmented and lacks a consistent doctrinal foundation, resulting in uncertainty and unpredictability in the application of the law. The study further identifies significant doctrinal gaps in the current framework. The absence of a clear definition of "fair dealing," coupled with the lack of a structured analytical test, creates ambiguity for both rights holders and users. Additionally, emerging forms of content creation—such as digital remixing, user-generated content, and artificial intelligence-driven outputs—do not fit comfortably within the existing statutory categories. This disconnect raises concerns about the continued relevance and effectiveness of the present legal regime.

In light of these findings, the study argues for a recalibration of the fair dealing doctrine in India. One potential approach is legislative reform aimed at introducing a more flexible, hybrid model that retains the clarity of enumerated purposes while incorporating guiding factors akin to the fair use doctrine under the Copyright Act of 1976.^[19] Such a model would enable courts to assess fairness in a more nuanced and context-sensitive manner, without abandoning the structural safeguards of the current system.

Alternatively, in the absence of immediate legislative reform, there is a pressing need for judicial standardisation. Higher courts, particularly the Supreme Court of India, could articulate a coherent set of factors to guide the interpretation of fair dealing, thereby enhancing consistency and predictability. This would involve synthesising existing jurisprudence into a

unified doctrinal framework that balances economic rights with constitutional values, including the right to freedom of speech and expression under Article 19(1)(a).

Any reform or standardisation must also remain consistent with India's international obligations under the Berne Convention for the Protection of Literary and Artistic Works and the Agreement on Trade-Related Aspects of Intellectual Property Rights, particularly the three-step test.[20] A carefully calibrated expansion of fair dealing, grounded in reasonableness and proportionality, can satisfy these requirements while promoting broader access to knowledge and culture.

In conclusion, the future of fair dealing in India lies in its ability to evolve beyond rigid statutory confines and embrace a more dynamic and principled approach. By aligning legal doctrine with technological realities and constitutional values, the Indian copyright regime can better fulfil its dual objectives of incentivising creativity and ensuring equitable access to information. The need of the hour is not merely incremental adjustment, but a thoughtful reimagining of the balance between exclusivity and access in a rapidly transforming digital landscape.

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11. Berne Convention, art. 9(2); TRIPS Agreement, art. 13.
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14. See comparative influence from Copyright Act of 1976, 17 U.S.C. § 107.
15. Constitution of India, art. 19(1)(a) read with art. 19(2).
16. Copyright Act, 1957, s. 52.
17. See discussion on chilling effect in copyright enforcement and free speech concerns.
18. Berne Convention for the Protection of Literary and Artistic Works, art. 9(2); Agreement on Trade-Related Aspects of Intellectual Property Rights, art. 13.
19. Copyright Act of 1976, 17 U.S.C. § 107.
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