
FAIR DEALING ONLINE: INSTITUTIONAL AUTHORITY BETWEEN COURTS AND PLATFORMS

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ABSTRACT

The rapid expansion of digital platforms has transformed the enforcement and interpretation of copyright law, particularly regarding fair dealing. While Indian copyright law recognises fair dealing under Section 52 of the Copyright Act, 1957, the practical regulation of online content is increasingly shaped by intermediaries through automated moderation and private take-down mechanisms. This development raises important institutional concerns regarding the balance of authority between courts, which traditionally determine the legality of use, and platforms, which exercise significant control over user content. The legal framework under the Information Technology Act, 2000, especially Section 79 and the Intermediary Guidelines Rules, 2021, attempts to preserve judicial primacy by conditioning intermediary liability on court or government directions. However, risk-averse compliance practices often result in over-removal of lawful content, potentially undermining freedom of expression and legitimate fair dealing uses. This paper examines statutory provisions, constitutional principles, and judicial precedents to evaluate the evolving institutional dynamics. It proposes measures to ensure accountability, transparency, and protection of user rights in digital copyright governance.

Keywords: FairDealing, Copyright, Intermediaries, Platforms, Judiciary, Speech

INTRODUCTION

The digital ecosystem has changed the world by transforming the creation, distribution, and consumption of copyrighted works. Social media applications, video-sharing sites, and digital repositories are now major sites of communication, education, commentary, and creative expression. This transformation has led to the doctrine of fair dealing taking centre stage in modern copyright law discourse. Under Indian law, Fair dealing is a statutory defence to infringement, allowing some uses such as research, criticism, review, and reporting on current events.¹ However, in the online environment, the decision on whether a given use constitutes fair dealing is increasingly made within the private governance structures of individual platforms rather than through judicial adjudication.

The Copyright Act, 1957, empowers the owner of copyright with exclusive economic rights under Section 14, which is complemented by Section 52, which contains an exhaustive list of exceptions, thereby placing the burden on private proprietary interests and the more expansive public interest in access to knowledge and expression.² Unlike the fair use interpretation that operates in an open-ended way in some nations, the Indian regime is heavily dependent on statutory construction and judicial examination of the purpose, context, and amount of use. Courts have emphasised the importance of having the concept of fairness assessed in light of the social objective of copyright law. In *The Chancellor, Masters & Scholars of the University of Oxford v. Rameshwari Photocopy Services*, the Delhi High Court held that the preparation of course packs for educational purposes was within the ambit of Section 52, inter alia, in recognition of the importance of access to education in the fair dealing analysis. This decision reflects the judiciary as being the principal institutional authority in defining the limitations of copyright.³

At the same time, the emergence of user-generated content has shifted the enforcement of copyright norms to online intermediaries, e.g., social media platforms and content-sharing services. These entities are subject to the regulation in Section 79 of the Information Technology Act, 2000, which affords third-party content conditional safe harbour protection, subject to certain due diligence requirements.⁴ The Supreme Court in *Shreya Singhal v. Union*

¹ COPYRIGHT ACT, No. 14 of 1957, § 52 (India).

² Id. §§ 14, 52; N.T. RAGHAVACHARI & B.B. SAHA, *Copyright Law in India* 205–12 (2d ed. 2019).

³ *The Chancellor, Masters & Scholars of the Univ. of Oxford v. Rameshwari Photocopy Servs.*, 2016 SCC OnLine Del 5583 (Del. H.C.).

⁴ INFORMATION TECHNOLOGY ACT, No. 21 of 2000, § 79 (India).

of India clarified that intermediaries are not required to assess the legality of content independently and must act only upon receiving a court order or a notification from the appropriate government.⁵ This interpretation was intended to prevent private censorship and to ensure that determinations affecting lawful speech, including fair dealing, remain within the domain of judicial oversight.

Despite this legal position, platforms often adopt automated systems for detection and private notice-and-takedown efforts to minimise potential liability. Such mechanisms often lack contextual evaluation, which may lead to the removal of content that may be considered fair dealing and, in doing so, create a chilling effect on legitimate expression. Scholars have noted that intermediary liability schemes are increasingly establishing a system of private regulation in which platforms have immense control over the definition of lawful use of their services. As regulatory obligations are increasingly expanding under the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, the renaissance of institutional balance between courts and platforms has become a key issue for preserving fair dealing and freedom of expression in the Indian digital copyright landscape.⁶

CONCEPTUAL FRAMEWORK: FAIR DEALING IN THE DIGITAL CONTEXT

Nature and Purpose of Fair Dealing

Fair dealing is one of the most important exceptions to the exclusive rights granted to copyright owners. The ultimate goal of copyright law, therefore, is not simply to reward creativity but to encourage the dissemination of knowledge and cultural development. Section 52 of the Copyright Act, 1957 reflects this balance to the extent that it states that certain acts will not amount to infringement, including private research use, criticism, review and reporting of current events.⁷ The doctrine therefore serves a public-interest function, ensuring that copyright protection does not unduly restrict access to information or suppress legitimate expression.

Indian scholarship consistently stresses that fair dealing is part of the broader constitutional commitment to freedom of speech and access to knowledge. The doctrine is a defence against the monopolisation of information and facilitates socially important uses such as education,

⁵ *Shreya Singhal v. Union of India*, (2015) 5 S.C.C. 1 (India).

⁶ JAYANTH K. KRISHNAN ET AL., Private Ordering and the Regulation of Online Platforms, 19 INDIAN J.L. & TECH. 1 (2023).

⁷ COPYRIGHT ACT, No. 14 of 1957, § 52 (India).

academic research and public discourse. Courts have also recognised that the fairness inquiry is to consider both the purpose of the use, the nature of the work, the extent of the material taken and the effect on the market for the original work.⁸ In *Civic Chandran v. Ammini Amma*, the Kerala High Court held that a work used for critical or transformative purposes could qualify as fair dealing even where substantial portions were reproduced.⁹ This purposive and contextual approach forms the conceptual foundation of fair dealing in India.

Statutory Limits and Judicial Interpretation

Unlike the open-ended “fair use” doctrine in the United States, India follows a closed statutory model. Only uses that fall within the categories listed in Section 52 are protected, and any act outside these categories is treated as infringement.¹⁰ This restrictive structure places significant interpretive responsibility on courts, which must determine whether a particular use fits within the statutory language and satisfies the requirement of fairness. Judicial decisions have gradually shaped the contours of the doctrine by incorporating elements such as proportionality, necessity, and public interest. In “*The Chancellor, Masters & Scholars of the University of Oxford v. Rameshwari Photocopy Services*”, the Delhi High Court emphasised that copyright law must be interpreted in a manner that promotes educational access and social welfare.¹¹ The court declined to accept a purely commercial or quantitative test, instead looking more to the broader goal of facilitating learning. Such decisions show that fair dealing is not a technical exception but a normative tool for balancing private rights on the one hand with public interest considerations on the other. However, scholars have noted that Indian fair dealing jurisprudence remains inconsistent and lacks a coherent theoretical structure. This uncertainty takes on new importance in the digital environment, where other ways of using the content, including remixing, embedding and short-form content, may not always neatly belong into traditional categories.¹²

Digital Transformation and New Forms of Use

⁸ Pushpanjali Sood, Fair Dealing in India: An Analysis vis-à-vis Fair Use in the United States, 29 J. INTELL. PROP. RTS. 245 (2024).

⁹ *Civic Chandran v. Ammini Amma*, 1996 PTC (16) 329 (Ker. H.C.).

¹⁰ COPYRIGHT ACT, No. 14 of 1957, § 52 (India); Revant Ranjan, The ‘Fair Dealing’ Exceptions Under Indian Copyright Law: A Critical Appraisal, 5 S. ASIAN L. REV. J. 1 (2019).

¹¹ *The Chancellor, Masters & Scholars of the Univ. of Oxford v. Rameshwari Photocopy Servs.*, 2016 SCC OnLine Del 5583 (Del. H.C.).

¹² Chelsea Sawlani, Copyright, Culture and Contemporary Debates: A Jurisprudential Analysis of Fair Dealing in India, 28 J. INTELL. PROP. RTS. 149 (2023).

Digital technologies have revolutionised access to and reuse of copyright-protected content. Online services make it as easy to copy, share, link, and change works available on the network as it is to create them, and by making that easier, also increase both the number of potential infringements ‘on offer’ and of legal fair uses. Linking, embedding, content aggregation and short-form commentary have become ubiquitous in online communications yet raise challenging legal questions about the boundaries of copyright protection.¹³

Recent scholarly studies highlight the reality that digital transformation has demonstrated the inadequacy of traditional copyright regimes, which were created for physical reproduction but not for network distribution. The facility with which the aspects can be reproduced and converted into digital format has increased the vigour of enforcement as well as the social importance of fair dealing for educational, research, and free discussion purposes. Fair dealing is crucial to enabling equal access to knowledge in developing nations such as India, where access to educational and informational resources remains uneven.¹⁴

Simultaneously, the new technological practices, including automated processes for recognising content, technology protection, and the management of digital rights, mean a form of practical enforcement of copyright that is no longer left to the courts but rather transferred to technological systems. The implications of this technological mediation are immense, to the extent of the fairness that will be assessed in practice.¹⁵

Platform Governance and the Shift Toward Private Adjudication

The biggest conceptual change in the digital environment is the shift to platform governance as an additional system of copyright management. YouTube and other companies in the social media industry are becoming more dependent on automated detection systems and notice-and-takedown methods that allow private notices to be posted. These systems aim to reduce legal risk and ensure compliance with intermediary liability provisions, such as those in the Information Technology Act, 2000.¹⁶

¹³ Manali Atpadkar, Navigating Liability: Copyright Infringement by Linking in India, *INDIAN J. L. & LEGAL RES.* (2025).

¹⁴ Raj Kumar & Asheesh Yadav, Reimagining Copyright Law in the Digital Age: Challenges, Reforms, and Educational Access in India (2025), <https://www.preprints.org/manuscript/202506.2225/v1> (last visited Feb. 17, 2026).

¹⁵ Himanshi Tiwari & Anant Kumar Singh, Revisiting Fair Dealing and Copyright Infringement in India vis-à-vis Research and Education, 45 *DESIDOC J. LIBR. & INFO. TECH.* 425 (2025).

¹⁶ INFORMATION TECHNOLOGY ACT, No. 21 of 2000, § 79 (India).

Nonetheless, automated systems do not usually provide contextual assessment for fair-dealing analysis. Consequently, the platforms usually take down materials when they are complained about, without evaluating their legality under Section 52. Scholars have found that this results in a system of private ordering in which platforms essentially dictate the parameters for what can be used in situations outside judicial scrutiny. The trend raises concerns about over-removal, a chilling effect on legal expression, and a degradation of user rights.¹⁷

The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, further reinforce the regulatory role of intermediaries by imposing due diligence and grievance redressal obligations.¹⁸ While these measures aim to enhance accountability, they also increase compliance pressure, encouraging platforms to adopt risk-averse moderation practices. Consequently, the institutional balance between courts and intermediaries has become a central issue in protecting fair dealing in the online environment. In conceptual terms, fair dealing in the digital age now operates at the intersection of three regulatory forces: statutory copyright law, judicial interpretation, and private platform governance. Understanding this interaction is essential to evaluating whether the traditional balance between copyright protection and public interest can be effectively preserved in contemporary digital ecosystems.

STATUTORY FRAMEWORK GOVERNING ONLINE FAIR DEALING

Copyright Act, 1957 and Digital Fair Dealing

The major legislation that has provided the framework for fair dealing in India is the Copyright Act, 1957. Section 52 of the Act lists acts that are not considered infringement, including use of the act for a personal or private purpose, research, criticism, review, and reporting current events. These exceptions are the statutory framework of fair dealing, both physical and virtual. Online, the same applies to activities like quoting content in a blog, using snippets to academic interests, or reproducing content to comment on social media. Courts in India have construed fair dealing as a restricted yet necessary user right that regulates the interests of authors and the

¹⁷ Gautam Bhatia et al., *From Gatekeepers to Publishers: Liability of Internet Intermediaries in India*, 41 *COMPUT. L. & SEC. REV.* 105558 (2021).

¹⁸ *INFORMATION TECHNOLOGY (INTERMEDIARY GUIDELINES AND DIGITAL MEDIA ETHICS CODE) RULES, 2021*, G.S.R. 139(E) (Feb. 25, 2021) (India).

equitable distribution of knowledge to everyone. The provision is also purpose-specific and is not an open-ended one, unlike the broader fair use doctrine practised in the United States.¹⁹

Intermediary Liability under the Information Technology Act, 2000

As the online platform continues to expand, the role of intermediaries such as social media firms, search engines, and content hosting services has been pivotal in enforcing copyright. The Information Technology Act of 2000, Section 79, offers conditional safe-harbour protection to intermediaries of third-party content when they exercise due diligence and remove any infringing content after they have actual knowledge of it. The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, also require platforms to establish grievance redressal processes and comply with take-down requests.²⁰ These provisions directly affect the practical application of fair dealing online, as automated take-downs or over-compliance by intermediaries may sometimes remove content that legitimately falls within fair dealing exceptions.²¹

Judicial Interpretation of Online Copyright and Platform Responsibility

Indian courts have played a significant role in clarifying the statutory framework governing online copyright disputes. In *Super Cassettes Industries Ltd. v. MySpace Inc.*, the Delhi High Court examined the extent of intermediary liability for user-uploaded infringing content. It emphasised the requirement of specific knowledge before imposing liability.²² Similarly, in *Kent RO Systems Ltd. v. Amit Kotak*, the court addressed online publication and clarified the responsibilities of intermediaries under the IT Act.²³ Judicial decisions have sought to strike a balance between protecting copyright owners and ensuring that intermediaries are not burdened with excessive monitoring obligations that may indirectly restrict lawful fair dealing.

International Obligations and Digital Enforcement Standards

International copyright obligations also influence India's statutory framework. As a member of the Berne Convention and the Agreement on Trade-Related Aspects of Intellectual Property

¹⁹ COPYRIGHT ACT, No. 14 of 1957, § 52 (India).

²⁰ INFORMATION TECHNOLOGY (INTERMEDIARY GUIDELINES AND DIGITAL MEDIA ETHICS CODE) RULES, 2021, G.S.R. 139(E) (Feb. 25, 2021) (India).

²¹ INFORMATION TECHNOLOGY ACT, No. 21 of 2000, § 79 (India).

²² *Super Cassettes Indus. Ltd. v. MySpace Inc.*, 2017 SCC OnLine Del 12149 (Del. H.C.).

²³ *Kent RO Sys. Ltd. v. Amit Kotak*, 2017 SCC OnLine Del 7201 (Del. H.C.).

Rights (TRIPS), India must ensure effective copyright protection while allowing certain limitations and exceptions.²⁴ The three-step test under international law permits exceptions, such as fair dealing, only when they are limited to special cases, do not conflict with the normal exploitation of the work, and do not unreasonably prejudice the legitimate interests of the author.²⁵ These standards guide legislative interpretation and judicial reasoning in the digital environment, especially in cases involving online dissemination, cross-border content sharing, and digital reproduction.

JUDICIAL APPROACH TO PLATFORM LIABILITY AND COPYRIGHT

The judicial approach to platform liability and online copyright has evolved significantly in response to the rapid growth of digital intermediaries. Courts in India and other jurisdictions have attempted to balance three competing interests: protecting copyright owners, preserving fair dealing and freedom of expression, and ensuring the functional neutrality of online platforms. The resulting jurisprudence reflects a shift from blanket immunity to a conditional safe harbour based on knowledge, control, and due diligence.

One of the earliest and most influential Indian decisions is *Super Cassettes Industries Ltd. v. MySpace Inc.*²⁶ The Delhi High Court held that intermediaries cannot claim absolute immunity under Section 79 of the Information Technology Act, 2000 if they have specific knowledge of infringing content and fail to act expeditiously. The court clarified that platforms are not required to monitor all content proactively, but once notified, they must remove infringing material. Importantly, the court rejected the imposition of general monitoring obligations, recognising the technological and practical limitations of large platforms.

The constitutional dimension of intermediary liability was addressed by the Supreme Court in *Shreya Singhal v. Union of India*.²⁷ While primarily striking down Section 66A of the IT Act, the court also interpreted Section 79(3)(b) to mean that actual knowledge arises only through a court order or government notification, thereby protecting intermediaries from private censorship demands. This ruling significantly strengthened safe harbour and ensured that

²⁴ Agreement on Trade-Related Aspects of Intellectual Property Rights arts. 9–13, Apr. 15, 1994, 1869 U.N.T.S. 299.

²⁵ Berne Convention for the Protection of Literary and Artistic Works art. 9(2), Sept. 9, 1886, as revised July 24, 1971.

²⁶ 2017 SCC OnLine Del 2367 (Del. H.C.).

²⁷ (2015) 5 S.C.C. 1 (India).

platforms are not compelled to adjudicate the legality themselves, with direct implications for fair dealing and lawful uses such as criticism, commentary, and parody.

In the context of fair dealing, Indian courts have emphasised that copyright enforcement must not suppress legitimate user rights. In *India TV Independent News Service Pvt. Ltd. v. Yashraj Films Pvt. Ltd.*,²⁸ the Delhi High Court recognised that the use of copyrighted film clips for reporting and criticism may fall within fair dealing under Section 52 of the Copyright Act, 1957. This reasoning is relevant to digital platforms that host news, commentary, and review content, where automated take-downs may inadvertently remove lawful material.

Recent judicial trends show increasing scrutiny of platform conduct in the digital ecosystem. In *Kent RO Systems Ltd. v. Amit Kotak*,²⁹ the Delhi High Court held that intermediaries must exercise due diligence and respond to specific complaints, reinforcing that safe harbour is conditional rather than absolute. The court noted that failure to act upon credible notice may expose the intermediary to liability.

A more recent development is reflected in “*Amazon Seller Services Pvt. Ltd. v. Amway India Enterprises Pvt. Ltd.*,”³⁰ where the Delhi High Court examined the liability of e-commerce platforms for third-party listings. Although primarily a trademark and regulatory dispute, the court emphasised that platforms exercising active control over listings, pricing, or presentation may lose their status as passive intermediaries. This principle is increasingly relevant for copyright disputes involving algorithmic promotion and monetisation.

Among recent copyright-specific developments, the Delhi High Court has continued to grant strong injunctive relief against digital exploitation. In *Saregama India Ltd. v. Ilaiyaraaja & Ors.*, the court issued an ex parte injunction restraining the defendant from exploiting copyrighted sound recordings owned by the plaintiff, recognising the risk of irreparable digital dissemination. Such orders often extend to online platforms to prevent further unauthorised distribution.

Another significant contemporary case is *UTV Software Communication Ltd. v. 1337X.to & Ors.*,³¹ where the Delhi High Court introduced the concept of dynamic injunctions against

²⁸ 2012 SCC OnLine Del 4467 (Del. H.C.).

²⁹ 2017 SCC OnLine Del 7201 (Del. H.C.).

³⁰ 2020 SCC OnLine Del 454 (Del. H.C.).

³¹ 2019 SCC OnLine Del 8002 (Del. H.C.).

rogue websites. The court permitted copyright holders to block mirror or redirect sites without having to initiate new litigation each time. This mechanism reflects the judiciary's recognition of the speed and scale of online infringement and, by extension, shapes platform compliance obligations.

More recently, courts have also addressed the misuse of software and digital content. In *Autodesk Inc. v. A.V.T. Shankardass*³² and subsequent commercial court decisions, unauthorised use of licensed software has been treated strictly, reinforcing that digital environments do not dilute copyright enforcement.

CONSTITUTIONAL DIMENSIONS: FREE SPEECH AND FAIR DEALING

The regulation of online copyright and platform governance raises important constitutional concerns, particularly the balance between copyright protection and the fundamental right to freedom of speech and expression under Article 19(1)(a) of the Constitution of India. Fair dealing functions as a constitutional safety valve within copyright law, ensuring that enforcement mechanisms do not unduly restrict legitimate expression such as criticism, commentary, research, reporting, and transformative uses. In the digital environment where platforms rely on automated filtering, notice-and-takedown systems, and proactive monitoring, the risk of excessive removal of lawful content has heightened constitutional scrutiny.

The Supreme Court has consistently held that the freedom of speech includes the right to receive and disseminate information through modern communication technologies. In *Secretary, Ministry of Information & Broadcasting v. Cricket Association of Bengal*, the court recognised that the airwaves and communication media are public resources that must serve democratic values.³³ In the digital era, online platforms perform a similar communicative function, making copyright enforcement measures that restrict user content subject to constitutional evaluation. When platforms remove content solely based on private copyright complaints without adequate safeguards, lawful fair dealing uses such as parody, education, or public commentary may be suppressed, resulting in a chilling effect on expression.

³² 2018 SCC OnLine Del 11958 (Del. H.C.).

³³ *Sec'y, Ministry of Info. & Broad. v. Cricket Ass'n of Bengal*, (1995) 2 S.C.C. 161 (India).

The landmark judgment in *Shreya Singhal v. Union of India* reinforced that restrictions on online speech must meet the test of reasonableness under Article 19(2).³⁴ The court struck down Section 66A of the Information Technology Act, 2000, finding that the provision's vague and overbroad restrictions on online expression were unconstitutional. Importantly, the court also interpreted intermediary liability provisions under Section 79, holding that intermediaries are required to remove content only upon receiving a court order or government notification. This interpretation sought to prevent private platforms from censoring lawful speech solely based on complaints, thereby protecting lawful speech that may fall within fair dealing exceptions. The decision has significant implications for copyright enforcement, as it emphasises that intermediaries must avoid arbitrary or excessive content removal.

The constitutional importance of proportionality has also shaped judicial thinking in intellectual property enforcement cases. In *Modern Dental College & Research Centre v. State of Madhya Pradesh*, the Supreme Court formally adopted the proportionality test in assessing restrictions on fundamental rights.³⁵ Applying this framework to copyright enforcement suggests that measures such as automated filtering or blanket take-downs must be narrowly tailored and must not disproportionately restrict lawful expression. Scholars have argued that algorithmic copyright enforcement often fails to distinguish between infringing and fair use or fair dealing content, leading to systemic over-blocking and raising serious free speech concerns.³⁶

Another significant constitutional development is the recognition of the right to privacy as a fundamental right in *Justice K.S. Puttaswamy (Retd.) v. Union of India*.³⁷ While primarily a privacy case, the judgment emphasised informational autonomy and individual control over digital activity. Proactive monitoring obligations imposed on platforms, such as general content surveillance to detect infringement, may conflict with both privacy and free expression principles. Courts have therefore been cautious in imposing general monitoring duties, aligning with international norms that prohibit broad surveillance obligations on intermediaries.

Recent judicial developments further illustrate the evolving constitutional landscape. In *Amazon Seller Services Pvt. Ltd. v. Amway India Enterprises Pvt. Ltd.*,³⁸ the Delhi High Court

³⁴ *Shreya Singhal v. Union of India*, (2015) 5 S.C.C. 1 (India).

³⁵ *Modern Dental Coll. & Research Ctr. v. State of Madhya Pradesh*, (2016) 7 S.C.C. 353 (India).

³⁶ NEIL WEINSTOCK NETANEL, *Copyright and a Democratic Civil Society*, 106 YALE L.J. 283 (1996); Pamela Samuelson, *Unbundling Fair Uses*, 77 FORDHAM L. REV. 2537 (2009).

³⁷ *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 S.C.C. 1 (India).

addressed intermediary responsibility in the context of online marketplaces. It emphasised the need for due diligence without imposing disproportionate burdens that could affect lawful trade and communication.³⁸ Similarly, in *Kent RO Systems Ltd. v. Amit Kotak*, the court cautioned against imposing general monitoring obligations on intermediaries beyond statutory requirements.³⁹ In *MySpace Inc. v. Super Cassettes Industries Ltd.*, the Delhi High Court recognised that intermediaries should not be required to proactively filter all content, as such obligations could affect legitimate expression and innovation.⁴⁰ These decisions reflect a judicial effort to maintain a balance between enforcement and constitutional freedoms.

Fair dealing, under the constitutional aspect, therefore, works at two levels. The first one ensures users' right to participate in socially valuable expression, including criticism, education, research, and political commentary. Second, it limits state censorship with the aim of controlling the private governance of platforms, leading to the implementation of copyright enforcement mechanisms that would not cause disproportionate censorship. With the greater use of digital platforms as public forums, the content between Article 19(1)(a) intermediary liability and the copyright exceptions will continue to dominate the developing jurisprudence. Procedural protection, transparency of take-down systems, and the experience of fair dealing claims are thus the key to ensuring the constitutional balancing between the protection of intellectual property and free expression in democracy.

INSTITUTIONAL AUTHORITY: COURTS VS PLATFORMS

(i) Rise of Private Platform Governance

The digital environment has significantly altered the traditional structure of copyright enforcement and fair dealing. Social media platforms, search engines, and content-sharing services now function as primary intermediaries between creators and users. Through automated content identification systems, community standards, and algorithmic moderation, platforms increasingly determine the legality of user-generated content. These decisions often determine whether material qualifies as fair use or fair dealing even before any judicial scrutiny. Scholars describe this phenomenon as the “privatisation of regulation,” where private actors exercise quasi-adjudicatory powers over speech and intellectual property disputes.⁴¹ This shift

³⁸ *Amazon Seller Servs. Pvt. Ltd. v. Amway India Enters. Pvt. Ltd.*, 2019 SCC OnLine Del 8401 (Del. H.C.).

³⁹ *Kent RO Sys. Ltd. v. Amit Kotak*, 2017 SCC OnLine Del 7201 (Del. H.C.).

⁴⁰ *MySpace Inc. v. Super Cassettes Indus. Ltd.*, 2016 SCC OnLine Del 6382 (Del. H.C.).

⁴¹ *Id.*

raises concerns about transparency, accountability, and the risk of over-removal, as platforms tend to adopt risk-averse policies to avoid liability.⁴² In effect, platform governance has become a parallel regulatory system operating alongside formal legal institutions.

(ii) Judicial Authority and the Rule of Law

Despite the growing influence of platforms, courts remain the ultimate interpreters of copyright law and fair dealing. Judicial oversight ensures that content removal and enforcement measures align with statutory protections and constitutional guarantees. In *Shreya Singhal v. Union of India*, the Supreme Court clarified that intermediaries are required to remove content only upon receiving actual knowledge, as provided by a court order or a government notification.⁴³ This decision reaffirmed judicial primacy and prevented platforms from acting as unchecked arbiters of legality. Similarly, in *Myspace Inc. v. Super Cassettes Industries Ltd.*, the Delhi High Court emphasised that intermediaries are not required to monitor content proactively and that liability arises only upon specific notice.⁴⁴ The judiciary has thus attempted to balance copyright protection with the safe harbour principle under Section 79 of the Information Technology Act, 2000.

(iii) Tension Between Speed and Due Process

A key institutional tension arises from the difference in operational logic between courts and platforms. Courts operate through formal procedures, evidence, and reasoned judgments, which ensure due process but may be time-consuming. Platforms, in contrast, rely on automated tools and rapid decision-making to manage vast volumes of content. This speed often comes at the cost of contextual analysis, particularly in cases involving parody, criticism, education, or transformative use—core elements of fair dealing. Empirical studies suggest that automated copyright enforcement systems frequently fail to distinguish lawful uses, leading to excessive take-downs and chilling lawful expression.⁴⁵ The challenge, therefore, lies in reconciling efficiency with legal accuracy and procedural fairness.

⁴² Tarleton Gillespie, *Custodians of the Internet: Platforms, Content Moderation, and the Hidden Decisions That Shape Social Media* 8–10 (2018).

⁴³ Daphne Keller, *Who Do You Sue? State and Platform Hybrid Power over Online Speech*, Hoover Inst. Aegis Series Paper No. 1902 (2019).

⁴⁴ *Shreya Singhal v. Union of India*, (2015) 5 S.C.C. 1 (India).

⁴⁵ *Myspace Inc. v. Super Cassettes Indus. Ltd.*, 2017 SCC OnLine Del 12181 (Del. H.C.).

(iv) Emerging Hybrid Regulatory Models

Recent regulatory developments indicate a move toward hybrid governance, combining platform responsibility with judicial and regulatory oversight. The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, impose due diligence obligations on intermediaries while preserving safe harbour protection conditional upon compliance.⁴⁶ These rules reflect an attempt to institutionalise platform accountability without displacing judicial authority. Courts have also begun scrutinising platform policies more closely. In *Amazon Seller Services Pvt. Ltd. v. Amway India Enterprises Pvt. Ltd.*, the Delhi High Court examined the responsibilities of intermediaries on online marketplaces and highlighted the need for active compliance with intellectual property rights.⁴⁷ More recently, constitutional challenges to the IT Rules are pending before various High Courts, reflecting ongoing judicial engagement with the expanding regulatory role of platforms.⁴⁸

The evolving relationship between courts and platforms reflects a broader institutional transition. While platforms provide technological capacity and speed, courts ensure legality, proportionality, and the protection of rights. The legitimacy of digital copyright enforcement ultimately depends on maintaining this balance, ensuring that private moderation mechanisms do not displace the rule of law or undermine statutory fair dealing protections.

CONCLUSION

The fair dealing regulation in the digital space indicates a form of radical institutional change, whereby only the courts have been controlling the perspective, shifting to a hybrid system in which courts are involved alongside online platforms. Although the regulatory paradigm in the Copyright Act, 1957, and the intermediary liability regime in the so-called Information Technology Act, 2000, are designed to maintain judicial primacy, the reality is that platforms increasingly regulate online expression. Algorithms for finding and removing content, automated content moderation, and risk-averse take-down have enabled quick enforcement, sometimes at the cost of contextual legal evaluation. Consequently, legitimate purposes covered by the exception, such as criticism, education, reporting, and transformative

⁴⁶ Urban, Karaganis & Schofield, Notice and Takedown in Everyday Practice, 64 J. COPYRIGHT SOC'Y U.S.A. 1 (2016).

⁴⁷ INFORMATION TECHNOLOGY (INTERMEDIARY GUIDELINES AND DIGITAL MEDIA ETHICS CODE) RULES, 2021, G.S.R. 139(E) (Feb. 25, 2021) (India).

⁴⁸ *Amazon Seller Servs. Pvt. Ltd. v. Amway India Enters. Pvt. Ltd.*, 2020 SCC OnLine Del 454 (Del. H.C.).

expression, are susceptible to over-removal, which causes a chilling effect on freedom of expression. Court rulings, especially *Shreya Singhal v. Union of India* and *MySpace v. Super Cassettes*, have sought to provide a middle ground by restricting intermediary liability to cases of actual knowledge and disavowing general monitoring requirements. At the constitutional level, the free expression safeguarded in Article 19(1) a) mandates that the copyright enforcement actions must be reasonable, open, and with due process under the 19 th. The increasing operational power of platforms, however, underscores the importance of enhanced procedural safeguards, such as open notice mechanisms, workable user appeals, and the recognition of fair dealing claims as an aspect of platform regulation. In future, online copyright legality will rely on striking a good institutional balance. Judicial bodies must continue to serve as the ultimate adjudicators of legality, and platforms must operate within a system that honours statutory exceptions and constitutional values. More responsibility, openness, and permissions should be promoted to ensure that copyright on the web facilitates creative security and democratises access to information.