

Copyright and Satire: An Indian Legal Perspective in a Global Context

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The journey of copyright law has always witnessed an interesting interaction between protection of original work and respecting fundamental right of speech and expression. One subset of this is the relation between copyright and satire. Authors, critics, comedians and cultural commentators have the right to make fun of work which often gets constitutional protection in liberal democracies. But while doing this how does it interfere with copyright jurisprudence remains underexplored. This article examines legal status of satire in Copyright law in India while comparing with the international legal landscape through countries like United States, United Kingdom, Canada and Australia.

Keywords: Copyright, Satire, Right of Free Speech and Expression, Digital Media

Copyright law prohibits reproduction of work without authorization unless there is statutory exception. In India this is covered under Sec 52(1)(a) of Copyright Act 1957. But Indian law does not explicitly recognize satire or parody as statutory exception. *Civic Chandran v Ammini Amma*¹ has demonstrated an attempt to reconcile private interest in copyright enforcement and public interest in free speech. The recent controversy of comedian Kunal Kamra and T-Series is an indicator of issues involved in this area.² The countries like US, UK and Canada have tried to address the issue in their own way while India has not adopted any clear stand while leaving it to the court to decide. This failure to protect satire explicitly within fair use has caused chilling effect on free speech, especially in today's world of digital and social media. The comedians, meme creators, political cartoonists and social media users are all at the receiving end of this situation.

In the digital world where creative expression spreads through social media, satire has emerged as a powerful player for these platforms. Satire plays an important role in democratic discourse by critiquing politics, social norms and popular culture and through this it provokes thought, questions authority and entertains public. But while doing this can it borrow or build on copyrighted material is the uneasy question. The legal position of satire in copyright law stands in the midst of legal right, creative freedom and social value.

The copyright law needs to balance the interest of copyright owners with larger public interest in free speech and access to knowledge. To what extent author can control the use of his work is the key question which will maintain this balance. It is true that comedians often use existing literature, film, music, visual art to develop the satire and thus becomes vulnerable to copyright infringement accusation. The number of satirical memes, video remixes and comedy that are present in platforms like You Tube and Twitter have aggravated the situation. In response to these random takedown notices will have chilling effect on free speech. If copyright law does not unequivocally recognize satire as exception, then it will become a tool for censorship, especially by powerful right owner against independent voices.

The essential difference between parody and satire is that parody targets the original work itself for the purpose of critiquing whereas satire uses portion of copyrighted work for critiquing something completely different. For example, parody of a movie can make fun of its hero whereas if a scene from a movie can be used to critique a politician in satire. This difference between parody and satire is also reflected when it comes to their interaction with law, thus parody is more easily protected under copyright law but not satire.

Deepfake, AI generated voiceover and algorithmically remixed videos have been used to create different derivative works which often becomes recourse for satire. The law's inability to respond to this digital culture has created legal risk for satirists

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and consequently has undermined public discourse. This makes the debate more relevant that whether current legal regime has evenly balanced the interest of copyright owner and the larger public interest in free speech. This is not only a legal concern but also a democratic imperative.

Philosophical Justification

Satire works as a mirror to society as it reflects flaws and contradictions through humour. The Greeks used comic forms to critique social norms. In Latin satire means “satura” i.e. mixture of Roman verse with humour.³ The satirist was supposed to take a quasi-philosophical role to observe and judge human behavior and demanding them to be accountable to ethics. Writers like Jonathan Swift and Alexander Pope marked the golden age of satire during 17th and 18th century.³ Michel Foucault’s critique of knowledge – power dynamics within a social discourse exposes dominant narratives that highlights how power controls culture and society.⁴ Satire often draws heavily from these critical theories. The rise of mass communication and digital media in the modern age has expanded the reach of satire and transformed its style. Satire’s role as moral or philosophical guide is facing a challenge from digital media, fake news, memes and algorithmic manipulations.

Indian Treatment of Fair Use

Copyright law maintains a balance between protecting rights of creators and ensuring access to information and this balance is generally maintained through the concept of fair use. Unlike United States, India’s fair dealing concept is more purpose -specific. Indian courts have interpreted fair dealing concept in conjunction with the spirit of constitutional guarantee of free speech under Art 19(1)(a) of the Indian Constitution.¹ Fair use is allowed for private or personal use including research, criticism, review, reporting of current events etc. under Sec 52(1) of Copyright Act. These specific purposes are indicative of that the legislature has created space for critical engagement with copyrighted material. Similarly, the right to free speech includes freedom to express opinion, criticize government and engage in public discourse under Art 19(1)(a) of the Indian Constitution. Copyright law must be read harmoniously with constitutional right.⁵ Copyrighted material needs to be quoted in content like criticism, parody, commentary and news reporting, thus Courts

have played an important role so that copyright cannot be used as tool for censorship.

In *Civic Chandran*¹, Court observed that criticism and social critic are pillars of democratic society and copyright law should contribute to it. The court felt that criticism and review in theatre are integral part of free speech and copyright law must facilitate that. The Delhi High Court quoted⁶ Lord Denning to explain mechanism to determine fair dealing in following manner “It is impossible to define what is fair dealing. It must be a question of degree. You must consider first the number and extent of the quotations and extracts. Are they altogether too many and too long to be fair? Then you must consider the use made of them. If they are used as a basis for comment, criticism or review, that may be fair dealing. If they are used to convey the same information as the author, for a rival purpose, that may be unfair. Next, you must consider the proportions. To take long extracts and attach short comments may be unfair. But short extracts and long comments may be fair.”⁷

The use of short clips was considered as fair dealing under review and reporting of news by Delhi High Court in *India TV Independent News Service Pvt. Ltd. v Yashraj Films Pvt. Ltd*⁸ and the court observed that copyright cannot be used against news reporting as it would be contrary to fundamental right to free speech.

Copyright Act 1957 does not specifically enumerate parody or satire within its fair use provision but courts have interpreted them within fair dealing, so much so that they can promote free speech. The category of parody and satire often requires use of copyrighted material to be more effective. Such transformative use is very critical to promote a democratic society and they need protection.

The reproduction of copyrighted material for private use, research and instructional use in educational institution is allowed under Sec 52 of Copyright Act 1957. This ensures access to information and academic freedom which fosters vibrant democracy. This is more relevant in today’s age of digital education. Copyright system must ensure that there is no monopoly of knowledge and students and teachers can freely use diverse copyrighted material.⁹

Indian courts have given wider interpretation to fair dealing doctrine but even then, it is much restricted as it is based on specific purposes in comparison with

jurisdiction which uses four factor test. This has a potential to create chilling effect on free speech as certain types may fall outside that purpose specific list like mashups, memes, fan fictions which are transformative but not certain whether will get protection from the court as they may not directly fall under review or criticism. Thus, statutory recognition of satire and parody is necessary to creative confidence in the mind of content developers.

Position under US Copyright Law

In a jurisdiction whether satire is protected under fair use treatment is decisive factor for the treatment of copyright law toward satire. Sec 107 of US Copyright Act provides copyright protection. The four factors which have been used to determine whether a treatment to a work will fall within fair use are –

- (i) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes
- (ii) the nature of the copyrighted work;
- (iii) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- (iv) the effect of the use upon the potential market for or value of the copyrighted work.

A parody mimics the original work to make a comment where as a satire uses original work to comment on a social issue but both of them receives protection from US Courts under fair use.¹⁰ US Supreme Court decided that parody can be protected as fair use even if it is a commercial parody so long it is transformative.¹¹ The question is if parody can be protected as fair use, why not satire. Satirical verses, memes need protection to keep harmony with First Amendment Right. Court needs to take more expansive meaning of transformative work to support political and cultural commentary in a democratic set up.

The story of *Gone with the Wind* focuses on the story of life of a wealthy slave owner during the American Civil War, *The Wind Done Gone* tells the story from a view point of an African American slave. The Eleventh Circuit held that the *Wind Done Gone* is protected by fair use and free speech and reversed the injunction. Parody can be redefined to include both parodic as well as satirical work.

Position under UK Copyright Law

The UK Copyright Law also provides limited purposed specific exception to infringement. The Copyright and Rights in Performances (Quotation and

Parody) Regulations 2014 has expanded fair use protection to caricature and parody.¹² These exceptions are narrowly interpreted so that they do not conflict normal exploitation of the work. The satire has not been specifically legislated within fair use clause, so Court offers a careful interpretation which makes satirical authors vulnerable. The European Court of Justice observed that a parody has to express a work through humour and mockery.¹³ UK Courts may take this view and extend protection to satire.

In *Samherji HF -v- Oddur Fridriksson*¹⁴ the court held that the artist's spoof website amounted intellectual property infringement rather than artistic parody as court felt that the intention behind the website was to deceive rather to create parody.

Position under Copyright Law, Canada

Canada has always emphasized importance of liberal democracy based on natural law. Canadian Charter of Rights and Freedoms (1982) has documented "everyone has the fundamental freedoms of "thought, belief, opinion and expression, including freedom of the press". So even in the absence of specific exception for satire and parody in copyright law, copyright law would never curb free speech as the Copyright Act required to harmonize with the Charter. The SCC in *Galerie d'Art du Petit Champlain Inc. et al.*⁴ *Théberge*, in interpreting the meaning of "reproduction" within the Copyright Act, held that it is important to recognize the creator's rights while "giving due weight to their limited nature." Therefore, "[e]xcessive control by holders of copyrights and other forms of intellectual property may unduly limit the ability of the public domain to incorporate and embellish creative innovation in the long-term interests of society as a whole, or create practical obstacles to proper utilization".¹⁵ Canadian Copyright law has made a significant contribution through Copyright Modernization Act 2012 by specifically including parody and satire within exception to copyright infringement.¹⁶ This bold move has brought the Canadian law very close to US standard and truly contributed in making a democratic society. The Canadian Supreme Court has given fair dealing a status of a right in *CCH v Law Society, Upper Canada*, 2004.¹⁷ This Canadian approach should be considered as model for India as this will rightly facilitate free speech and access to information which is undoubtedly key to a successful democracy.

Position under Copyright Law, Australia

Copyright law of Australia has also made a major advancement after 2014 amendment. It has specifically included fair use protection of parody and satire.¹⁸ This has made the law progressive and instrumental in protecting free speech. The absence of definition of parody and satire may cause some confusion, nonetheless this addition has given confidence to many authors. The working formula to differentiate is that parody mocks at the work whereas satire uses the work to mock at other issues. This protection is also available when use is a commercial one provided the fairness is proved. The intention behind the use and transformative use are key indicator for fairness. This necessitates determination of fair use on case-to-case basis which is not ideal but this legislative change is a positive movement towards democratic society.

In *AGL Energy Limited v Greenpeace Australia Pacific Limited*¹⁹ AGL sued Greenpeace for using AGL’s logo to describe AGL as Australia’s Greatest Liability. The Federal Court of Australia ruled that the campaign was protected under fair use for parody or satire.

In a comparative scale, US continues to be the most flexible jurisdiction for fair use treatment due to open ended format, Canada and Australia have incorporated specific inclusion of parody and satire within legislative framework and resulted into gaining confidence of authorial community but UK and India need to make the decisive move through legislative amendment (Table 1).

Satire, Digital Technology and Copyright

Digital media has amplified the scope of satirical expression and Copyright law should respond to it in such a way that it continues to facilitate free speech in a democratic set up. In this age of digital technology, the line between satire, copyright infringement and defamation are getting blurred rapidly. With the advent of social media and digital content, enforcing defense of satire in copyright infringement is becoming very complex.

Digital platforms like You Tube, Facebook has revolutionized the creation and distribution of content. Today anyone with a smart phone can crate a satirical content in no time and reach out to the whole world. This advantage has also given birth to some legal

complexities. Contents are copied, mixed and distributed by using digital technology in such a way that there can be confusion about authorship and originality leading toward creating uncertainty about transformative work. A meme which mocks at a politician by using a copyrighted film can be treated as political satire but can also raise issues regarding infringement depending on length and impact.

Platforms like You Tube removes copyrighted material by using technology called Content ID though legally speaking use may be satirical use and protected by fair use doctrine. As these are fully automated technology without any human interference, it becomes difficult to oppose it. The only option remains is legal solution which is time taking and uncertain. These platforms often use own guideline or community standard which may not necessarily match with Indian position. This creates confusion for satirical authors.

Indian government has the power to instruct platforms to remove content through Information Technology (Intermediary Guideline and Digital Media Ethics Code) Rules 2021. Though the objective is to curb fake news and hate speech but often satirical criticism against powerful institutions is targeted through this. Memes are always very effective form of satire to criticize wrong policies but as generally they use copyrighted content be it text, image, video, or music, copyright owners are ready to go against them. Even the usages are transformative but author often argues that the use has harmed their reputation and thereby affected their moral right under Sec 57 of Copyright Act. Hypothetically if a heroic scene of a movie is used for a comic jab against a political figure, through the intention is clear to viewers but author may find them to be derogatory if not defamatory. As the volume of material gets uploaded is enormous, it becomes impossible to monitor them manually, thus copyright owners go for automated flagging system or broad notices which are often disproportionate. Tracking the origin of meme is also difficult as identical content is shared with multiple platforms with slight variation. This complicates the matter along with the fact of anonymity. Platform liability has to be reassessed and more emphasis is to be given for accessible appeal procedure with human involvement.

Table 1 — Position of parody and satire under copyright law in different jurisdictions

USA	UK	CANADA	AUSTRALIA
If parody can be protected as fair use, why not satire?	The satire has not been specifically legislated within fair use clause.	Included parody and satire within exception to copyright infringement.	Specifically included fair use protection of parody and satire.

Conclusion

In today's digital world where we are operating in a global market, Indian copyright law has to match the world standard and satire which is a prominent form expression in a democratic set up, we need to find a proper balance between copyright law and freedom of speech and expression.

Proposed Amendment to Copyright Act, 1957

Sec 52 needs to insert a new clause like this – “The making or use of literary, artistic, dramatic, musical work and cinematograph film and sound recording for the purpose of satire and parody, provided it does not affect legitimate interest of the right owner”.

To conclude, one has to reemphasis that the objective of copyright law is to facilitate free speech. Satire and parody are undoubtedly extension of free speech. A democratic country like India has the obligation to demonstrate its commitment to free speech and to that effect it has to offer protection to author of satire and parody, so that they can work without the fear of litigation from copyright owner. The jurisprudence of transformative work needs to grow in consonance with the digital environment offered through Internet, so that it gives birth to a culturally progressive society. The judicial intervention while dealing with interpretation of fair dealing, has to maintain balance between constitutional spirit of free speech and necessary protection to copyright owner. It is then the ecosystem of creativity and free speech will go hand in hand to develop a culturally vibrant democratic society.

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- 5 *Indian Performing Right Society Ltd. v Sanjay Dalia* (2015).
- 6 *Super Cassettes Industries Ltd. v Hamar Television Network Pvt. Ltd.* (2010).
- 7 *Hubbard & Anr. v Vosper & Anr.* (1972) 2 Q.B. 84.
- 8 2013 (53) PTC 586 (Del).
- 9 *University of Oxford v Rameshwari Photocopy Services*, 2016 SCC Del 6229.
- 10 Nimmer on Copyright, Lexis Nexis.
- 11 Parody, like other comment and criticism, may claim fair use. Under the first of the four § 107 factors, “the purpose and character of the use, including whether such use is of a commercial nature . . . ,” the enquiry focuses on whether the new work merely supersedes the objects of the original creation, or whether and to what extent it is “transformative,” altering the original with new expression, meaning, or message. *Campbell v Acuff-Rose Music, Inc.* (1994).
- 12 30A Caricature, parody or pastiche
- (1) Fair dealing with a work for the purposes of caricature, parody or pastiche does not infringe copyright in the work.
- (2) To the extent that a term of a contract purports to prevent or restrict the doing of any act which, by virtue of this section, would not infringe copyright, that term is unenforceable.”
- 13 The essential characteristics of parody, are, first, to evoke an existing work, while being noticeably different from it, and secondly, to constitute an expression of humour or mockery. The concept of ‘parody’, within the meaning of that provision, is not subject to the conditions that the parody should display an original character of its own, other than that of displaying noticeable differences with respect to the original parodied work; that it could reasonably be attributed to a person other than the author of the original work itself; that it should relate to the original work itself or mention the source of the parodied work. *Deckmyn v Vandersteen* (CJEU, 2014).
- 14 [2024] EWHC 2892 (Ch).
- 15 Lai A, *The Natural Right To Parody: Assessing The (Potential) Parody/Satire Dichotomies In American And Canadian Copyright Laws*. 2018 CanLIIDocs 151.
- 16 29. Fair dealing for the purpose of research, private study, education, parody or satire does not infringe copyright.
- 17 Procedurally, a defendant is required to prove that his or her dealing with a work has been fair; however, the fair dealing exception is perhaps more properly understood as an integral part of the Copyright Act than simply a defence. Any act falling within the fair dealing exception will not be an infringement of copyright. The fair dealing exception, like other exceptions in the Copyright Act, is a user's right.
- 18 41A Fair dealing for purpose of parody or satire A fair dealing with a literary, dramatic, musical or artistic work, or with an adaptation of a literary, dramatic or musical work, does not constitute an infringement of the copyright in the work if it is for the purpose of parody or satire.
- 19 [2021] FCA 625.