



Fair Dealing Unveiled In India: Evolution And Challenges

Abhishek Yadav

Student

Amity Law School Noida, Amity University Noida

ABSTRACT

Copyright law operates on a delicate equilibrium between the rights of copyright owners and the interests of the general public. Fair dealing is an essential and fundamental element of copyright law. This philosophy is crucial to achieving a delicate balance between authors' competing monopolistic interests and the larger creative interests of society as a whole. The primary objective of this paper is to delve into a comprehensive analysis of the fair dealing doctrine, tracing its development, scrutinizing its inherent limitations, and examining its practical application, all within the specific context of India. This examination aims to shed light on how a delicate equilibrium is established and maintained between the exclusive rights granted to authors and creators and the broader interests of the public in a country marked by rapid progress and growth, which is India.

To achieve this overarching goal, the study will adopt a multifaceted approach. It will not only dissect the legal provisions meticulously outlined in statutory frameworks but also delve into the intricate nuances of the fair dealing doctrine as interpreted and clarified through judicial precedents. By combining these legal perspectives, the analysis seeks to provide a comprehensive and nuanced understanding of the subject matter at hand.

In essence, this paper endeavors to serve as a substantial exploration of fair dealing in the Indian context, bridging the gap between legal theory and practical application. It strives to offer a comprehensive view of the evolution, constraints, and implementation of fair dealing, ultimately contributing to a deeper understanding of how copyright law operates in a nation experiencing rapid transformation and progress. By shedding light on the intricacies of fair dealing, the paper aims to illuminate the path for a more informed and nuanced approach to copyright regulation within a dynamic and evolving societal landscape.

KEYWORDS: fair dealing, fair use, protection, infringement, transformative nature, substantial taking, copyright act, intellectual property rights,

INTRODUCTION

In the world of writing and publishing, a common query often centers around how much of someone else's literary work can be used without needing permission. The answer to this question is rooted in the concept of fair dealing and its boundaries.

Normally, any unauthorized use of a work's copyright constitutes a violation of that work's copyright. However the law does permit some unauthorized uses of copyrighted works for specific purposes, and these uses are not viewed as infringements of the original work.. The reproduction of a portion of the copyrighted work for uses like research, private study, criticism, news reporting, teaching, reviewing, etc. constitutes the legal basis for this unauthorized use. Fair use or "fair dealing" is the term used to describe this unauthorized use.

Copyright law allows individuals to utilize copyrighted material for certain purposes without the need for permission. The copyright system can be perceived as an endeavor to harmonize two divergent theories: fairness theory and welfare theory. Fairness theory revolves around the author, giving prominence to their rights and bestowing upon them exclusive opportunities for financial gain from their creations. Conversely, welfare theory places a higher priority on the well-being of society as a whole, with the objective of guaranteeing that the works generated by authors are accessible to society to serve the greater public interest. This duality of focus underscores the complex balancing act at the heart of copyright law.

The fundamental justification for allowing exceptions like fair dealing is rooted in the belief that, in certain specific circumstances, permitting a potentially infringing use of copyrighted work may lead to greater public benefit than outright prohibiting such use. This principle acknowledges the importance of balancing copyright protection with broader societal interests.

In the present day, the doctrine of "fair dealing" or "fair use" has become an essential component of the legal frameworks in almost every country. This underscores the significance of maintaining a delicate balance between safeguarding the rights of creators and ensuring public access to knowledge and culture.

A. *Literature Review:*

1.Elizabeth Verkey, *Intellectual Property Law and Practice*¹.

The author emphasizes the importance of carefully interpreting the doctrine of fair dealing within copyright law. This doctrine allows for the reproduction of copyrighted works without the copyright owner's permission, provided certain conditions are met. It is crucial to interpret this provision in a way that strikes a balance between the rights of the copyright owner and the interests of the general public.

¹ Elizabeth Verkey, *Intellectual Property* (Eastern Book Company, 2nd edn., 2021).

2. Jatindra Kumar Das, *Law of Copyright*²

The author offers a comprehensive exploration of fair dealing in specific types of works, supported by references to statutes³ and judicial precedents. The discussions encompass fair dealing in the context of private and personal use, research, criticism, review, and reporting of events. Additionally, the author delves into the intricacies of fair dealing with digital works, considering the implications and applications in educational institutions. Furthermore, the author points out the limitations that surround the concept of fair dealing in these various contexts.

3. Alka Chawla, *Law of Copyright-Comparative perspectives*⁴

The author provides an extensive explanation of the doctrine of fair dealing, primarily using the Indian Copyright Act of 1957⁵ as a reference point. To clarify the concept, the author draws on various judicial precedents. Additionally, the author delves into the provisions outlined in the act regarding fair dealing in the context of research and criticism. In doing so, the author summarizes the overarching principles that guide fair dealing within the framework of copyright law discussed by the judiciary.

4. Ayush Sharma, "Indian Perspective of Fair Dealing under Copyright Law: Lex Lata or Lex Ferenda?"⁶

The author highlights that while India has looked to the United States for inspiration regarding the fair dealing concept, it has adopted a more limited approach and only tackled specific issues. Courts in India have not adequately addressed various other concerns, including issues related to malicious intent. Although this concept is an essential component of the Act, its broad application remains unclear. The fair dealing provision in the Copyright Act⁷ is brief and does not explicitly define the scope of its application.

5. Revant Ranjan, "THE FAIR DEALING EXCEPTIONS UNDER INDIAN COPYRIGHT LAW: A CRITICAL APPRAISAL."⁸

The author conducts a critical analysis of the fair dealing doctrine in India, highlighting its limited and restricted application in comparison to the more flexible and expansive approach found in U.S. legislation. The author asserts that Indian courts have not fully explored the potential of this concept, indicating that such exploration is essential at this time.

Furthermore, the author argues that there is a pressing need to strike a balance between the interests of copyright holders and the general public when interpreting fair dealing provisions. This balance is essential to ensure that

² Jatindra Kumar Das, *Law of Copyright* (PHI Learning, Eastern Economy Edition., 2015).

³ The Copyright Act, 1957 (14 of 1957).

⁴ Alka Chawla, *Law of Copyright-Comparative Perspectives* (Lexis Nexis, 1st edn., 2013).

⁵ The Copyright Act, 1957 (14 of 1957).

⁶ 1 Ayush Sharma, "Indian Perspective of Fair Dealing under Copyright Law: Lex Lata or Lex Ferenda?", 14 *Journal of Intellectual Property Rights*, 523-531 (2009).

⁷ The Copyright Act, 1957 (14 of 1957).

⁸ Revant Ranjan, THE 'FAIR DEALING' EXCEPTIONS UNDER INDIAN COPYRIGHT LAW: A CRITICAL APPRAISAL, 5 *South Asian Law Review Journal* (2019).

one party does not gain an advantage at the expense of the other and to maintain an equilibrium in the application of copyright law.

6. Sufiya Ahmed, “Fair Dealing in Indian Copyright Law”⁹

The author delves into the evolution of the fair dealing doctrine and conducts an analysis of its scope and reach, drawing from both national and international legal frameworks and judicial interpretations. The author's conclusion emphasizes the need for a delicate balance between safeguarding individual rights and considering the broader interests of society.

Furthermore, the author contends that the fair use doctrine requires continuous examination and potential updates to its limitations, especially in light of evolving technologies and changing times. It is crucial to revisit and reformulate these principles, taking into account the latest developments in computer and digital technology.

7. Radhika Bhusari, “Fair Dealing Under the Copyright Law: A Critical Analysis”¹⁰

The author conducts a comparative analysis of the fair dealing concept in India and fair use in the USA, highlighting key differences in their application and scope. In India, the fair dealing provision is succinct and lacks a comprehensive explanation of its extent, whereas the fair use provision in the USA is expansive and adaptable. The author underscores that, compared to the well-established copyright legislation in the United States, India's copyright jurisprudence is still relatively nascent and requires further development.

The author concludes by emphasizing the necessity of broadening the existing fair dealing provision in India to ensure that no actions fall outside its scope. This expansion should not aim to weaken the exclusive rights granted to copyright owners but rather seek to limit these monopolistic rights, ensuring a balanced approach that considers both the rights granted and those curtailed in the realm of copyright law.

B. **Research Methodology:**

The methodology used in this study is largely doctrinal and is based on a critical examination of both primary and secondary sources. The relevant national laws and the official and judicial interpretations of those laws as found in case law and administrative decisions serve as the primary sources of information. Books, scholarly articles, and commentaries that have appeared in a variety of journals are among the secondary sources. An emphasis is placed on using current legal developments as much as possible.

⁹Sufiya Ahmed, “Fair Dealing in Indian Copyright Law” 26 *Journal of Intellectual Property Rights* 96-102(2021).

¹⁰ Radhika Bhusari, “Fair Dealing Under the Copyright Law: A Critical Analysis” 5 *International Journal of Law Management & Humanities* 1077-1089(2022).

I. HISTORICAL DEVELOPMENT

The concept of fair dealing was originated by the English courts in the 18th century as a response to the 'Statute of Anne' which was passed by the parliament in 1710. This statute acknowledged the legitimacy of certain activities that were considered fair, and the English courts developed the concept of 'fair dealing' based on it, officially adopting it in 1841. The term 'fair dealing' was later incorporated into the copyright laws of the British colonies. The UK Copyright Act of 1911 was the first to explicitly recognize fair dealing in the imperial copyright legislation.

When the concept was adopted by the U.S. Courts, its terminology was altered to 'fair use. The courts created a doctrine of "Fairness Abridgement" in the famous case of *Gyles v. Wilcox*¹¹, which eventually evolved into the modern concept of "fair use" in the US. Prior to 1975, the term 'fair use' in the United States was essentially a judicially established idea that was eventually formalized in 1996 through the U.S. Copyright Act, which distilled the principles from case law into statutory form. The origins of the fair use concept can be traced back to the 19th century, particularly in the case of *Folsom v. Marsh*¹², which is widely regarded as the case where Justice Joseph Story first articulated the concept of fair use. In this case, Justice Story also laid the groundwork for the four-factor test that is still in use today. Judges applied these criteria to determine fair use cases until Congress incorporated the fundamental elements of Justice Story's test into Section 107 of the U.S. Copyright Act¹³ in 1976.

The doctrine of fair Dealing was explicitly enshrined in Article 13 of the TRIPS (Trade-Related Aspects of Intellectual Property Rights) Agreement¹⁴ which runs as follows-

*"Members shall confine limitations or exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder".*¹⁵

The Berne Convention allows for exceptions to be made to the rights in works protected under the Convention in certain specified cases.

Article 9(2) of the Berne Convention¹⁶ also states:

"It shall be a matter for legislation in the countries of the Union to permit the reproduction of such works in certain special cases, provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author".

¹¹ *Gyles v. Wilcox*, (1740) 26 ER 489.

¹² *Folsom v. Marsh*, 9. F.Cas. 342, No. 4901 (C.C.D. Mass. 1841).

¹³ The Copyright Act, 1976, § 107, 1976 (USA).

¹⁴ TRIPS: Agreement on Trade-Related Aspects of Intellectual Property Rights, April 15, 1994.

¹⁵ TRIPS: Agreement on Trade-Related Aspects of Intellectual Property Rights, April 15, 1994, art 13.

¹⁶ Berne Convention for the Protection of Literary and Artistic Works, 1886.

In India in 1914, the Indian legislature passed the Copyright Act, 1914 so that thenceforth the law of copyright was governed by the Imperial Copyright Act of 1911 which was essentially the extension of the British Copyright Act, 1911¹⁷. However, the Indian legislature had limited authority to modify or add to these provisions. Fair dealing was first statutorily introduced in 1914 as a mere duplication of Section 2(1)(i) of the UK Copyright Act¹⁸, assuming that any fair handling of any work for the purposes of private study, research, critical review, or newspaper summary would not violate any copyright

The current Indian copyright law, known as the Indian Copyright Act, was enacted in 1957 as a separate and self-contained piece of legislation. The 1956 UK Copyright Act was heavily referenced in the new legislation, both in text and in terms of fundamental ideas. The 1957 statute, however, expanded the concept of fair dealing, and it was subsequently declared that using any work fairly for a radio summary or legal proceeding did not violate copyright. Section 52, which identifies fair dealing, has undergone three amendments since 1957.

II. FAIR DEALING IN INDIA

A. *Statutory provision dedicated to fair dealing.*

In India, the defense of fair dealing and the factors amounting to fair dealing have been stated under section 52(1)(a) of the Copyright Act, 1957¹⁹, while the remaining portion of Section 52 enumerates instances in which infringement is exempted.

In *Wiley Eastern Ltd. & Ors. v. Indian Institute of Management*,²⁰ a connection was drawn between the Fundamental Rights granted by the Constitution of India and the purpose of the defense of fair dealing. The court ruled that the basic purpose of Section 52 is to protect the freedom of expression under Article 19(1) of the Constitution of India, to ensure the protection of research, private study, criticism, reviews, and reporting of current events..²¹ The court further opined that Section 52 is not intended by Parliament to be a negative prescription of what infringement is.

The fair dealing clause stipulates that in order for a transaction to be considered "fair," its goals must be consistent with the following statutory objectives:

- *Private or personal use including Research*

The rationale for this defense lies in the belief that research and study are necessary to generate new works. It also recognizes that non-commercial research and study do not normally interfere with the incentives and rewards that copyright provides to creators and owners. In effect, the defense helps to achieve copyright's goal

¹⁷ UK Copyright Act ,1911.

¹⁸ UK Copyright Act ,1911.

¹⁹ The Copyright Act, 1957 (Act No. 14 of 1957).

²⁰ *Wiley Eastern Ltd. & Ors. v. Indian Institute of Management*, 5 61 (1996) DLT 281 Para 19.

²¹ The Constitution of India.

of maximizing the production of works.²² In order to come within the defence the dealing must be for the defendant's own research or study.²³

➤ *Criticism or review, whether of that work or of any other work;*

The exception is available whether the work reproduced is the work criticized or not.²⁴ The criticism or review may be of the work as a whole or a single aspect of a work, the thought or philosophy underpinning a work.²⁵ In order to illustrate a criticism of one work, it is therefore acceptable to quote from other, similar works.²⁶ Quotations may be taken from a copyrighted work for the purpose of review or criticism. It is not always easy to say where the line should be drawn between the use which for such purposes may be permitted and that which may be forbidden.²⁷ But extracts may be made, sufficient to show the merits or demerits neither of the work, but not so as to supersede the original work, nor to such an extent that the review becomes a substitute for the book reviewed.²⁸

It was decided in the case of *Associated Newspapers Group v. News Group Newspapers Ltd.* that a competitor in the industry could not use copyright material for its own gain. For the dealing to be fair in criticism, the pertinent question is why the copy was made.

In the case of *Syndicate of Press of University of Cambridge v. Kasturi Lal & Sons*²⁹ the Delhi High Court has observed that:

“A review, criticism or guide acknowledges the original authors of the work that they deal with. A review may summarise the original work and present it for perusal to a third person so that such person may get an idea about the work. A criticism may discuss the merits and demerits of the work. A guide may seek to enable students of the original work to better understand it from the point of view of examinations. Verbatim lifting of the text to the extent of copying the complete set of exercise and the key to such exercise can in no manner be termed as a review, criticism or a guide to the original work”.

➤ *The reporting of current events and current affairs, including the reporting of a lecture delivered in public:*

The defense is intended to protect the role of the media in informing the public about matters of current concern to the public.³⁰ In deciding whether the work is being used for this purpose, a useful test may be whether it is

²² Bentley L & Sherman B, *Intellectual Property Law* 207 (Oxford University Press, New York, 2009).

²³ The Copyright Act, 1957 (14 of 1957), s. 52(1)(a)(i).

²⁴ The Copyright Act, 1957 (14 of 1957), s. 52(1)(a)(ii).

²⁵ *Hubbard v. Vosper*, (1972) 2 QB 84.

²⁶ Marks B E, Copyright protection, privacy rights, and the Fair Use Doctrine: The Post-Salinger decade reconsidered, *New York University Law Review*, 72 (6) (1977) 568.

²⁷ *Hill v. Whalen & Martell Inc.* 220 Fed Cas 359,360.

²⁸ *Lawrence v. Dana*, 15 Fed Cas 261.

²⁹ *Syndicate Press of University of Cambridge v. Kasturi Lal & Sons*, (2006) 32 PTC 487.

³⁰ The Copyright Act, 1957 (14 of 1957), s. 52(1)(a)(iii).

reasonably necessary to refer to the work in order to deal adequately with the events in question.³¹ The reporting of current events defense aims to strike a balance between the protection of the rights of creative authors and the wider public interest.³²

IV. THE POSITION OF THE INDIAN JUDICIARY WITH REGARD TO THE DOCTRINE OF FAIR DEALING.

The Copyright Act of 1957 doesn't define the terms "fair dealing" or "fair use" anywhere. The courts also find it difficult to lay down precise standards. The court, in *Dellar v. Samuel Goldwyn, Inc.*,³³ described the "fair use" doctrine as "the most troublesome in the whole law of copyright".

While no definition of "fair dealing" or "fair use" is found under the 1957 Act, Indian courts have opted to rely on the English decision in *Hubbard v. Vosper*³⁴, which held that although "it is impossible to define what is fair dealing" but "fair dealing" is inevitably a matter of degree. The court further observed:

*"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. Other considerations may come to mind also. But, after all is said and done, it must be a matter of impression. As with fair comment in the law of libel, so with fair dealing in the law of copyright."*³⁵

In *The Chancellor Masters & Scholars of the University of Oxford v. Narendra Publishing House*³⁶ the Delhi High Court reiterated that the Fair use provisions must be interpreted to strike a balance between the exclusive rights granted to the copyright holder and the legitimate competing interest of enriching the public domain. The Court borrowed four-factor tests from the American *Pretty Woman* case³⁷ to determine whether a particular use of a work is fair and thus entitled to protection under the fair dealing exception even if the use of the work doesn't really fall under any of the categories mentioned in Section 52.

³¹ Copinger and Skone James on Copyright, Sweet and Maxwell, London, 2012, 572.

³² *Newspaper Licensing Agency v. Marks & Spencer plc* (2000) 4 All ER 239.

³³ *Dellar v. Samuel Goldwyn, Inc.*, 04 F.2d 661, 662.

³⁴ *Hubbard v. Vosper* [1972] 2 Q.B. 84.

³⁵ *Hubbard v. Vosper* [1972] 2 Q.B. 84 at p.94.

³⁶ *The Chancellor, Masters & Scholars of the University of Oxford v. Narendra Publishing House*, 2008(38) PTC 385 (Del).

³⁷ *Campbell v. Acuff Rose Music*, (1994).510 US 569.

In *Blackwood and Sons Ltd. and Others v. A. N. Parasuraman and Others*³⁸, the court stated that :

“Two points have been urged in connection with the meaning of the expression "fair" in "Fair dealing" (1) that in order to constitute unfairness there must be an intention to compete and to derive profit from such competition and (2) that unless the motive of the infringer were unfair in the sense of being improper or oblique the dealing would be fair.

If substantial and vital parts of the works are reproduced the intention to appropriate to the infringer the labour of others for his own profit is made out and there need not be proof of any independent oblique motive.”

The court adopted an unusual or distinctive position in *SK Dutt v. Law Book Co and Ors*³⁹, where the dispute was based on the use of certain quotations from a work. The Court held that the copying was not a substantial taking because the authors had acknowledged using the plaintiff's material, which implied that the authors would have done the same if they had used the plaintiff's book in any other way when compiling their own book.⁴⁰

The courts were cautioned in *V Ramaiah v. K Lakshmaiah* to remember that defendants pleading fair dealing should not have used the work without making any independent contribution, or, in other words, the work must have been transformative. The question in that case was whether the respondent's act in writing the guide violated the owner's copyright.⁴¹

In *Chancellor Masters*⁴², the Court established that when addressing the question of fair dealing, a Court should consider whether the purpose served by the subsequent work is considerably different (or the same) from the purpose served by the prior work. The said case once again involved copying for the purpose of guidebooks. The subsequent work must be distinctive in character and not just a simple replacement in order to be eligible as a transformative.

In *The Chancellor, Masters & Scholars of the University of Oxford & Ors. v. Rameshwari Photocopy Services & Ors. (DU Photocopying Case)*⁴³, the Delhi High Court took a distinctive stance by asserting that the creation of 'course packs,' which involves assembling photocopies of relevant portions from various books on the syllabus and distributing them to students through educational institutions, does not constitute copyright infringement of those books under the Copyright Act of 1957. This exemption is based on Section 52(1)(i) and

³⁸ *Blackwood and Sons Ltd. and Others v. A. N. Parasuraman and Others*, AIR 1959 Mad 410.

³⁹ AIR 1954 All 570.

⁴⁰ *SK Dutt v. Law Book Co and Ors*, AIR 1954 All 570 Para 45.

⁴¹ *V Ramaiah v. K Lakshmaiah*, 1989 (9) PTC 137.

⁴² *Chancellor Masters Case*, 2008(38) PTC 385 (Del) Para 34.

⁴³ RFA(OS) No.81/2016

applies as long as the inclusion of the photocopied works, regardless of the quantity, aligns with the educational instructional purpose.

In essence, the court ruled that such photocopying qualifies as the reproduction of the work by a teacher within the scope of instruction, and therefore, it does not amount to a violation of copyright. Consequently, educational institutions are not required to obtain licenses or permission from publishers to create and distribute course packs to students, provided that the copyrighted materials included are essential for instructional purposes by the teacher for the class

The court also talked about how competition affects the defense of fair dealing and decided that students would not necessarily buy the books as a result if photocopied course packs were not made. Instead, the students would be forced to copy the pages out by hand while sitting in the library. This is especially likely given the fact how heavily subsidized DU education is, making it feasible for students from low-income families to attend the university. The Court concluded that it was unfair to demand that students forgo the convenience offered by modern technology and return to the traditional methods of studying.

In *ESPN Stars Sports*⁴⁴, the Court upheld the concept of "likelihood of competition" and held that it might be unfair if the work is used to communicate the same information as the author for a competing goal. One of the factors the Indian courts occasionally consider when determining whether the reproduction is substantial is the publication's potential to compete with the plaintiff's copyright work.

Currently, India does not have any established laws regarding how much work can be used without the creator's permission in order to be considered as fair dealing. This decision is largely left up to the discretion of the courts, with certain guidelines they must follow. Indian courts have analyzed the doctrine of fair dealing, drawing primarily from UK and US approaches, and have endorsed certain factors that may be more or less relevant in fair dealing cases that are not outlined in Indian copyright law. These factors can be summed up in the following three ways:

- **Firstly**, The extent to which a portion of copyrighted material is used plays a crucial role. Fair dealing is more likely to apply when a smaller, less significant portion of the work is used, whereas using a substantial or essential part may not be considered fair dealing.

Another critical element of fair dealing is the transformative nature of the new work. If the new work adds fresh meaning, context, or purpose to the original material, it is more likely to be considered fair dealing.

Acknowledgment of the original author is also essential in fair dealing. Properly citing the source and giving credit to the copyright holder demonstrates good faith and is typically expected in fair dealing situations.

Fair dealing often involves the creation of something new that is independent of the original work. In other words, the new work should not merely duplicate or replace the original; it should have its own distinct identity and purpose.

⁴⁴ *ESPN Stars Sports v. Global Broadcast News Ltd and Ors*, 2008 (36) PTC 492 (Del) Para 17.

• **Next**, the purpose and character of the use should be considered. The Indian Copyright Act outlines a list of purposes that are considered fair dealing, such as private study, research, criticism, and review. If the purpose of the reproduction is not one of those listed, fair dealing may not apply.

Fair quotations, excerpts from comments and critiques, as well as genuine abridgments, are considered fair dealings under copyright law. However, when the purpose behind such usage is not educational, academic, private, or for review, but rather commercial or economic gain, it may be determined that the dealing is not fair. In other words, whether a particular use of copyrighted material is fair or not depends on factors such as the purpose of the use and whether it serves commercial or economic interests.

• **Lastly**, when evaluating fair dealing, it's crucial to assess the potential impact on the market and the likelihood of competition. Economic factors can heavily influence the determination of fair dealing. If the usage is such that it directly replaces or competes with the original author's work, then the fair dealing defense may not apply. This factor has been given varying levels of consideration in India but is still deemed significant by the courts. In essence, the potential economic consequences, especially if the usage significantly affects the market for the original work or competes directly with it, can be a critical factor in assessing whether fair dealing applies.

V. CONCLUSION

Copyright law operates on a delicate equilibrium between the rights of copyright owners and the interests of the general public. India's copyright law is designed to encourage creative activity and progress in the arts, ultimately enriching the intellectual landscape for the broader public. Copyright, at its core, is intended to promote the growth of knowledge rather than hinder it. Access to knowledge itself is considered a fundamental human right.

On the other hand, safeguarding the economic and moral rights of content creators is also a matter of human rights. Striking a balance between these two sets of rights is essential, and copyright law, as a form of welfare legislation, strives to achieve this equilibrium. The exceptions and limitations such as 'fair dealing' associated with copyright serve to protect the public's interest in accessing works and disseminating knowledge. Undoubtedly, "fair dealing" is a vital doctrine, not only within the realm of copyright laws but also in reinforcing the protection afforded to citizens under Article 19 of the Constitution of India.

Fair dealing constitutes a crucial and integral component of copyright law. This doctrine is indispensable for establishing a delicate equilibrium between the competing monopolistic interests of authors and the broader creative interests of society as a whole. Fair dealing serves as a catalyst for fostering creativity in society, resulting in a diverse array of innovative and remarkable works. Without the presence of the Fair Dealing Doctrine, many of these creative endeavors might not have been feasible.

It's evident that the concept of Fair Dealing in India is not highly advanced or fully developed. There is a lack of clear specification regarding what qualifies as a significant or insubstantial portion of a work. However, the approach of Indian courts in matters related to fair dealing has broadened, with courts meticulously considering each aspect of a case by employing a checklist. While Indian courts have made efforts to broaden the scope of fair dealing, a degree of uncertainty still exists.

Nevertheless, through various amendments and judicial decisions, the Fair Dealing Doctrine has gained a more solid footing within India's copyright legislation. It continues to evolve, with its scope expanding with each new judicial pronouncement.

The recent legal developments by the judiciary serve as a validation of the freedom to exchange ideas and knowledge, a fundamental element in cultivating a thriving learning environment. These developments also guarantee that enthusiastic students and educators in developing nations can openly share the latest research and publications without any fear of operating in a legal gray area. These judgments have effectively reinstated the public-serving aspect of copyright law, marking a significant victory for the accessibility of knowledge.

The historic decision in *Folsom v. Marsh*⁴⁵ has provided valuable guidance to the doctrines of fair dealing and fair use. However, a significant challenge lies in the fact that Indian courts and legislators have not fully explored the potential scope of fair dealing, which is a crucial exception within the copyright framework. It is imperative to revisit and reconsider this doctrine in light of contemporary developments and make efforts to establish our own equivalent of a landmark case like *Folsom v. Marsh*⁴⁶. The fair use doctrine necessitates ongoing analysis and adaptation of limitations to keep pace with evolving times.

With the continuous advancement of technology and the widespread influence of the internet, copyright law faces unprecedented challenges and complexities. The traditional frameworks of copyright are often ill-equipped to address the rapidly evolving digital landscape. In this context, the modernization of fair use or fair dealing laws becomes imperative.

The conflict that pervades the copyright ecosystem arises from a clash between the rights of copyright holders and the interests of those who seek access to copyrighted materials for legitimate and socially valuable purposes, such as research and education. Copyright holders naturally aim to safeguard their intellectual property and derive economic benefits from their creative works, while the broader public seeks access to knowledge and cultural content in an increasingly digital-centric world.

To address this conflict, the laws governing fair use or fair dealing must be updated and refined to reflect the contemporary digital reality. These laws should strike a balance that recognizes and respects the rights of creators while also facilitating the free flow of information, innovation, and educational opportunities for the public.

The modernization of fair use or fair dealing laws entails a comprehensive reevaluation and redefinition of their scope and relevance in the digital age. This process requires taking into account factors such as the transformative nature of new creative works, their impact on the market, and the accessibility of copyrighted materials in the digital realm. Moreover, it entails addressing emerging issues like online content sharing, promoting open access initiatives, and navigating the challenges posed by advancing technologies like artificial intelligence and machine learning.

⁴⁵ *Folsom v. Marsh*, 9. F.Cas. 342, No. 4901 (C.C.D. Mass. 1841).

⁴⁶ *Supra* 40.

By updating fair use or fair dealing laws, policymakers and legal experts can work toward reducing conflicts and fostering a more balanced and harmonious relationship between copyright holders and the broader public. This modernization is not only essential for ensuring the continued progress of knowledge and culture but also for promoting innovation and creativity in a rapidly changing technological landscape.

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