
COPYRIGHT IN THE AGE OF MEMES: EXAMINING FAIR DEALING, DERIVATIVE WORKS, AND THE EVOLVING BOUNDARIES OF COPYRIGHT PROTECTION

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ABSTRACT

It's been nearly 30 plus years since internet became part of our daily lives and over a decade or two for Instagram, Facebook etc. Now these platforms can be used for various purposes, among which, is the circulation of memes which are usually circulated for comedic purposes. This practice has been so commonly engraved in our daily doomscrolls that we hardly think twice about it before sharing. While the unauthorized copying of songs, stories, or scripts is readily identified as copyright infringement, the use of memes despite their frequent reliance on copyrighted material often escapes similar scrutiny. This paper examines the scope and meaning of copyrighted subject matter in the context of memes and analyses the existing legal framework governing such use. It further explores the legal structure which is present regarding this. It further explores how the meme creators can protect their original creation and also what are the defences available to them against the blames of copyright infringement. We will further look into the study conducted to analyse how memes are perceived by the general public and how much these memes can affect the purchasing habits and brand reputations.

Keywords: Memes, Fair Dealing, Protection of Memes, Copyright, Copyright Protection

HOW ARE MEMES COPYRIGHTED MATERIAL?

A meme is an artefact that incorporates creative expression and perceptions.¹ If made without copyrighted material then it meets the definition of ‘artistic work’ under **Section 2(c) of the Copyright Act, 1957**. The said definition goes as: “*artistic work*” means-

- (i) *a painting, a sculpture, a drawing (including a diagram, map, chart or plan), an engraving or a photograph, whether or not any such work possesses artistic quality;*
- (ii) *a [work of architecture]; and*
- (iii) *any other work of artistic craftsmanship;*

But since there are memes that involves various images, videos, dialogues, etc. of someone who is different from the creator of the memes, hence these memes are an epitome of neglected and very much evident copyrighted material. When an image or video clip is shared without the consent of the rightful owner or original creator, it amounts to copyright infringement and qualifies as an “infringing copy.” *Infringing Copy means:*

- (i) *in relation to a literary, dramatic, musical or artistic work, a reproduction thereof otherwise than in the form of a cinematographic film;*
- (ii) *in relation to a cinematographic film, a copy of the film made on any medium by any means;*
- (iii) *in relation to a sound recording, any other recording embodying the same sound recording, made by any means;*
- (iv) *in relation to a programme or performance in which such a broadcast reproduction right or a performer’s right subsists under the provisions of this Act, the sound recording or a cinematographic film of such programme or performance, if such reproduction, copy or sound recording is made or imported in contravention of the provisions of this Act;]²*

¹Tejaswi D. Shetty, Copyright Provisions pertaining to ‘Internet Memes’ in India, Blog of NLIU Cell for Studies in Intellectual Property Rights, May 22, 2022, <https://csipr.nliu.ac.in/copyright/copyright-provisions-pertaining-to-internet-memes-in-india/>

² The Copyright Act, 1957, §2(m)

Individuals who create memes, commonly referred to as “memers,” frequently rely on pre-existing copyrighted works such as songs, films, web series, images, and dialogues. In many cases, these creators significantly alter the original content and portray themselves as the actual authors, thereby infringing upon the moral and economic rights of the original creators, particularly the right of attribution and the right to maintain the integrity of the work. Such practices not only deprive authors of due recognition but also undermine the originality and value of their creative expressions.

Indian judicial interpretation highlighted in decisions of various High Courts and the Supreme Court, along with commentary such as *Kerly’s Law of Trade Marks and Trade Names*, indicates that the circulation of commercial material through digital platforms, including memes, can amount to trade mark disparagement. Disparagement, here, refers to lowering the reputation of a mark by ridiculing, discrediting, or unjustly comparing it with something inferior, thereby diminishing its commercial value.

Given the strong psychological influence of visual advertising and the rapid spread of meme-based content across online platforms, such material can significantly affect public perception. Where a meme mocks, devalues, or tarnishes the goods, brand name, or trade mark of a competitor, it may fall within the scope of actionable disparagement under Indian trade mark law.³

Moreover, memers often purposely distort copyrighted material to ridicule, demean, or malign the original creator, causing reputational harm. A prominent example can be observed in the case of Tony Kakkar’s songs, which were intentionally altered and circulated by several meme pages in a manner that portrayed his work in a derogatory light, adversely affecting his public image. Although such content is often justified as humour or satire, the intentional misuse and misrepresentation of creative works raise serious concerns regarding copyright infringement and the violation of moral rights. Memes can also pose significant risks to individual reputation and public perception. Due to their viral nature and persuasive visual format, memes often blur the line between satire and assertion of fact. For example, a meme circulating online depicts actor Rowan Atkinson holding a placard containing a statement relating to U.S. President Donald Trump and the widely discussed Epstein Files controversy. Regardless of whether the

³ Nishant Tripathi and Akshat Singh, *Memes, Marks and Mayhem, from Virality to Legal Validity*, August 19, 2025, <https://www.scconline.com/blog/post/2025/08/19/memes-marks-and-mayhem-from-virality-to-legal-validity/>

actor genuinely endorses or even agrees with the message conveyed, the association created through the meme may lead viewers to infer that he supports the views expressed therein.

Such wrong attribution is particularly problematic in the digital age, where content is frequently consumed without context and shared rapidly. The visual authority of a public figure gives unintended credibility to the message, thereby shaping public opinion based on a false premise. Consequently, memes not only raise questions of copyright and fair dealing but also engage concerns relating to reputation, misrepresentation, and potential defamation, underscoring the need for a more nuanced legal and ethical assessment of meme culture.

In addition to reputational harm, memes can also disrupt the commercial and artistic value of cinematographic works by prematurely revealing key elements of the narrative. For instance, following the release of the film *Dhurandhar*, numerous memes incorporating its scenes and dialogues were widely circulated, with some of these memes revealing crucial plot points and spoilers. A similar situation arose with the Netflix series *Bads of Bollywood*, where several meme creators revealed suspenseful elements of the storyline through memes, thereby diminishing the viewer experience and potentially affecting the marketability of the work.

Therefore, it can be contended that memes, when created and disseminated without authorization and in a manner that distorts, misrepresents, or prematurely discloses copyrighted content, directly contribute to copyright infringement. These practices underscore the growing conflict between viral meme culture and copyright law in the digital ecosystem, where rapid circulation exacerbates the impact of such violations. The lack of clear legal demarcation between permissible transformative use and unlawful exploitation further necessitates a nuanced and balanced legal framework that safeguards creative expression while effectively protecting authors' rights.

THE FAIR DEALING DEFENCE IN MEME CULTURE

When a meme is created, the original copyrighted work (such as a song, movie scene, or image) is usually used only as a base, while the main focus of the meme is the creator's own humour, creativity, or commentary. One of the surest and the safest test to determine where or not there has been violation of copyrights to see if the reader, spectator or the viewer after having read or seen both the work is clearly of the opinion and gets an unmistakable impression that the

subsequent work appears to be a copy of the original.⁴ Because the meme transforms the original work rather than simply copying it, it becomes difficult to say that the original work is being fully or unfairly exploited. In such cases, the doctrine of fair use (fair dealing) becomes relevant.

Memes are generally made for entertainment, parody, or criticism, and not for making money. Under **Section 52(1)(a) of the Copyright Act, 1957**, the use of copyrighted material for purposes such as criticism, review, or parody is permitted. This section says, *certain acts not to be infringement of copyright*:

(1) The following acts shall not constitute an infringement of copyright, namely,

(a) a fair dealing with any work, not being a computer programme, for the purpose of

(i) private or personal use, including research

(ii) criticism or review, whether of that work or of any other work

(iii) the reporting of current events and current affairs, including the reporting of a lecture delivered in public

Therefore, if a meme uses a copyrighted work in a *limited* and *transformative manner*, without harming the original creator's commercial interests, it may be protected under fair dealing and may not amount to copyright infringement. Here, the word *transformative* means when the original content is repurposed to convey a different message, meaning, or expression.

In [Campbell v. Acuff-Rose Music, Inc.](#)⁵ the court laid down the following four-factor test to determine the liability of the fair use defence:

- the purpose and character of the use, including whether such use is of a commercial nature
- the nature of the copyrighted work
- the amount and substantiality of the portion used in relation to the copyrighted work as

⁴ R.G Anand v. Delux Films ((1978) 4 SCC 118: A.I.R 1978 S.C 1613)

⁵ 510 U.S. 569 (1994)

a whole

- the effect of the use upon the potential market for or value of the copyrighted work⁶

Parody operates within a fundamental tension: it must be innovative while simultaneously drawing upon an existing work. Its effectiveness depends on borrowing recognizable elements from the original trademark so that the audience can identify the reference and appreciate the humour. However, if the imitation becomes excessive and lacks sufficient creative transformation, it may cross the boundary into infringement by appearing more like misappropriation than independent expression. In essence, parody involves intentional imitation combined with alteration or distortion. It assumes that the original work enjoys public recognition and authority, as the humour depends upon the audience's ability to perceive the reference and understand the implied commentary. The meaning of a parody is therefore co-created by the audience, whose recognition and interpretation complete the satirical effect. This distinguishes parody from plagiarism, since the latter seeks to conceal copying, whereas parody openly relies on and acknowledges the original source.⁷

In *Civic Chandran v. Ammini Amma*⁸, the Kerala High Court applied the principle of fair dealing by holding that the use of substantial portions of a copyrighted work is permissible when such use is for the purpose of criticism, review, or parody under Section 52(1)(a) of the Copyright Act, 1957. The Court recognized that effective criticism may necessarily involve reproducing parts of the original work and that the test of fair dealing depends not merely on the quantity copied but, on the purpose, character, and transformative nature of the use. Since the defendant's play was a bona fide critical response that did not compete with or cause market harm to the original play, it was protected as fair dealing, thereby reinforcing the balance between copyright protection and freedom of expression.

Hence the fact that how a meme is made is a big driving force in determining that whether it can be categorised as copyright infringement or not. In *Blackwood and Sons Ltd. And Ors. v. A.N. Parasuraman and Ors.*, the court urged two points connected with the meaning of the

⁶ Tejaswi D. Shetty, Copyright Provisions pertaining to 'Internet Memes' in India, Blog of NLIU Cell for Studies in Intellectual Property Rights, May 22, 2022, <https://csipr.nliu.ac.in/copyright/copyright-provisions-pertaining-to-internet-memes-in-india/>

⁷ Tata Sons Ltd. case, 2011 SCC OnLine Del 466

⁸ 1996 PTC 670 (Ker HC) 675-677

expression 'fair' in 'Fair dealing' –

- (i) that to constitute unfairness, there must be an intention to compete and to derive profit from such competition and
- (ii) that unless the motive of the infringer were unfair, in the sense of being improper or oblique, the dealing would be fair. The Court's reasoning is that one party should not be allowed to profit financially on the efforts of another and fair use is a comprehensive area that is open to interpretation and additional contemplation.

And since memes which are not made for profit but for entertainment, parody, or criticism are protected under **Section 52 (1)(a) of the Copyright Act, 1957**. The concept of fair use should not be viewed as vague or based merely on subjective evaluation. Rather than treating it as a scattered set of exceptions to copyright protection, fair use ought to be understood as an essential and coherent component of the copyright framework itself. It is not a deviation from copyright principles but a mechanism that helps fulfil the very goals of the law.

Far from being an unusual or reluctantly permitted limitation on copyright monopoly, fair use forms a deliberate and necessary feature of the system. In simple terms, a use qualifies as fair when it advances learning, intellectual development, and dissemination of knowledge, while at the same time not substantially undermining the creator's economic motivation to produce original works.⁹

THE LIMITS OF FAIR DEALING

Fair dealing can go a long way in protecting memers to a very large extent since it incorporates transformative use rather than copying. This means that in some instances, even though the meme might be directly using a pre-existing image or video, it can still fall under the umbrella of fair dealing. This is because the meme also conveys a new meaning and context. Most of the memes being created are for non-commercial use and are shared for entertainment and criticism. This also shows that most of the rights granted to memers fall under the umbrella of fair dealing. The law also recognises that parody and criticism require the representation of the original work, and thus, some copying of the work is essential. Furthermore, when the meme does not implicate the original work and does not harm the market value of the work, the judges

⁹ Leval PN, 'Towards a fair use standard', (1990) 103 Harv. L. Rev. 412-417

can go easy on the meme creators. Despite all the legal protection given to memers by the law, it must be understood that the law works within boundaries.

It must be noted that if the meme is used for commercial purposes, then it cannot take refuge in the principle of fair dealing. Although memes circulated purely for amusement may be protected under the principles of fair use or fair dealing, depending on the applicable legal framework, their use for commercial purposes can amount to copyright infringement if the necessary authorisation or licensing from the rights holder has not been secured.¹⁰ This distinction was clearly illustrated in *Grumpy Cat Ltd. v. Grenade Beverage LLC et al*¹¹. The company to which the rights belonged was named Grumpy Cat Ltd. It is the company that granted a license to Grenade Beverage LLC to use the image of the cat but under the condition that the image was used for a specific product within a limited scope: a limited number of iced coffee drinks. However, there is a sharp departure from these guidelines and rules that were laid down by the company for the use of the image of the cat by Grenade Beverage LLC. They used the image for unlicensed products such as roasted coffee drinks and related merchandise, as well as promotional material that was not included in the contract with the company that owned the rights to the image of the cat.

This unauthorised extension had hence converted an authorised usage into a form of commercial exploitation because the image was not used as an image or for self-expression but was employed as a potential mode for generating income through the promotion of brand awareness. In the end, the court found Grenade to be guilty of the violation of copyright law, trademark infringement, and the violation of contract law. This limitation is, in fact, very important. This is because if we do not limit the use of such images, videos, etc. they can be used to support certain beliefs, products, services, etc which the owner of the said image, videos, etc do not support or wish to be associated with. Let us take the example of this Grumpy Cat case. If, hypothetically, the coffee chain Grenade used the Grumpy Cat on its new batch of Halloween Special Coffee and that coffee turned out to be a flop among general public. Then this would not only result in harming the reputation of Grenade itself but also the public would associate the Grumpy Cat logo with that bad edition of Grenade coffee. Now, in our hypothetical the coffee was the problem but in real life the problem can be much bigger. For

¹⁰ Nishant Tripathi and Akshat Singh, Memes, Marks and Mayhem, from Virality to Legal Validity, August 19, 2025, <https://www.sconline.com/blog/post/2025/08/19/memes-marks-and-mayhem-from-virality-to-legal-validity/>

¹¹ 8:15-cv-02063, (C.D. Cal.)

example- it can be associated with a political belief, or personality right, etc. These kinds of associations can result in brand damage.

WHEN ORIGINAL OWNERS BENEFIT FROM MEMES

Looking at this situation from a different perspective, we can say that the original creators of the image, videos, etc sometimes benefit from the memes too. One of the most significant advantages and, at times, drawbacks of an internet meme achieving viral popularity is its ability to reach a vast, global audience, including individuals who might not ordinarily engage with the subject matter concerned. This idea was clearly demonstrated by the “Barbenheimer” memes, which went viral in 2023 and substantially increased worldwide attention for two major film releases, Barbie and Oppenheimer. As a consequence, film studios experienced huge interest from audience segments that would not typically gravitate toward these genres. The trend also evoked nostalgia for an earlier era of cinema, when audiences frequently attended double features and viewed multiple films in a single sitting.

In the case of *Barbenheimer*, viewers who would usually choose only one of the two films were encouraged to watch both, largely due to the meme-driven cultural momentum. This resulted in audiences spending nearly five hours in theatres this outcome would have been highly unlikely in the absence of the meme’s viral influence. Moreover, meme-based marketing demonstrated its capacity to draw in viewers who might otherwise remain disengaged. For instance, a significant number of younger viewers, previously unfamiliar with the historical and scientific context surrounding Oppenheimer, were prompted to explore its subject matter. This highlights the potential of meme culture as an effective promotional tool for historical or educational films, particularly in appealing to younger demographics.

This being said, the use of memes as a marketing strategy is not without limitations. It is essential to ensure that such content does not trivialise, distort, or appear insensitive toward serious or traumatic historical events. This concern became evident in the Barbenheimer phenomenon, which attracted criticism from Japan for allegedly diminishing the gravity of the suffering endured as a result of the atomic bombings linked to J. Robert Oppenheimer’s work. Another thing which has to be paid attention to, is the fact that it does not infringe the rights of the filmmakers or the original content creators which can lead to various lawsuits and rights violations as well. For example, in U.S.A Warner Brothers sent take down notice for the Robin slapping Batman meme being misused commercially.

PROTECTION OF MEMES

Meme culture operates largely within the grey zones of intellectual property law. Nevertheless, like most original creations, a newly created meme may attract copyright protection automatically, provided it qualifies as an original work of authorship, demonstrates a minimal degree of creativity, and is fixed in a tangible medium of expression. Copyright law confers upon the original meme creator, or the rights holder of the underlying media incorporated into the meme, exclusive rights over reproduction, adaptation, distribution, public performance, and display. Consequently, the viral circulation of a meme can, in certain instances, amount to copyright infringement, as the original work is altered and subsequently reproduced, distributed, and publicly displayed through repeated online sharing.

Additionally, businesses have started using memes as a way to grab consumer attention and stay relevant online. When a meme begins to generate commercial value, its original creator may even try to claim legal rights over it through trademark protection. A well-known example is the viral 2016 YouTube video "*Damn Daniel*," which gained popularity for the catchphrase, "Damn Daniel, back at it again with the white Vans." As the phrase spread rapidly across social media, the creators took steps to secure trademark registrations for "DAMN DANIEL" and "DAMN DANIEL BACK AT IT AGAIN," particularly in areas like clothing and entertainment. This shows how something that starts off as a casual, humorous piece of internet culture can eventually evolve into a protected commercial asset.

Meme creators in India are watermarking their logos to claim credit and protect their work. Under the idea of moral rights, the focus shifts from purely economic interests to the personal connection between an author and their work. Moral rights are essentially the non-economic rights that allow authors to protect the integrity of their creations and object to any distortion, modification, or misuse, regardless of who owns the copyright. In this sense, they act as an important counterweight to the otherwise commercial orientation of modern copyright law, bringing the author back to the centre of the discussion.

In the Indian context, the recognition of moral rights under the Copyright Act, 1957 has evolved gradually, but in a way that has generally strengthened the position of authors. The roots of copyright law in India, however, can be traced back to the colonial period, particularly the Indian Copyright Act of 1847. This legislation introduced the idea of exclusive rights over creative works something that was not previously a part of the traditional Indian legal

framework.

Notably, the 1847 legislation did not recognise moral rights. It was only with the enactment of the Indian Copyright Act, 1957 that moral rights were formally incorporated into Indian copyright law. Judicial engagement with moral rights began to take shape in subsequent decades, with one of the earliest and most significant cases being *Mannu Bhandari v. Kala Vikas Pictures Pvt. Ltd. and Others*¹². In this case, the court clarified that the scope of Section 57 is not confined to literary works alone but extends to visual and audiovisual expressions as well, thereby affirming the broad and inclusive nature of moral rights protection under Indian law. Thus, including the modern-day audio and visual manifestation – Memes.

Under Indian copyright law, creators have moral rights, which mainly mean two things:

1. The right to be identified as the creator of the work, and
2. The right to object if the work is distorted or used in a way that harms their reputation.

When a meme goes viral, it is often reposted, edited, or shared without giving any credit to the original creator. By adding a watermark or logo, meme creators make sure that their name stays attached to the meme even when it is shared across platforms. This helps others know who originally created it, and it prevents someone else from falsely claiming authorship.

In practical terms, watermarking works as a soft legal safeguard. It does not stop people from sharing the meme, but it helps enforce the creator's moral right to attribution and acts as evidence if the creator later needs to prove authorship or object to misuse. Therefore, watermarking has become a simple yet effective way for Indian meme creators to protect their creative identity in the fast-moving digital space.

WHAT IF THE MEME IS AI GENERATED?

AI-generated creations sit in a grey zone under Indian copyright law, which continues to anchor protection in human authorship. Under the Copyright Act, 1957, only a “person” can qualify as an author, meaning works produced entirely by AI whether images, text, or music generally fall outside copyright protection and are treated as part of the public domain. Courts have

¹² AIR 1987 DELHI13

consistently emphasised the need for human skill, judgment, and creativity, as seen in *R.G. Anand v. Deluxe Films*¹³ and AI, by itself, does not meet this threshold. However, the position shifts when there is meaningful human involvement. Where a user exercises creative control through detailed prompts, iterative refinements, and personal input, they may be regarded as the author, with ownership vesting in them under Section 17, but again it mostly is dependent on case-to-case basis. AI platforms, in contrast, are typically viewed as tools rather than rights-holders, and their claims are usually limited to contractual terms rather than ownership of outputs. As a result, the real question in disputes is no longer simply whether a work is original, but whether it is “human enough.” Until legislative reforms are introduced, creators using AI must be careful to document their contributions and structure their arrangements clearly, or risk their work being treated as free for all to use and adapt.

FINDINGS FROM THE EMPIRICAL STUDY

The empirical findings of the present study reinforce the central argument of this research on Copyright in the Age of Memes. The survey, conducted among 45 respondents predominantly aged between 18–25 years and largely comprising students, reveals that meme engagement is deeply embedded in everyday digital culture, with a majority interacting with memes multiple times a day. The following results were revealed:

I. Circulation Practices: Minimal Transformation, Lack of Attribution, and Perceived Copying

The empirical evidence suggests that passive consumption, as opposed to active creation, is the primary driver of meme circulation. While 76% of respondents say they only watch or share memes rather than making them, 69% of respondents say they interact with memes several times a day. More importantly, 51% of respondents say they “share as it is,” meaning they don't change or alter the content. This implies that a significant amount of meme distribution takes place without modification, adaptation, or obvious acknowledgement to the original creator. Furthermore, 84% of participants have at least occasionally believed that memes may have been improperly copied from original sources, even though 24% of respondents who make memes acknowledge using images, clips, or templates derived from copyrighted works. Even though derivative use is intuitively recognised, only 51% of respondents were clearly aware

¹³ ((1978) 4 SCC 118; A.I.R 1978 S.C 1613)

that memes are protected by copyright; the remaining respondents were either completely unaware or only partially aware. When taken as a whole, these results show a pattern of widespread distribution of derivative content with little modification and little attribution, which raises serious questions about adherence to copyright law doctrines like fair dealing and transformative use.

II. Commercialization, Market Influence, and Brand Appropriation of Memes

The study also demonstrates the significant commercial development of meme culture. Meme-based communication has become a standard advertising tactic, as evidenced by the overwhelming 91% of respondents who reported seeing brands or companies use memes for marketing. Additionally, 24% of participants say they may have been influenced by a meme used in brand marketing, and 29% of participants say they have bought a good or service as a result. This implies that more than half of the participants recognise that meme-based advertising has at least some influence on the market. The idea that memes are just amusing, non-commercial expressions shared in unofficial online communities is complicated by the economic consequences of such usage. Rather, their observable commercial impact is consistent with legal precedents like the Grumpy Cat case, where judicial recognition of enforceable intellectual property rights resulted from unapproved commercial exploitation of a copyrighted character. Similar to *Grumpy Cat Ltd. v. Grenade Beverage LLC*, where commercial misuse of a protected image led to liability, brands' appropriation of memes highlights the legal risks associated with derivative content when used for profit. As a result, the results support the paper's main argument that meme culture, especially in its commercialised form, functions in a legally delicate area that calls for close doctrinal examination.

CONCLUSION

The latest day of digital world is full of some new challenges for these all. One of which being the difficulty in learning about what threats you have become susceptible to due to these new technologies. Its a place where something as petty as a meme can cause its owners, the brands and most of all - people tremendous pain or pleasure when it is being shared through the various social media platforms of entertainment or informing (or whatever purpose) by everyone but especially who are actually behind them in making, creating, editing and sharing. This paper demonstrates that memes are not simply legally irrelevant objects, but instead occupy an

incredibly complex space in which creativity, derivation/deriving, parody, commerce and intellectual property all exist alongside one another in such intricately tangled fashions that some may characterize them as creature objects (due to the utterly vague boundaries between each of these categories).

Memes can be classified as creative works and would therefore fall under the realm of copyright (Copyright Act, 1957) provided they meet the conditions of originality and fixation. A meme generated independently of any other copyrighted work may be considered an “artistic work” under section 2(c). Most memes would then be considered derivative works since they are based on others' existing works or images. A lot of memes have stills from movies, pictures of celebrities and quotes based on movies or songs as well as clips from TV series and films. So, if someone creates a meme that uses such types of works without obtaining permission or does not satisfy the application of the right to fair dealing, then they are creating an infringing copy of original copies. Additionally, if someone distorts or misrepresents the original works when creating their memes, they could also violate the moral rights of the original authors, as defined by Section 57 of the Code.

This paper examines how Indian Copyright Law indicates that copyright law is not an absolute legal construct. Specifically, **Section 52(1)(a) of the Copyright Act** (Fair Dealing), provides that critique and review of works, as well as the act of creating a parody or commenting on a work, are recognized as fair dealing uses. Examples of this concept are evident in cases such as ***Civic Chandran v. Ammini Amma and Blackwood & Sons Ltd v. A.N. Parasuraman***,¹⁴ which illustrate that determining whether any particular act of copying is fair will depend on several factors, including the amount of copying versus the purpose, the character of the copying; the transformative nature of the copying; and the impact of market competition between the original work and the resulting work. Likewise, the case ***Campbell v. Acuff-Rose Music, Inc***¹⁵ serves as an example of persuasive authority that outlines specific tests to determine whether a use qualifies as transformative. Parody is fundamentally derivative and original. A parodical work borrows sufficiently from the original to summon an association, yet adds an entirely new meaning to the original. Therefore, memes often fall within the scope of fair dealing protection, particularly where the use is not for commercial purposes, and where

¹⁴ 1996 PTC 670 (Ker HC) 675-677

¹⁵ 510 U.S. 569 (1994)

the use does not detrimentally affect the market for the original work.

The doctrinal observations made in this study is also supported by the empirical work performed herein. 69% of the total sample report that they consume memes multiple times during a given day, and with 76% of the same sample saying they tend to be passive viewers rather than creators of memes, this suggests that meme culture is consumption based. Importantly, 51% of respondents reported that they pass memes along in the same state in which they received it, using very little transformational use and/or attribution. To be fair, while 84% of respondents had feeling at least sometimes that their memes may have been used improperly, only 51% knew about copyright protection for the memes. This lack of knowledge points to the disparity between the moral understanding of copyright protection and the actual understanding of the copyright protection afforded by the law. In addition, 91% of the respondents have seen brands using meme culture in their marketing campaigns, and over half of the respondents reported that the use of meme culture by brands affects their purchasing behaviours. This further confirms the fact that memes have an economic impact, which in turn raises the legal risks associated with the use of memes.

This study also concludes that meme culture is not a uniformly negative phenomenon for original creators. Memes like “Barbenheimer” demonstrate how the viral nature of memes can be utilized as vehicles to increase an individual creator’s notoriety and generate revenue for the creator through increased audience engagement with a creator’s pre-existing work. According to this study, memes can be simultaneously infringing derivatives of an original creator’s work and/or they can function as valuable promotional tools for creators. Therefore, the challenge posed to copyright law is primarily that of regulating meme culture in a manner that permits original creators the opportunity for creative expression while effectively protecting the rights of creators of original works.

In concluding this paper, we consider that meme culture occupies both a legally ambiguous space, but one that is also intellectually meaningful. This paper tests the ability of the copyright doctrine to be flexible in an era of rapid digital dissemination and participatory creativity. A strictly enforced copyright system may hinder creative expression, whereas an excessively permissive copyright system can devalue an author's economic and moral rights. To address both concerns, copyright law needs to develop a more nuanced, context-based application of fair dealing principles, including clear doctrinal definitions for transformation, purpose, market

harm, and commercial intent. By reconciling viral creativity and legal protection, copyright law must develop as a structural framework for facilitating cultural participation, rather than acting as a barrier to culture, and enabling both the continued creation of new ideas through creativity and the maintaining of integrity within the virtual economy.