
COPYRIGHT LAW AND ACADEMIC FREEDOM: A LEGAL BALANCING ACT

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ABSTRACT

The copyright law and academic freedom are an intermingling dilemma both in a legal and ethical sense, especially in countries such as India which recognize a doctrine of fair dealing as the basis of the exception to the copyright protection. This research paper discusses critically the scope, limitations and the implications of the fair dealing provisions of the Copyright Act of 1957 of India in light of the application of the provisions to teaching materials, research publications, and digital educational content. Comparing to the more flexible doctrine of fair use that is adhered to in such countries as the United States, the enumerated principles of fair dealing in India allow only scant interpretive deviation, which can result in legal ambiguity in relation to educators and researchers. The paper examines the top judicial precedents such as the landmark DU Photocopy Case, and pinpoints the loopholes in existing legal protections available to the academic community especially in the new digital learning environment setting and then institutional repositories. It also examines the extent to which other legal doctrines including moral rights, statutory licenses and institutional authorship opposes the academic practices in India. The analysis that involves doctrinal and comparative studies indicates that the existing framework is insufficient to meet new demands of education in the digital world. The paper suggests certain amendments to the Indian copyright act based on the finding, which includes adding fair dealing grounds, application of fair use principle-based standard, and provision of better fair guidelines on use of digital academic works, and acknowledging academic moral rights. Such reforms are necessary to find the equilibrium between the rights of the copyright holder and the necessity of access to knowledge and, protect the academic freedom and guarantee the fulfilment of the international obligations. In the end, this paper reinforces the importance of education friendly, well balanced copyright regime that captures the dynamics of such contemporary scholarship such as teaching and communication.

Keywords: Copyrights law, Teaching materials, Publications, Digital materials, Academic freedom.

Copyright Law and Academic Freedom: A Legal Balancing Act

INTRODUCTION

Copyright law is central in having to strike a balance between the proprietary interests of the authors and the overall interests of access and equity in the developing field of education and knowledge dispersion. In India, copyright fairness is largely confined by the Copyright Act, 1957 in which the doctrine of fair dealing under the section 52 is a statutory exception to the limited use of the copyright materials through research, private review, criticism, study, and teaching. The limited and listing aspect of such exceptions, however, presents a big challenge to academic users, particularly in the contemporary teaching practices and online learning platforms.¹

In contrast to other jurisdictions like the United States, which apply an open-ended and factorized standard and approach to fair use as addressed in section 107 of the United States code, the fair dealing model in India is closed-list, by which judicial flexibility is narrowed, and can rarely adapt to changes in scholarship². Such vagueness is especially sharp in the digital sphere, as applications of uploading readings on its learning management systems, or streaming recorded lectures, raise legal questions that the existing provisions fail to accommodate sufficiently³.

The interpretation of fair dealing has been taken to cover some educational use based on judicial decision, primarily in the DU Photocopy Case, which has permitted face-similes of course materials to be used in classrooms.⁴ These rulings are strictly limited and do not encompass broader questions of digital course distribution, institutional archives or networked research groups. Consequently, the absence of jurisdiction or jurisprudence and the absence of a clear legislative framework pertaining to the digital age frequently subjects the academic profession to a precarious legal standing⁵; an issue that is only complicated by the fact that

¹ The Copyright Act, 1957, No. 14, Acts of Parliament, 1957 (India), § 52, <https://www.indiacode.nic.in>. (Last visited on 24.03.2025)

² Pushpanjali Sood, *Fair Dealing Under Indian Copyright Law: A Comparative Study*, 10 INDIAN J.L. & JUST. 87 (2019).

³ Radhika Bhusari, *Fair Dealing Under the Copyright Law: A Critical Analysis*, 5(1) INT'L J. L. MGMT. & HUMANITIES 1077 (2022).

⁴ Univ. of Oxford & Ors. v. Rameshwari Photocopy Servs., 2016 SCC OnLine Del 4932 (Delhi High Court, India).

⁵ Kandarp Parashar & Arvind K. Singh, *Balancing Copyright Protection and Public Interest: The Role of Fair Dealing in India*, Ind. J. Law & Legal Rsch. (2022).

academic institutions tend to err, in favor of copyright safety.⁶

Researchers and policy analysts are of the view that fair dealing requires reforms to make it broad and transparent with one of the recommendations being the use of a principle-based approach that is consistent with international best practice. Such reform would help serve India in its constitutional provision of education by ensuring that knowledge is disseminated, but without interfering with the lawful interests of the rights holders. Without such proactive changes, the Indian copyright regime would have become a stumbling block instead of the facilitator of academic innovation and access.

RESEARCH PROBLEM

The growing complexity of copyright law is posing a great challenge to academic community especially in its efforts to achieve a balance between legal rights of the content creators and the principle of academic freedom. The fact that most educators and researchers need the use of copyrighted resources to teach, publish and distribute digitally in their educational practices contributes to respective cases of legal and ethical dilemmas when it comes to matters concerning their rights to use. There is an urgent need to explain the meeting points of the copyright regulations and the scholarly activities and also to build up the measures that will enable preserve compliance with law and also the free flow of knowledge.

RESEARCH HYPOTHESIS

"The current application of copyright law to academic works—including teaching materials, publications, and digital content—lacks sufficient alignment with the principle of academic freedom, and the limited scope and ambiguity surrounding fair use/fair dealing provisions contribute to legal uncertainty, thereby restricting educators and researchers in their lawful use and dissemination of knowledge."

RESEARCH OBJECTIVES

- To discuss how the copyright law is applied to academic works such as teaching materials, publications and digital materials.

⁶ Shamnad Basheer, Exceptions and Limitations in Indian Copyright Law for Education: An Assessment, WIPO & NUJS (2010), <https://www.researchgate.net/publication/46555572>.

- To discuss the role of fair use/fair dealing in the regulation of the copyright holder and the academic freedom.
- To find legal measures and best practice of operating in copyright, and safeguarding the academic freedom.

DISCUSSION

Copy rights Law in India

In India, the Copyright Act, 1957 is the main law addressing protection through the copyright law on the works which include works of literature, arts, music, drama, cinematographic films and sound records. The copyright law provides authors and other creators with a package of exclusive rights with regards to the use of their works which include the right to copies, distribute, perform and modify their creations. Copyright is a so-called automatic copyright, which happens when the work is created, and even though one does not have to apply for copyright, its registration amounts to prima facie evidence of ownership in case of legal infringements.⁷

The literary, dramatic, musical and artistic works, cinematograph films and sound recordings as an original work are given protection under Section 13 of the Act.⁸

The exclusive rights granted in copyright are listed in the Section 14, i.e. reproduce a work, issue copies of the work to the public, perform the work publicly, and communicate the work to the public.⁹

Besides economic rights, the Indian copyright law entitles the moral rights in Section 57, which permit the author to assert his or her authorship and to protect against any distortion and mutilation of the work.¹⁰

Among the most influential provisions that can apply to academic community, it is possible to distinguish Section 52 that involves the listing of acts that may not amount to copyright

⁷ The Copyright Act, 1957, No. 14 of 1957, INDIA CODE (1995), <https://www.indiacode.nic.in/handle/123456789/1963>. (Last visited on 24.03.2025)

⁸ Id. § 13.

⁹ Id. § 14.

¹⁰ Id. § 57.

infringement. These are fair dealing on private use, research, education, criticism, review and reporting of current events. It is worth noting that Section 52(1) provides exceptions to reproduction of a work by a teacher or student in the course of his instruction under section 52(1)(h), has made an exception on the performance of a work in course of his or her classroom teaching under the section 52(1)(i).¹¹

The examples are meant to be exceptions to cover academic and educational uses of copyrighted materials and carry a larger policy interest of facilitating access to knowledge.

The case that made headlines is *The Chancellor, Masters & Scholars of the University of Oxford v. Rameshwari Photocopy Services*¹² dealt with the practical extent of these exceptions to education. The Delhi High Court held that the act of making photocopies of course packs so that they could be used by the students amounted to fair dealing and the same did not amount to copyright infringement.¹³

The significance of this judgment was the reliance of interpreting the provisions of fair dealing in way that enhances access to education especially in the case of Indian context.

By the introduction of the digital technology, there was a substantial amendment to the Indian copyright law which came in the Copyright (Amendment) Act, 2012 and incorporated amendments to deal with digital rights management, statutory licenses to broadcasting rights and cover versions, and to increase protection of rights of the performers.

This amendment also made Indian law compatible to that of the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) which India is a signatory¹⁴. In spite of these progressive changes, the area where ambiguities are still to a certain extent apparent is in the practical implementation of the copyright law, especially when it comes to the educational applications of digital and online domains. Failure to provide precise advice on what an acceptable copying/digital distribution of teaching materials may provide many educators and institutions with a legally vague stance. Although Indian

¹¹ Id. § 52(1)(h)–(i).

¹² *The Chancellor, Masters & Scholars of the Univ. of Oxford v. Rameshwari Photocopy Servs.*, 2016 SCC OnLine Del 4932.

¹³ The Copyright (Amendment) Act, 2012, No. 27 of 2012, INDIA CODE (2012), <https://www.indiacode.nic.in/handle/123456789/2043>. (Last visited on 29.03.2025)

¹⁴ WIPO Copyright Treaty, Dec. 20, 1996, S. TREATY DOC. NO. 105-17 (1997); WIPO Performances and Phonograms Treaty, Dec. 20, 1996, S. TREATY DOC. NO. 105-17 (1997).

legislation puts education in the exception to the law, the deprivation of the so-called fair dealing is usually left to the discretion of the judge on individual cases.

To sum up, the Indian copyright system contributes to the two-fold aim of the legislature and serves to protect the rights of the creators and add to the social good; nevertheless, it has to be elaborated further in regard to the sphere of academic usage. Legislation, administrative guidelines, and institution copy left policy may be used to narrow the legalistic-fragmented model gap that exists between the law on the books and educational practice so that the copyright law does not limit academic freedom and knowledge contributions but rather promotes them instead.

Copyright Law in India application to Academic Works

The copyright law is instrumental in the government of the creation, use, and publication of academic works such as teaching material, scholarly publications, and digital sources. In India, such works are subject to the Copyright Act, 1957¹⁵ and authors have exclusive rights on the work and include exceptions that are of importance to learning and teaching purposes.

1. Security of instructional contents

Resources used in teaching such as lecture notes, presentations, syllabi and handouts are generally considered literary works and thus covered by Section 13(1) (a)¹⁶ Copyright Act.

They are automatically covered by copyright precariously when they are created as long as they are original and are in a tangible form. The academician or the faculty person (the author) is the one who saves the rights to reproduce, recast, and spread the content under Section 14(a).¹⁷

But where teaching materials generated are included under the scope of employment, the employer (i.e. the institution) may be given a copyright of the material under the doctrine of work made for hire as defined in Indian case law. The problem of ownership can be left at the discretion of institutional policies or at the contract between faculty and university. When there

¹⁵ The Copyright Act, 1957, No. 14 of 1957, § 13(1)(a), INDIA CODE (1995), <https://www.indiacode.nic.in/handle/123456789/1963>. (Last visited on 24.03.2025)

¹⁶ Id. § 13.

¹⁷ Id. § 14(a).

is no clear contract, a court may look at the intent and background of its creation to decide on who owns it.

2. Academic Publication copyright

Section 13¹⁸ of the Act covers other literary works such as academic publications e.g. journal articles, books and conference papers.

The initial copyright ownership is normally vested with the author unless assigned to a publisher through a licensing or an assignment agreement. Most publishers seek exclusive access to publish as well as distribute the work, where rights may deny the author the right to use the work again in other projects or offer it freely.

This waiver of rights has proved to be an issue of contention in academia particularly in the open-access movement. To deal with such problems, certain scholars apply Creative Commons (CC) licences, accepted in India and leaving the author in possession of rights to copyright, whereas providing certain users rights. Although the Copyright Act does not name the CC licenses, they work within the provisions of Section 30¹⁹ which entitles authors to grant the rights to other people.

3. Copyrighted Materials in Research and Instruction

Teachers and scholars tend to use copyrighted works-of-art like excerpts of books, diagrams, journal reports, and videos, as teaching instruments and in research undertakings. Such use is catered to by the law in the section of fair dealing in section 52.²⁰

Notably:

- Section 52(1) (h) allows a teacher or a student to reproduce works under copyright during the teaching process.
- Section 52(1) (i) permits the performance of a literary or a dramatic work to the extent

¹⁸ Id. § 13.

¹⁹ Id. § 30.

²⁰ Id. § 52.

that it is done during educational activities.

- The fair dealing under the section 52(1) (a) is allowed in case it is used privately or personally, like research or study.

The provisions grant a legal protection to the common academic activities like photocopying materials to distribute in classes, displaying excerpts in classes and mentioning published material in a research.

An interpretative reading of these provisions was taken in DU Photocopy Case, when the Delhi High Court held that the formulation and distribution of course packs came under educational exceptions provided in Section 52.

The court was keen to point out that learning has a broader interest in society and the copyright law should be construed in a way that promotes learning materials.

4. Digital Educational Resources Application

With the emergence of e-learning and MOOCs, as well as the availability of online libraries, digital content has increased in higher education. Nonetheless, the rights under the copyright law in the sphere of digital reproduction and distribution are not so well defined because of the dynamism of the technology of copying and sharing.

Copyright (Amendment) Act, 2012²¹, made provisions that could amend the copyright regime to deal with the issues of digital technologies, such as the anti-circumvention measure, digital rights managements, and statutory licensing of digital broadcasting.

However, the conditions of digital materials use in learning are not developed. As an example, distributing copyrighted files in PDF through learning management tools (LMS) or even cloud services might not be properly classified as Section 52, unless assigned directly to an educational application and restricted in magnitude.

This gray zone in laws makes the institutions follow the fair use principles, digital copyright policies, and encourage the usage of Open Educational Resources (OERs). These materials that

²¹ The Copyright (Amendment) Act, 2012, No. 27 of 2012, INDIA CODE (2012), <https://www.indiacode.nic.in/handle/123456789/2043>. (Last visited on 24.03.2025)

usually fall under Creative Commons licenses can be used and adapted to teaching and learning freely.

5. Institutional Control and Ownership

Ownership of academic material, and in particular digital material produced using institutional resources (such as e-courses or video lectures) is the subject of disputes with ever greater and increasing frequency. All intellectual property defaults to the creator unless controlled by contract or non-profit IP policy. But when the content is created with sponsorship under certain arrangements of funding or employment then the institution is the supplier.

This question still requires clarification in Indian case law and this could be enrichment with formal guidelines, after the style of what universities in the U.S. and Europe use: faculty have right to scholarly work, but institutions to commissioned digital content.

Fair Use/Fair Dealing under the Regulation and the Copyright Holder and the Academic Freedom: Contractions of the Current Indian Copyright Law

Copyright law is a means of encouraging creativity through giving an exclusive right to the creators. These rights have however been constrained by exceptions such as fair use (used internationally) or fair dealing (in India), which are in the greater interest of the general public. Within the academic field fair dealing is critical to the protection of academic freedom which is the freedom to educators and researchers to access, use and share knowledge beyond the constraints of commercially sensible law. Although the Indian Copyright Act, 1957²² contains provisions of fair dealing, the same has formulations and interpretations of various gaps (lacunae), particularly in accordance with the current education and digital practices.

1. Statutory Fair Dealing: Enumerative and Young Approach

The Indian system is that of closed list under fair dealing, with limited scope or purpose of fair dealing stated in Section 52 of Copyright Act 1957 which include such legitimate purposes as use in privacy, research, education, criticism, review and reporting current events.

This is opposed to the jurisdiction of other countries such as the United States where the

²² The Copyright Act, 1957, No. 14 of 1957, § 52, INDIA CODE (1995), <https://www.indiacode.nic.in/handle/123456789/1963>. (Last visited on 12.03.2025)

doctrine of fair use under 17 U.S.C. SS 107²³ mutes of an open ended four factor test with more discretion being given to the judge.

Indian model narrow enumeration is not complete which covers the vast number of applications currently used in academic environments today e.g. Distribution of digital learning materials, inserting multimedia in lectures or the development of open online courses. As any use that is not included in the list of purposes is not a fair dealing, even obviously non-commercial, educational uses can lead to the violation of the law. This curtails the freedom of academics by restraining valid pedagogical instruments.

2. Deficiency of the Quantitative and Qualitative Advice

The Indian law does not provide any definite limits on what can constitute a fair dealing of what can be copied and this includes no percentage of copying limits on words, or count of words, and transformative use limits. This legal grey area exposes educators, librarians and researchers to risk, which results in many over-complying with the rules or not using valuable scholarly material at all.

Though the courts have the authority to learn the doctrine concerning the purpose and fairness, the decisions of the courts imply restricted judgment. One exception was the DU Photocopy Case which the Delhi High Court decided that photocopying course material to be used in an educational context was covered by fair dealing²⁴.

Such a judgment however, strongly relied on the circumstances that surrounded the actual situation of copying, that is physical copying, of course packs. It failed to give wider interpretation guidelines on digital reproduction and therefore, its suitability in online learning is not clear.

3. Ambiguity in Digital and Online spaces

The Copyright (Amendment) Act, 2012²⁵ made some provisions relating to the digital space

²³ 17 U.S.C. § 107 (2018)

²⁴ The Chancellor, Masters & Scholars of the Univ. of Oxford v. Rameshwari Photocopy Servs., 2016 SCC OnLine Del 4932.

²⁵ The Copyright (Amendment) Act, 2012, No. 27 of 2012, INDIA CODE (2012), <https://www.indiacode.nic.in/handle/123456789/2043>. (Last visited on 24.03.2025)

including technological protection measures and statutory licensing of broadcasting.

Nonetheless, such amendment did not increase or define fair dealing in relation to digital learning. As an illustration, there is no specific wording in the law about whether copying a copyrighted material and uploading it to Learning Management System (LMS) and sharing PDF-files using institutional portals, as well as streaming a copyrighted clips to conduct educational webinars, is considered covered under a fair dealing.

Consequently, online academic activities end up in a legal grey zone leaving institutions and educators to resort to informal norms or inhibitive licenses. Conversely, the international frameworks such as the Marrakesh Treaty, to which India is a ratifying country, highlight the necessity of the accessibility of digital education to persons with disabilities, but the domestic legislation in the given field is still lacking.

4. Lack of Institutional and Policy-Level transparency

The other major gap is the lack of institutional copyright policies in the Indian universities. Whereas in jurisdictions like the U.S.²⁶, whereby there are numerous academic institutions with properly written policies in place that differentiate between institutional and faculty rights and thoroughly govern the utilization of fair use, Indian institutions are usually without IP policies. The vacuum creates gaps and misconceptions of who owns course materials, lecture recordings, or the results of research; faculty, university, or third-party publishers.

Even proper educational uses are shunned in fear of infringement, in the absence of clear guidelines of ownership and use. This is a way of discouraging academic freedom, particularly where institutions collaborate with commercial ed-tech systems that insist on gaining exclusive ownership over academic materials.

Landmark cases on the copyrights law related to academia

1. The Chancellor, Masters and Scholars of the University of Oxford against Rameshwari Photocopy Services (DU photocopy Case)²⁷

²⁶ WIPO Doc. VIP/DC/8, 52 I.L.M. 1312 (2013).

²⁷ *Id.*

- **Facts:** A number of overseas publishing houses along with Rameshwari Photocopy Services, and Delhi University were sued when the publishers discovered the production and sale of course packs by its excerpted versions of the textbooks intend to be copy reproduced without the consent of the textbook publishers.
- **Judgment:** The Delhi High Court considered that the education purposes of using copyrighted works in the form of course packs suited under the exception of fair dealing under Section 52(1)(h) of the Copyright Act, 1957. The Court pointed out that education is not a commercial activity and the use made is conducive to gain access to education that is a constitutional goal.
- **Importance:** This case established an important precedent in acceptance of fair dealing as an education and broadened the consideration of Section 52 in the academia.

2. The Syndicate of the Press of the University of Cambridge v. B D Bhandari²⁸

- **Facts:** Cambridge University Press (plaintiff) accused a bookseller of violating its copyright because the bookseller had copied and distributed photocopies of some items in the Cambridge books.
- **Judgment** The defendant was found seeding copyright infringement by the court since the reproduction was done commercially and not covered by the educational fair dealings.
- **Importance** - In this case, the distinction between educational fair use and commercial exploitation was made, highlighting the fact that fair dealing is not the catch-all defence of any use simply brought about by educational circumstances.

3. Academy of General Education, Manipal v. B. Malini Mallya²⁹

- **Facts:** The defendant was a former teacher who used study material developed when she was employed by the institution of the plaintiff in order to initiate other coaching classes.

²⁸ Syndicate of the Press of the Univ. of Cambridge v. B.D. Bhandari, AIR 1997 Del. 63 (India).

²⁹ Acad. of Gen. Educ., Manipal v. B. Malini Mallya, AIR 2009 Kar. 110 (India).

- Judgment: The Karnataka High court enforced that the copyright of the materials created by the employee in the course of her duty belonged to the institution.
- Importance : The case dealt with a copyright ownership between employer and employee as applied in academic institutions where the work produced is owned by the academic institutions unless an agreement to the contrary.

4. Blackwood and Sons Ltd. Case Sons Ltd. v. A.N. Parasuraman³⁰

- Facts: The defendant copied some of the parts of the copyrighted book in his educational publication without the authorization.
- Judgment: The Madras high Court ruled that education uses in substantial copying could be an infringement unless supported with fair dealing exemptions.
- Importance: This case provided preliminary foundations to culminate over imposing reasonable parameters on fair uses in education that includes quantitative and qualitative elements of reproofs.

5. Chancellor, University of Oxford & Ors. v. Narendra Publishing House & Ors.³¹

- Facts: The foreign publishers sued Indian publishers over illegal reproduction of academic resources on the count of low cost Asian editions.
- Judgment: The Delhi High court decision was held in favor of foreign publishers that economic rights of copyright holders are not excluded and cheap access to education is not an excuse to copy right violation.
- Importance: The case highlighted the clash of access and protection of copyright, particularly in developing countries such as India, and again supported the necessity of licensed educational publishing.

All these instances influence the legal framework of the copyright law within Indian academia. Courts have demonstrated their interest in safeguarding the interest of education under the fair

³⁰ Blackwood & Sons Ltd. v. A.N. Parasuraman, AIR 1959 Mad. 410 (India).

³¹ Chancellor, Univ. of Oxford & Ors. v. Narendra Publ'g House & Ors., 2008 (37) PTC 385 (Del) (India).

dealing, yet at the same time they have reinforced the concept of commercial limits and copyright possession of the according content creators and academic institutions. The changing legal environment requires more definite legislature, particularly due to the emergence of online knowledge and communication of materials.

Suggested amendments and inclusions in the present Copy rights Law Act to enhance academic freedom

1. Section 2 amendment-definitions

Current Issue: The Act lacks defining of such major academic terms as “academic work,” open educational resources, or educational institution.

Proposed Additions:

Add in Section 2 the following definitions:

- *(xxv) The term academic work refers to any original work produced as a recipient of teaching, research or scholarship assignment in an academic institution by a teacher, researcher or student.*
- *(xxvi) Educational institution means any university, college, school, a research entity or an online learning centre that is recognized by any government or any statutory entity with the intent of education.*
- *(xxvii) Under law “Open Educational Resources (OER)” refers to any type of teaching, learning, and research that has either been released into the public domain, whereby the copyright-related rights have not been reserved, or has been published under a license that grants free use and adaptation.*

2. The Section 14 will be amended to cover the scope of copyright.

Current Problem: Sections 14 give extensive copyright protection to the creation but fails to take note of the changing academic trends such as recording lectures and re-publishing educational content online.

Proposal (Section f):

As regards the works of the academic chronicle, the rights of exclusive use established in this section apply within the framework of the institutional policy and within the framework of reasonable academic exploitation, as stipulated in Section 52.

3. Section 17 - Amendment on First Ownership of Copyright

Current Problem: The legislation failed to define who owns the intellectual work produced by employees in the academic field that consequently causes conflict between the employees and academic institutions.

Explanation offered to Section 17(c):

Explanation: Where the work is the teaching and research of a faculty member, unless otherwise determined, the faculty person shall own the copyright to any scholarly publication, whereas the institution may own rights to any commissioned teaching material (e.g. video lectures, courseware).

4. Significant change to Section 52 Fair dealing exceptions

Current Issue: Section 52 is not clear about what constitutes allowable academic use and is no longer up-to-date in pedagogy in the digital age.

New Clauses proposed to be inserted in Section 52(1)

- The copying, conversion and distribution of a work by a teacher, a student or an institution with the purpose of classroom teaching, online instruction, an examination or academic cooperation shall not be an infringement.*
- The utilization of copyright work to create or disseminate open educational resources (OER) is allowed as long as the copyright is used appropriately and not in any form of commercial profit.*
- Sharing of copyrighted works over the secure institutional networks (e.g., LMS or Intranet) will be a fair dealing, in order to teach and research.*
- Fair dealing shall permit the digitization of the library resources by the academic institutions to be accessed by the students and researchers in a non-commercial*

way.

5. New Section 52B Fair Use Guidelines of Digitally Academic Use

New Section - Proposed:

52B. Virtual Academic Fair Use

The Central Government may, through other stakeholders engagement, prescribe guidelines at any time to control the utilization of the copyrighted work in the digital academic setting, MOOCs, online journals, and Institutional repositories.

6. The Section 31B- Statutory License to Education Broadcasting is to be amended.

Current Problem: Section 31B does not cover educational digital streaming though it involves broadcast statutory licenses.

Proposed Addition:

Institutions of education will enjoy a statutory license to broadcast copyrighted materials on educational online platforms, which should not be commercially used in a non-infringing manner at reasonable rates or reasonable payment.

7. Moral Rights by Academics New Section 57A

New Section Proposed:

57A. Academic Moral Rights

Despite any provision of this Act, academic authors will have a right to be comprehensively recognized as the creator of their intellectual production and to oppose to the distortion, mutilation, or uncontrolled commercial use of the academic output.

8. Insert in Section 79 Power to make Rules (Institutional IP Policy Clause)

Proposed Addition:

Central Government may also convert / prescribe model intellectual property policies

to govern the academic institutions in matters related to authorship, ownership, licensing and use of academic works even when such works are funded by public grants.

CONCLUSION

To conclude, though the Indian copyright framework also tries to balance the rights of the creators and the right of the audience to get access to knowledge there is also a lot to be done to change its current approach to fair dealing, which remains too inflexible and backward to be used by scholarly community. The listed exceptions of Section 52, Copyright Act, 1957, as good intentioned as they are, do not reflect adequately the inherent complexity of contemporary education- especially in digital and hybrid learning context. Educators and institutions are navigating unclear territory when it comes to knowing what is acceptable to use when it comes to online instruction and sharing research, and especially when it involves a student working in these areas with little direction to go on and sometimes it comes at the loss of academic freedom and innovation.

There is an urgent need of legislative change in order to actually facilitate the sharing of knowledge and fulfill the constitutional provision of education. A fair dealing model closer to the fair use doctrine, which is more flexible and principle-based would enable courts and institutions to adapt to and respond to continuing pedagogical demands. In addition, the legal context can be improved by adding legislative certainty around digital academic applications, institutional ownership of IP and open educational materials, a situation that may enhance both copyright respect and vigorous academic activity. It is only after such reform that copyright law can be transformed into an aide to educational equity, and academic advancement in India, as opposed to an obstacle to the same.

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