

THE 'FAIR DEALING' EXCEPTIONS UNDER INDIAN COPYRIGHT LAW: A CRITICAL APPRAISAL

Written by *Revant Ranjan*

3rd Year BA LLB Student, KIIT Law School, KIIT University, Bhubaneswar

ABSTRACT

Fair dealing is an important concept in Indian copyright law. In the global context, the fair dealing doctrine has been a point of constant discussion for a long time now. However, the issue of fair dealing is one of the least explored areas of Intellectual Property Law in India. There is a need to delve into the original thought process behind the genesis of the concept and analysing it in the Indian scenario. The article attempts to explore its *raison d'être* and the statutory and primarily the judicial treatment of the concept. It is found that the Indian courts have borrowed in spirit the factor analysis method in the assessment of fair dealing from the US and have also adopted a disciplined approach in dealing with this defence. There is no doubt that continuation of the 'Fair Dealing' concept with certain amendments to bring it in line with the 'Fair Use' doctrine is the best-possible discourse to adopt for India. However, as the role of fair dealing in the overall scheme of Indian copyright law regime remains to be defined there is an urgent need to address this issue by the Indian courts and legislature.

Keywords: Section 52, fair dealing, fair use, copyright, exception, infringement.

INTRODUCTION

Copyright is one of the branches or aspects of Intellectual Property Rights which is an exclusive bundle of legal rights¹ including, inter alia, rights of reproduction, communication to the public, adaptation and translation of the work to creators of literary, dramatic, musical and artistic works and producers of cinematograph films and sound recordings. Copyright is the legal protection given to the creator of an original literary or artistic work to do, authorize, or prohibit certain acts in relation to such work, thereby protecting and rewarding creativity. These rights can be either assigned or licensed by the owner of copyright as way of encouragement and promotion for continual creative activities. If any of the above acts are carried out by a person other than the owner of the copyright, without licence from the owner, it constitutes infringement² of the copyright.

The grant of Copyright is subject to certain conditions³ and the same is granted for a specific period of time. However, the countries where authors enjoy Copyright protection, tried to create a balance between the authors “sole right of copying on the one hand and public interest in using the authors” work on the other. Therefore, even when the author enjoys Copyright, his protection is often subject to many limits. As copyright system promotes the interests of society as a whole as well and favours the greatest good for the greatest number of people by limiting the rights to a fixed duration. After the expiry of the term of the copyright the work falls into public domain and any act of reproduction of the work by any person other than the author would not amount to infringement. Another example of these limits is the doctrine of Fair dealing. It is a limitation and exception⁴ to the exclusive right granted by copyright law to the author of a creative work. It permits reproduction or use of copyrighted work in a manner, which, but for the exception carved out would have amounted to infringement of copyright. It has thus been kept out of the ‘mischief’ of copyright law.⁵

¹Indian copyright act 1957

² Infringement is an act that interferes with one of the exclusive rights of a patent, copyright or trademark owner. Black’s Law Dictionary, 8th ed., Thomson & West

³ Supra note at 1

⁴ The Copyrights Act, 1957, § 52.

⁵ *Sk Dutt V. Law Book Co. & Ors. (1954) AIR ALL 750*

COPYRIGHT VIS-A-VIS PLAGIARISM

Under Section 57, the authors have special rights even after the expiry of the economic rights. These rights are inalienable and perpetual. In India paternity rights and integrity rights are recognized though the statute terms these rights as special rights of authors. Even after the expiry of copyright, one has to acknowledge the source and respect the moral rights of authors, because it is demanded as part of academic integrity and honesty. One should not claim credit for something if it is not created by him. When copyright protects only expressions of idea, the allegations of plagiarism would arise if the researcher/writer fails to give credit to a person who has propounded a new idea or a phrase.⁶ Plagiarism occurs when ideas are copied without attributing the source. In copyright infringement, the permission of the author is required, if fair dealing doctrine is not applicable. Copyright infringement and plagiarism may merge, when the researcher, copies somebody's work without authorisation and pass it off as his own work.

DOCTRINE OF FAIR DEALING

Doctrine of Fair Dealing is a legal doctrine, which allows a person to make limited use of copyrighted work without the permission of the owner. It is a significant limitation on the exclusive right of the copyright owner. The laws relating to fair dealing have been incorporated in Section 52⁷ of The Copyrights Act, 1957. As the Indian Copyright Act does not define the term "fair dealing", the courts have on various occasions referred to the landmark English case *Hubbard v Vosper* on the issue of this exception to infringement. The following words of Lord Denning clearly outline the description of fair dealing,

*It is impossible to define what is "fair dealing". It must be a question of degree. You must first consider the number and extent of the quotations and extracts.... then you must consider the use made of them....Next, you must consider the proportions...other considerations may come into mind also. But, after all is said and done, it is a matter of impression.*⁸

⁶ Lisa P. Lukose. *Copyright Issues in Legal Research and Writing*. JOURNAL OF INTELLECTUAL PROPERTY RIGHTS. Vol 21, September-November 2016, pp 275-282, 280

⁷ Supra note at 4

⁸ *Hubbard v Vosper* (1972) 1 All ER 1023 p. 1027.

This doctrine is an important aspect of Copyright Law which is aimed at drawing a line between a legitimate, bonafide fair uses of a work from a malafide blatant copy of the work. The concept of fair dealing has also been recognised in the Berne Convention⁹ as well as the TRIPS Agreement.¹⁰ The doctrine has been explicitly enshrined in Article 13 of the TRIPS (Trade Related Aspects of Intellectual Property Rights) as –

*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.*¹¹

The main idea behind this doctrine is to prevent the stagnation of the growth of creativity for whose progress the law has been designed. It can be said that Copyright system attempts to balance two conflicting theories: fairness theory and welfare theory. Fairness theory is author-centric, promoting the rights of the authors by giving them exclusive opportunity to gain profit from their work, whereas welfare theory focuses on the interest of society as a whole by ensuring availability of the works created by the authors to the society for greater public interest. The rationale or justification for allowing the exception of fair dealing is that on certain specific occasions an infringing use of the copyrighted work may bring about greater public good than its absolute denial.¹² A welfare society must balance the two competing and equally significant interests, i.e., the monopoly of authors that acts as an incentive to create and produce and that such a monopoly must never come in the way of creative ability of others or the right of the public at large to build upon previous works.¹³

As the member countries of WTO are obliged to comply with the Berne Convention on Copyright as well as the articles of TRIPS, this doctrine has been incorporated in the Territorial Copyright legislations of the member countries. However, while some of the legislations have a rigid approach, others have kept their options open to embrace any new factor which can be treated as fair dealing. The Indian and UK copyright laws of fair dealing work strictly within

⁹ https://www.wipo.int/treaties/en/ip/berne/summary_berne.html

¹⁰ TRIPS Agreement, art. 13.

¹¹ https://www.wto.org/english/docs_e/legal_e/27-trips_04_e.htm

¹² B.J. Damstedt. (2003). *Limiting Locke: A Natural Law Justification for the Fair Use Doctrine*, 12 YALE LAW JOURNAL 1179

¹³ *Kartar Singh v. Ladha Singh*, (1934) A.I.R Lah. 777. 15; *Eastern Book Co. v. Navin Desai*, (2001) A.I.R. Del. 185

the framework of the enlisted actions which constitute fair dealing, but the American laws of fair use is open for interpretation and works with the help of only certain guideline factors which help in determining the extent of “fairness” involved in the work. The UK laws which form the basis of Indian laws are considered limiting and restrictive and the US doctrine of “fair use” is considered to be the fairest of all as it is the most closely designed law with the TRIPS. Public benefit and the maintenance of the balance between an author’s monopolistic rights in a copyrighted work and the copyright acts underlying policy of encouraging inventions are at the core of the American fair use exceptions.¹⁴

The courts have found that such quotation is not “fair use” when material is taken from unpublished sources. If the work is unpublished, any dealing is unlikely to be fair, for any other person would undoubtedly use the same for his/her own commercial gain or for taking undue credit. The motive can be clearly culled out from that act.¹⁵ An important aspect of the Act in this regard is that all works are not copyrightable. There are exceptions to copyright protection in the public interest, such as judgments of a court. In *Eastern Book Co. v DB Modak*¹⁶ the apex court in India made it clear that there can be no copyright in the raw text of court judgments and decisions. The Court adopted the ‘minimal degree of creativity’ as the threshold for copyright protection and further held that to claim copyright, mere copy editing would not suffice. But, in the field of knowledge and information the reproduction of some portion of the copyrighted work is necessary for the purposes of research, private study, criticism, news reporting, teaching, review, etc.

FAIR DEALING IN INDIA

Even before the English Act was expressly made applicable in India, the Bombay High Court had pronounced the Copyright Act of the United Kingdom to be applicable in India in the case of *MacMillan v. Khan Bahadur Shamsul Ulama Zaka*.¹⁷ The concept of fair dealing was first brought about in India in a statute in the year 1914. That statutory provision of fair dealing was but a mere copy of the similar provision of the statute present in the United Kingdom. The said

¹⁴Newby, T. (1999). *What's fair here is not fair Everywhere: does the American fair use doctrine violate international copyright law?* 51 STANFORD LAW REVIEW 1633-1663.

¹⁵ *Lewis Galoob Toys v. Nintendo Inc.*, (1992) 964 F.2d 965 9th Cir.

¹⁶ (2008) 1 SCC 1

¹⁷ 19 ILR (1895) Bom 557 43

statutory provision provided that copyright would not be infringed by “any fair dealing with any work for the purposes of private study, research, criticism, review or newspaper summary”.¹⁸ The present Copyright Statute of India which was passed way back in 1957 also had extensively borrowed from the new Copyright Act of UK of the year 1956.¹⁹ The concept of fair dealing is primarily dealt with in Section 52 of the Copyright Act, 1957.²⁰ While Section 14 of the Copyright Act enlists the exclusive economic rights of the copyright owners; Section 52(1) running from sub clause (a) to (zc) provides for several exceptions to the exclusive rights of copyright owners. Under the fair dealing clause, a fair dealing with any work (a literary, dramatic, musical, artistic work, cinematographic film or sound recording not being a computer programme) for the purposes of private or personal use; research; criticism or review; for the purpose of reporting current events, current affairs or publicly delivered lecture in media like newspaper, magazine or similar periodical do not constitute an infringement.

By Copyright (Amendment) Act, 2012, the existing clause (1) (a) has been amended to provide fair dealing with any work for the purposes of private and personal use with an exception that of a computer programme. With this amendment in force, cinematograph and musical works also came under the ambit of the works to which the fair use provision has been extended to. It also facilitates reproducing, issuing of copies, adapting or communicating to the public any work in any accessible format, for disabled persons to access works including sharing with any person with disability for private or personal use, research or for any other educational purposes.

The catalogued purposes made clear under Section 52 have been characteristically interpreted as exhaustive, inflexible and definite since any use or dealing which finds itself not falling firmly within the enumerated grounds as specified in section 52 is considered to be an infringement of the copyright.²¹ It is important to note that the Indian Copyright Act under the provisions of Section 52 slices out fair dealing from copyright as one of the affirmative defences which places the burden of proving the defences upon the user once the copyright owner establishes *prima facie* infringement by showing extensive breach of copyright of expression.

¹⁸ Burrell Robert. (2001). *Reining in copyright law: Is fair use the answer?* 4 INTELLECTUAL PROPERTY QUARTERLY 361-388

¹⁹ P. Narayan. (2002). *Copyright and Industrial Designs* 8 Eastern Law House, Calcutta.

²⁰ The Copyright Act, 1957, § 52; The Copyright (Amendment) Act, 1983 (Act 23 of 1983), [The Copyright (Amendment) Act, 1994 (Act 38 of 1994), The Copyright (Amendment) Act, 1999 (Act 49 of 1999), The Indian Copyright (Amendment) Act, 2012, The Copyright (Amendment) Act, 2016

²¹ *Blackwood and Sons Ltd and Others v. A.N. Parasuraman and Others*, (1959) AIR Mad 410.

However, as it is clear from the case of *Civic Chandran v. Ammini Amma*,²² that the fair dealing cases in India do not at all times establish prima facie infringement before taking into consideration an application of fair dealing.

The fair dealing doctrine is essential for research and academic purpose, private study and for dissemination of knowledge. The term, fair dealing is nowhere defined²³ in the Indian Copyright Act; hence, determination of the scope of fair dealing is to be done in a case to case basis, which is always a difficult task for the judiciary. The judiciary in India and abroad has developed some tests and doctrines to determine whether a particular dispute is a case of infringement or an instance of fair dealing. As the Indian courts have explored and unveiled the various facets of fair dealing, they have often mentioned that there cannot be a definite or exhaustible list of uses which can come within the purview of fair dealing but it has to be decided depending upon the facts and circumstances of each case.

JUDICIAL INTERPRETATIONS

Lord Denning in *Hubbard & Another v Vosper & Another*²⁴ said thus:

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. 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. The tribunal of fact must decide.

²² (1996) PTC 16 670

²³ G. Reddy. (2007). *Infringement of copyright and doctrine of fair use. DESIDOC Bulletin of Information Technology*, 27 (4), 29-36

²⁴ 1 [1972] 2 Q.B. 84.

In the case of *Kartar Singh Giani v. Ladha Singh*, the High court held 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 the dealing would be fair.*²⁵

In *Wiley Eastern Ltd. & Ors. v Indian Institute of Management*,²⁶ a connection was drawn between the Fundamental Rights granted by the Constitution of India and the purpose of the defence 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, so that research, private study, criticism or review or reporting of current events could be protected. The court further opined that Section 52 is not intended by Parliament to be a negative prescription of what infringement is.

Permissible Purpose Test

The exception of fair dealing is also allowed for the purpose of a judicial proceeding or for the purpose of a report of a judicial proceeding. A reasonable extract from a published work can be reproduced under Section 52 for bonafide use of educational institutions.²⁷ Similarly, the reproduction of a literary, dramatic or musical work by a teacher or a pupil in the course of instruction; or as part of the questions to be answered in an examination; or in answers to such questions etc. is deemed to be fair dealing.²⁸ Hence, fair quotation, extracts from comments and criticism or bonafide abridgements etc. are fair dealings. In all these exceptions what is relevant is the 'purpose'. To apply the fair dealing exception, the purpose must be statutorily permitted. If the purpose is not educational or academic or private or review but commercial or economic, the dealing is not fair.²⁹ In *Academy of General Education, Manipal v B. Manini Mallya*,³⁰ the Supreme Court held that when a fair dealing is made *inter alia*, of a literary or a

²⁵ Supra note at 16

²⁶ 61 (1996) DLT 281.

²⁷ Provided that not more than two such passages from works by the same author are published by the same publisher during any period of five years.

²⁸ The Copyright Act, 1957, § 52 (1) (i) and (j),

²⁹ A. Sharma. (2009). *Indian perspective of fair dealing under Copyright Law: Lex Lata or Lex Ferenda?* JOURNAL OF INTELLECTUALPROPERTY RIGHTS, 14 523-531.

³⁰ *Academy of General Education, Manipal v B. ManiniMallya*, 2009 (39) PTC 393 (SC).

dramatic work for the purpose of private use including and not limited to research, criticism or review, whether of that work or of any other work, such a dealing does not constitute an infringement of copyright.³¹

In *The Chancellor Masters & Scholars of the University of Oxford v Narendra Publishing House*³² the Delhi High Court reiterated that the Fair use provisions must be interpreted so as to strike a balance between the exclusive rights granted to the copyright holder, and the valid competing interest of enriching the public domain. The Court borrowed four factor tests from American *Pretty Woman* case³³ 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. These four factors are:

- (i) *The purpose and character of the use (educational purposes or critique etc.);*
- (ii) *The nature of the copyrighted work – whether the work is eligible for copyright protection in the first place;*
- (iii) *The substantiality of the portion used in relation to the copyrighted work
- the extent and nature of copying done with respect to a work;*
- (iv) *The effect on the potential market for, or value of, the copyrighted work
- whether the new work would adversely affect the market value of the original work.*

In *The Chancellor, Masters & Scholars of the University of Oxford & Ors. v. Rameshwari Photocopy Services & Ors. (DU Photocopying Case)*³⁴ decided on December 9, 2016, there is a landmark judgement of the Division Bench of the Delhi High Court that the preparation of 'course packs' which includes compilation of photocopies of the relevant portions of different books prescribed in the syllabus, and their distribution to the students by educational institutions does not constitute infringement of copyright in those books under the Copyright Act, 1957, by virtue of Section 52(1)(i) as long as the inclusion of the works photocopied (irrespective of the quantity) was justified by the purpose of educational instruction. In effect

³¹ *V. Ramaiah v K. Lakshmaiah*, 1989 PTC (9)137 (AP); *Forster v. Parasuram*, 1954 AIR Mad 331

³² 2008 (38) PTC 385.

³³ *Campbell v Acuff Rose Music*, (1994).510 US 569

³⁴ CS(OS) 2439/2012

it was held that such photocopying qualifies as reproduction of the work by a teacher in the course of instruction and thus does not amount to copyright infringement. That is, the educational institutions do not require a license or permission from the publishers for making and distributing course packs to students if the copyrighted materials included in them are necessary for the purpose of instructional use by the teacher to the class.

Qualitative and Quantitative Test: Doctrine of Substantiality

Section 52 in no way guarantees the right of reproduction of the whole material. Substantial copying and material constitute copyright infringement. That is, only an insubstantial portion of a copyrighted work only can be reproduced or published as fair dealing. The Copyright Act does not define what is substantial or insubstantial. The substantiality is purely a qualitative question which depends on how distinctive and important it is to the overall work. Even a short extract may be a key part to of the overall work. Furthermore, fair dealing are applicable only with respect to the reasonable excerpts and the larger the copying, the less fair is the dealing. It cannot be academically fair and ethical to copy extensively from another work by just acknowledging the source. In *R G Anand v Delux Films* case³⁵, the court observed that where the idea is developed into a different manner and presence of dissimilarities can negate an allegation of infringement; there can be both qualitative and quantitative test for finding the substantiality though the literal number of words copied might not be the determining factor for copyright infringement.³⁶ If the ‘heart of the book’ is taken by way of copying that would amount to substantial taking.³⁷ In this case, the apex court referred many foreign judgments to distinguish between fair dealing and infringement.³⁸

Verbatim Lifting

Verbatim lifting has been considered as a clear case of infringement, which cannot be afforded the defence of fair dealing. In *Syndicate of Press of the University of Cambridge v B. D. Bhandari*³⁹ wherein the defendant had made verbatim copy of the several extracts from the Cambridge University publication and plagiarized even the pattern of exercise, answers, etc. in

³⁵ (1978) 4 SCC 118: AIR SC 1613

³⁶ Supra note at 6

³⁷ *Harper and Row Publishers v Nation Enterprises*, (1985) 471 US 539.

³⁸ The judgments such as *Donoghue v Allied Newspapers*, (1937) 3 All E.R. 503; *Ladbroke (Football) Ltd. v WilliamBill (Football) Ltd.*, (1964) 1 All E.R. 465; *Dorsey v Old Surety Life Ins. Co.*, 98 F 2d 872; etc.

³⁹ 2005 (31) PTC 58 (Del).

his impugned guide, the Court refused to term it as review or criticism. But, in *Ramesh Chaudhry & Ors. v Ali Mohd*, drawing a distinction from the earlier case the Court held that, “once the original authors of the books allowed the University to publish it in their syllabus and the University published it as a part of their syllabus prescribed for its students, the matter went into the hands of the general public and no copyright in the strict sense of the term remained with the original authors. Having been published by the University, it became more or less a public property. Any member of the public could publish a review or a criticism, or guide to this book.”⁴⁰

Fair dealing in “Private use”

In India, the exception of fair dealing can be acceptable for private use in study or research work but not for commercial use after the 1994 amendment. In the case of *Blackwood v. Parasuraman*⁴¹ fair dealing defence was claimed for the purpose which was stated to be of private study. The defendant had published student’s guides of the plaintiff’s books but the Court rejected the claim of fair dealing. The court held that the purview of private study covers the student copying the book for his own personal use, and that it cannot include circulation of copies among other students. Clearly, the court had given a restricted interpretation to the ‘fairness’ of the dealing. In this case the Court further clarified that in order to avail protection the use must be restricted to those enumerated in the statute under “fair dealing”. Similar were the facts in *Syndicate of Press University of Cambridge v. Kasturi Lal*⁴², where the Court held that there was infringement, not falling because Section 52(1)(h) allows reproduction for the purpose of answering questions in an examination and not questions and answers as a whole. The Delhi High Court observed that,

Law should encourage enterprise, research and scholarship but such encouragement cannot come at the cost of the right of an individual to protect against the misappropriation of what is essentially a product of his intellect and ingenuity. The law encourages innovation and improvement but not plagiarism. Copyright is a form of protection and not a barrier against research and scholarship. Lifting portions of the original work and

⁴⁰ AIR 1990 Raj. 8

⁴¹ Supra note at 20.

⁴² *Syndicate Press of University of Cambridge v. Kasturi Lal & Sons* (2006) 32 PTC 487 Del; see also *University of London Press Ltd v. University Tutorial Press Ltd*, [1916] 2 Ch. 60.

presenting it as one's own creation can in no way be described as any form of bona fide enterprise or activity. Research and scholarship are easily distinguishable from imitation and plagiarism.

Criticism or Review

The fair dealing defence is available only when the act is accompanied by an acknowledgement as per the provision of Section 52 (1). In the case of *Associated Newspapers Group v. News Group Newspapers Ltd.*⁴³ it was held that a rival in the trade cannot use copyright material for its own benefit. The motive for which the copy is made is the relevant question for the dealing to be fair in criticism. The case of *Syndicate of Press of University of Cambridge v. Kasturi Lal & Sons*⁴⁴ is a landmark judgement on the issue of fair dealing as it has also set a precedent in case of criticism too. In this case, 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.

In *Civic Chandran v. Ammini Amma*, it was held that even if the copying is substantial it does not constitute infringement if it is for the purpose of criticism. Criticism or review may relate not only to the literary style, but also to the doctrine, philosophy, ideas or events described by the author. It is not necessary for the parts of the work selected for the criticism or review to be representative of the work as a whole. Criticism of a single aspect of a work is therefore capable of constituting fair dealing.⁴⁵ Parodies also fall within the purview of criticism.⁴⁶ They are a humorous form of social commentary, and while deciding whether a particular work

⁴³ *Associated Newspapers Group v. News Group Newspapers Ltd.*, (1986) R.P.C. 103 (19): p. 515-520.

⁴⁴ *Supra* note at 43.

⁴⁵ *Civic Chandran v. Ammini Amma*, (1996) PTC (16) 670

⁴⁶ *Campbell v. Acuff-Rose Music, Inc.*, (1994) 510 U.S. 569, 114 S. Ct.(SC) 1164

constitutes a valid parody, it must be established that only that much work is to be copied as would be necessary to remind the reader, listener or viewer of the original work.⁴⁷

Degree of Originality and Creativity

The precise amount of skill, judgment and labour or literary quality which the author of any work including compilation must bestow upon his composition to acquire copyright is not defined. Though there is no copyright in the ideas, facts and information *per se*, the expression of the same in a work makes it an original literary work. For example, a work on history is copyrightable, but the facts therein are not. A literary work need not be of any literary quality or merit. In *University of London Press v University Tutorial Press* J. Peterson while dealing with the issue of whether examination papers are within the meaning of the ‘literary works’ states that “the words ‘literary work’ covers a work which is expressed in print or writing, irrespective of the question whether the quality or style is high. The word ‘literary’ seems to be used in a sense, somewhat similar to the use of the word ‘literature’ in political or electioneering literature, and refers to written or printer matter.”⁴⁸

Reporting Current Events

Fair dealing material for the purpose of reporting current events in print or broadcast media is also an exception under Section 52 (1) (b) of the Copyright Act because a person has the right to know (right to freedom of speech and expression).⁴⁹ In *Ashdown v. Telegraph Group*⁵⁰, the exception of fair dealing was not granted when a newspaper published extracts of a confidential diary minute of a political meeting. It was rejected because of the extent of reproduction made for the defendants' commercial interests.

Technological Developments

The development in technological infrastructure and the multifunctional character of the information and communication technology eases copyright violation which may lead to rise in trivial disputes. The judgments in the case of *India TV Independent News Services Pvt. Ltd*

⁴⁷ *Woody Allen v. National Video*, (1985) 610 F Supp. 1612

⁴⁸ (1916) U. 119.] [1916] 2 Ch. 601

⁴⁹ *Reliance Petrochemicals v. Indian Express Newspapers*, (1988) 4 SCC 592

⁵⁰ *Ashdown V. Telegraph Group Ltd*, REPORTS OF PATENT, DESIGN AND TRADE MARK CASES, Volume 119, Issue 6, 2002, Pages 235–256, (<https://doi.org/10.1093/rpc/2002rpc5>)

*& Ors. V Yashraj Films Private Limited*⁵¹ indicate that there is still much left to look upon, to consider to keep the legislations hand in hand with the technological and scientific developments going across the world. In this case one of the relevant grounds of dispute was that the defendants “India TV” broadcasted a documentary on the life of singers where they perform their own songs. While the singer sings, clips of scenes from the movies are shown in the background. The plaintiffs claimed to infringement of their copyright in such acts and the defendants claimed the exception of fair dealing in such use of the plaintiff’s copyrighted material. The Delhi High Court in its judgment restrained the defendants from distributing, broadcasting or otherwise publishing or in any other way exploiting any cinematograph film, sound recordings or part thereof that is owned by the plaintiff. The argument of the counsel for defendant seems to be valid that “the singer who has recorded a song which has gone on to become a hit has a sense of ownership over such a song, and that it would be very unreasonable to the point of being unfair and cruel to the said singer, to say that one cannot sing the said song in a TV or other interactive program in front of an audience, just because the copyright in the underlying literary and musical works resides in some other person(s)” But since such use does not come within the exhaustive list provided under section 52 of the act, they were deprived of any remedy in the fair dealing laws. However, after a long litigation saga, in the appeal from the above order, the Delhi High Court subsequently felt the need of a diversion from the conventional approach and thus the decision of the single judge was set aside and the restrictions thus imposed were accordingly removed, though the Appellants were still prohibited from displaying any cinematographic films without permission.

CONCLUSION

Access to the copyrighted material and knowledge is a must to keep well-informed with new developments and to create next generation of original work. Access to knowledge in itself is a human right. On the other hand, protection of the economic rights in the copyrighted material and moral rights are also human rights of the content creators. These two rights are to be balanced. The copyright law as a welfare legislation tries to balance this. The exceptions and

⁵¹ 2013 (53) PTC 586 (Del); see also *Saregama India Limited v/s Viacom 18 Motion Pictures and Ors.* (Special 26)

limitations like ‘fair dealing’ attached to copyright are meant for protecting the public interest to have access to the works and for dissemination of knowledge.

Undoubtedly, “fair dealing” is a necessary doctrine, not only in the Copyright laws but also in strengthening the protection given to the citizens under Article 19 of the Constitution of India. But the Indian law related to fair dealing is very limited and confined as compared to the US fair dealing laws which is more elaborate and keeps a flexible approach. However, the Courts have on various occasions made it clear that it is absolutely impossible to come up with a certain “rule of thumb” which would find its application in all the cases of fair dealing as each and every case depends upon its own varied facts and circumstances.⁵² In several cases the courts consider the interest of the public to be paramount consideration.⁵³ With the passage of time, India has gone through tremendous technological ameliorations but still procures a very limited scope in the law of fair dealing.⁵⁴ But if we look towards the west, continuous advancements through innovative interpretations and judicial activism have been introduced in this field. The fact remains that the difficulty that exists and causes hindrance with respect to this defence is the fact that the Indian courts and legislature are yet to fully explore the scope of fair dealing which is a very necessary exception in the copyright regime.

⁵² *ESPN Star Sports v. Global Broadcast News Ltd and Ors.*, (2008) (36) PTC 492 (Del)

⁵³ *Ashdown v. Telegraph Group Ltd*, (2001) EWCA Civ 1142.

⁵⁴ S. Mahesh. (2008). *Copyright and digitization*. 6 JOURNAL OF INFORMATION MANAGEMENT, 3, 84-88.