
FAIR DEALING AND MUSICAL WORKS IN INDIA: RECALIBRATING COPYRIGHT BALANCE IN THE AGE OF DIGITAL REMIX CULTURE

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ABSTRACT

The doctrine of fair dealing under the Copyright Act, 1957 constitutes the principal statutory limitation upon the exclusive rights of copyright holders in India. It reflects the internal balancing mechanism of copyright law, which seeks to reconcile economic incentives for creators with broader societal interests in access to culture and knowledge. In the contemporary digital ecosystem, the music industry has undergone structural transformation driven by remix culture, digital sampling, user generated content, algorithmic dissemination, and platform based distribution. These developments challenge traditional copyright assumptions rooted in singular authorship, fixed originality, and strict proprietary control.

This paper undertakes a detailed doctrinal and analytical examination of fair dealing in India with particular reference to musical works and sound recordings. Through close statutory interpretation of Section 52 of the Copyright Act, 1957, critical analysis of judicial precedents, engagement with constitutional free speech principles under Article 19(1)(a), economic theory concerning market failure and transaction costs, and comparative reference to the transformative use doctrine in the United States, the paper argues that the Indian framework remains structurally rigid and insufficiently responsive to contemporary musical practices. The study identifies four principal concerns: the closed list architecture of Section 52, judicial overemphasis on market harm, absence of a transformation based inquiry, and inadequate engagement with digital platform realities. It concludes by advocating a purposive, transformation-sensitive, and constitutionally aligned interpretation of fair dealing capable of sustaining both economic incentives and creative innovation in the evolving digital music ecosystem.

Keywords: Fair Dealing; Musical Works; Sound Recordings; Section 52; Remix Culture; Transformative Use; Copyright Balance; Digital Platforms; Freedom of Expression.

1. Introduction

Copyright law has long been understood as a mechanism designed to encourage creativity by granting authors exclusive rights over their intellectual output. At its core lies a fundamental tension: while exclusivity incentivises production by enabling authors to derive economic benefits from their works, excessive protection may inhibit the very creativity that copyright seeks to promote. Copyright systems therefore incorporate limitations and exceptions as internal balancing devices.

Wendy J. Gordon's influential economic analysis conceptualizes copyright limitations as responses to market failure.¹ Where transaction costs are high, bargaining is impractical, or social value exceeds private gain, strict enforcement of exclusive rights may produce inefficient or unjust outcomes. In such circumstances, doctrines such as fair dealing or fair use function as corrective mechanisms.

The musical domain exemplifies this tension vividly. Musical creativity has historically been cumulative and dialogic. From classical compositions that reworked earlier motifs to folk traditions transmitted through collective reinterpretation, music has rarely emerged in isolation. The advent of digital technologies has intensified this cumulative character. Contemporary musical practices such as remixing, sampling, mashups, and short-form digital adaptations rely heavily on engagement with pre-existing works.

In India, the Copyright Act, 1957 governs copyright protection and limitations. Section 52 codifies the doctrine of fair dealing by enumerating specific acts that do not constitute infringement.² Unlike the open-ended fair use doctrine in the United States, Indian law adopts a closed list approach.³ This structural difference significantly shapes judicial interpretation and limits flexibility.

The central question this paper addresses is whether the existing Indian fair dealing framework adequately accommodates transformative musical practices in the digital age. It argues that while the statutory framework recognises the importance of balance, judicial interpretation has

¹ Wendy J. Gordon, "Fair Use as Market Failure: A Structural and Economic Analysis of the Betamax Case", (1982) 82 *Columbia Law Review* 1600.

² The Copyright Act, 1957, Section 52.

³ Shamnad Basheer, "Copyright Law and the Closed List Approach in India", (2005) 1 *Indian Journal of Law and Technology* 1.

tended toward rigidity and market centric reasoning, thereby constraining the doctrine's adaptive potential.

2. Literature Review

The balancing function of copyright exceptions has been extensively examined in Indian and international scholarship.

P. Narayanan emphasises that copyright must operate as a balanced system that protects authors without undermining public interest in dissemination and cultural development.⁴ However, his doctrinal commentary largely reflects pre digital disputes and does not extensively analyse remix culture.

Shamnad Basheer critically evaluates the closed-list structure of Section 52 and argues that its enumerative design restricts judicial innovation.⁵ He observes that Indian courts frequently interpret fair dealing narrowly, treating it as a defensive exception rather than as a structural safeguard within copyright architecture.

Arul George Scaria's work on copyright enforcement in India highlights asymmetries between large rights holders and individual users.⁶ He notes that proprietary interests often dominate judicial reasoning, with limited attention paid to user rights and public interest.

Dev S. Gangjee examines the concept of transformative use within Indian copyright jurisprudence and identifies the absence of a structured transformation based inquiry comparable to U.S. law.⁷

Internationally, Lawrence Lessig's theory of remix culture underscores that reuse and transformation are intrinsic to contemporary creativity rather than marginal infringements.⁸ Kembrew McLeod and Peter DiCola demonstrate how rigid licensing regimes may suppress

⁴ P. Narayanan, *Intellectual Property Law in India*, 4th edn. (Eastern Law House, 2010).

⁵ Shamnad Basheer, *supra* note 3.

⁶ Arul George Scaria, *Piracy and the Indian Copyright Law* (Oxford University Press, 2014).

⁷ Dev S. Gangjee, "Copyright and Transformative Use in India", (2020) 12 *NUJS Law Review* 45.

⁸ Lawrence Lessig, *Remix: Making Art and Commerce Thrive in the Hybrid Economy* (Bloomsbury Publishing, 2008).

digital sampling and disproportionately burden emerging artists.⁹

Collectively, scholarship reveals a gap in focused doctrinal analysis of fair dealing specifically in relation to musical works within India. This paper contributes to that discourse by situating remix culture at the centre of fair dealing analysis.

3. Research Methodology

This study adopts a doctrinal legal research methodology grounded in the analysis of primary and secondary sources.

First, it undertakes close textual interpretation of the Copyright Act, 1957, particularly Section 52 and provisions relating to musical works and sound recordings under Sections 13 and 14.

Second, it analyses judicial precedents from the Supreme Court and High Courts to identify interpretative trends concerning fair dealing and copyright balance.

Third, it engages with constitutional principles under Article 19(1)(a) to evaluate whether fair dealing interpretation aligns with freedom of expression.

Fourth, it incorporates economic theory relating to transaction costs and market failure to contextualise the practical implications of rigid enforcement.

Finally, it undertakes limited comparative analysis with U.S. transformative use doctrine to identify potential interpretative models.

The methodology is qualitative and analytical rather than empirical.

4. Statutory Framework: Section 52 and Its Structure

Section 52 of the Copyright Act enumerates acts that do not constitute infringement, including use for private or personal purposes, criticism or review, reporting of current events, and educational uses.¹⁰

⁹ Kembrew McLeod & Peter DiCola, *Creative License: The Law and Culture of Digital Sampling* (Duke University Press, 2011).

¹⁰ The Copyright Act, 1957, Section 52 .

The Supreme Court in *Eastern Book Company v. D.B. Modak* recognised that copyright protection must balance incentive with public access.¹¹ This balancing philosophy underlies the existence of fair dealing.

However, the enumerative structure of Section 52 distinguishes Indian law from more flexible fairness standards. Courts must determine whether a particular use fits within specified purposes rather than evaluate fairness through open-ended criteria.

In the musical context, this structure poses difficulties. Transformative remixes and mashups may not neatly fall within categories such as criticism or review. The absence of general evaluative language limits judicial adaptability.

5. Musical Works and Sound Recordings: Layered Protection

Indian copyright law recognises separate protection for musical works and sound recordings. A musical work protects the underlying composition, while a sound recording protects the fixation of performance.

In remix culture, creators may sample brief audio segments from sound recordings or reproduce melodic structures independently. Determining whether infringement concerns the musical work, the sound recording, or both requires doctrinal clarity.

Layered rights create cumulative licensing obligations and increase transaction costs. Such complexity may deter transformative creativity and exacerbate bargaining asymmetries.

6. Judicial Interpretation of Fair Dealing

Indian courts have historically emphasised proprietary stability and market considerations.

In *Super Cassettes Industries Ltd. v. Entertainment Network India Ltd.*, the Supreme Court prioritised safeguarding commercial interests.¹²

In *India TV Independent News Services Pvt. Ltd. v. Yashraj Films Pvt. Ltd.*, the Delhi High

¹¹ *Eastern Book Company v. D.B. Modak*, (2008) 1 SCC 1.

¹² *Super Cassettes Industries Ltd. v. Entertainment Network India Ltd.*, (2008) 13 SCC 30.

Court adopted a restrictive interpretation of fair dealing in relation to song usage.¹³

In *Civic Chandran v. Ammini Amma*, contextual fairness was acknowledged.¹⁴

In *University of Oxford v. Rameshwari Photocopy Services*, educational use was interpreted broadly in favour of public interest.¹⁵

However, transformation-based reasoning remains underdeveloped in musical contexts.

7. Digital Platforms and Algorithmic Enforcement

The emergence of digital platforms has significantly altered the landscape of musical creation and dissemination. Online streaming services, video sharing platforms, and social media networks have enabled widespread participation in music production. Remixing, mashups, slowed versions, parody adaptations, and short-form musical reinterpretations are now common features of digital culture.¹⁶

However, these platforms also rely heavily on automated content identification systems to detect copyrighted material. Such systems function through algorithmic matching rather than contextual legal analysis. They are incapable of assessing whether a particular use qualifies as fair dealing under Section 52. As a result, content may be removed or monetised without consideration of transformation, criticism, or educational purpose.¹⁷

For independent creators, the cost and complexity of challenging automated takedowns can be substantial. This technological enforcement environment may therefore create a chilling effect, discouraging experimentation with transformative musical practices.¹⁸ In this context, statutory rigidity becomes more consequential, as practical enforcement mechanisms operate strictly and often pre emptively.

Fair dealing interpretation must therefore be sensitive not only to doctrinal principles but also

¹³ *India TV Independent News Services Pvt. Ltd. v. Yashraj Films Pvt. Ltd.*, 2012 SCC OnLine Del 429.

¹⁴ *Civic Chandran v. Ammini Amma*, 1996 PTC (16) 329 (Ker).

¹⁵ *The Chancellor, Masters & Scholars of the University of Oxford v. Rameshwari Photocopy Services*, 2016 SCC OnLine Del 1851.

¹⁶ Niva Elkin-Koren, "Fair Use by Design", 64 *UCLA Law Review* 1082 (2017).

¹⁷ Lawrence Lessig, *Remix: Making Art and Commerce Thrive in the Hybrid Economy* (Bloomsbury Publishing, 2008).

¹⁸ Arul George Scaria, *Piracy and the Indian Copyright Law* (Oxford University Press, 2014).

to the digital realities within which music circulates.

8. Comparative Perspective: Transformative Use

The United States fair use doctrine provides a useful comparative lens, particularly through its emphasis on transformative use. In *Campbell v. Acuff-Rose Music, Inc.*, the U.S. Supreme Court held that a work may qualify as fair use if it adds new meaning, expression, or purpose to the original.¹⁹ This qualitative focus allows courts to distinguish between mere duplication and creative reinterpretation.

While Indian law does not adopt a four factor test, purposive interpretation of Section 52 could incorporate similar reasoning. Categories such as “criticism” or “review” may be interpreted broadly to include creative commentary expressed through musical transformation.²⁰

The relevance of comparative analysis lies not in importing foreign doctrine wholesale, but in recognising that qualitative transformation can coexist with statutory structure. Incorporating such reasoning would enhance doctrinal flexibility without undermining legislative intent.

9. Findings and Critical Analysis

The preceding analysis reveals four principal concerns in the Indian fair dealing framework.

First, the closed list structure of Section 52 limits interpretative flexibility. Emerging musical practices often do not align neatly with enumerated categories.

Second, judicial reasoning frequently emphasises market harm and licensing stability. While economic protection is important, excessive focus on commercial impact may overshadow creative transformation.

Third, Indian courts have not consistently articulated a transformation based inquiry. Fairness is often assessed through quantity of extraction rather than qualitative contribution.²¹

Fourth, fair dealing analysis rarely engages explicitly with constitutional free speech values.

¹⁹ *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569 (1994).

²⁰ Dev S. Gangjee, “Copyright and Transformative Use in India”, 12 *NUJS Law Review* 45 (2020).

²¹ Shamnad Basheer, “Copyright Law and the Closed List Approach in India”, 1 *Indian Journal of Law and Technology* 1 (2005).

Given that music constitutes expressive activity, interpretative approaches should align with Article 19(1)(a).²²

Collectively, these concerns indicate that the doctrine requires interpretative refinement rather than structural abandonment.

10. Policy and Interpretative Reform

Meaningful reform can occur at both judicial and legislative levels.

Courts can adopt a structured inquiry within Section 52 that examines purpose, transformation, and market substitution in a balanced manner. This would enhance analytical clarity without requiring statutory amendment.

Legislative clarification regarding de minimis musical sampling or simplified licensing mechanisms could reduce uncertainty and transaction costs. Additionally, platform-level procedural safeguards may help ensure that potentially fair uses are not automatically suppressed.²³

Ultimately, reform should aim to recalibrate the balance between economic rights and creative freedom in light of digital transformation.²⁴

11. Conclusion

The doctrine of fair dealing represents copyright's internal equilibrium. In the musical domain, that equilibrium faces increasing strain due to digital transformation and participatory culture.

This paper has demonstrated that the closed-list architecture of Section 52, combined with market centric judicial reasoning and absence of transformation-based inquiry, limits the doctrine's adaptability. Layered protection of musical works and sound recordings further complicates fairness analysis and increases transaction costs.

²² Gautam Bhatia, *Offend, Shock, or Disturb: Free Speech under the Indian Constitution* (Oxford University Press, 2016).

²³ World Intellectual Property Organization (WIPO), *Study on Limitations and Exceptions of Copyright and Related Rights* (WIPO, 2019).

²⁴ P. Narayanan, *Intellectual Property Law in India*, 4th edn. (Eastern Law House, 2010).

However, interpretative recalibration remains possible. By incorporating transformation, contextual economic reasoning, and constitutional expressive values into fairness analysis, Indian courts can restore doctrinal balance without abandoning statutory structure.

Copyright must function not merely as a regime of control but as a dynamic framework that sustains both authorship and artistic evolution. A transformation sensitive and constitutionally aligned interpretation of fair dealing will ensure that Indian copyright jurisprudence remains both protective and progressive in the digital age.

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