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# **FAIR USE IN PARODY AND SATIRE: DEFINING THE LEGAL BOUNDARIES**

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## **Abstract**

This research paper delves into the fascinating intersection of fair use doctrine with parody and satire in today's creative landscape. Courts often favor parody over satire when assessing fair use, but the distinction between the two remains fluid and ever-evolving. Recent legal trends emphasize transformative use as a key factor in determining fair use, especially in the digital age, where new forms of creative commentary are constantly emerging. The ongoing tension between copyright protection and freedom of expression continues to shape this dynamic legal landscape, with significant implications for artists, legal professionals, and policymakers navigating the fine line between creativity and copyright infringement.

Although parody and satire are frequently used interchangeably, they have distinct legal meanings. Parody directly imitates a work to critique or comment on it, whereas satire borrows elements from a work to offer broader social or political commentary. In India, both are recognized under the Fair Dealing provisions of the Copyright Act, 1957, which allows for limited use of copyrighted material without permission under specific circumstances such as education, research, criticism, and reporting. This doctrine plays a crucial role in striking a balance between protecting creators' rights and ensuring the public's access to creative and critical expression.

The Indian legal system acknowledges the significance of parody and satire as expressions of free speech under Article 19(1)(a) of the Constitution of India. Courts have been instrumental in interpreting fair dealing provisions to protect artistic and creative freedom while also considering the rights of copyright holders. Several landmark cases, both in India and internationally, have explored the complexities of what constitutes transformative use versus copyright infringement, reinforcing how fair use law continues to adapt.

With the rise of digital media, the scope of parody and satire has expanded dramatically. User-generated content, internet memes, and remix culture have introduced new challenges for courts and policymakers in defining the boundaries of fair use. As more individuals engage in digital storytelling, social commentary, and humorous reinterpretations of existing works, a more nuanced and flexible approach to copyright law is essential. This paper explores these critical issues, offering a comprehensive analysis of how fair use applies to parody and satire in India and beyond.

**Keywords:** Fair Use, Parody, Satire, Copyright Act 1957, Fair Dealing, Transformative Use, Freedom of Expression, Digital Age, Intellectual Property, Article 19(1)(a)

## INTRODUCTION

The balance between protecting intellectual property rights and fostering creative expression has long been a subject of debate in copyright law. At the heart of this discussion lies the principle of fair use (in the United States) and fair dealing (in India), both of which serve as legal doctrines permitting the limited use of copyrighted material without the need for prior authorization from rights holders. While the core objective of these doctrines is similar to allow certain exceptions to copyright infringement they differ in their scope, interpretation, and application.

In the United States, the fair use doctrine, codified under Section 107 of the Copyright Act of 1976, provides a flexible framework for assessing whether a particular use of copyrighted material is permissible. Courts consider four key factors: (i) the purpose and character of the use (including whether it is transformative), (ii) the nature of the copyrighted work, (iii) the amount and substantiality of the portion used, and (iv) the effect of the use on the market value of the original work. Among the most debated and complex applications of fair use are parody and satire, both of which rely on borrowing elements from pre-existing works to deliver humor, critique, or commentary. While courts generally afford stronger protection to parody since it directly critiques the original work satire, which uses copyrighted material to comment on broader social or political themes, often faces stricter scrutiny.

In India, the fair dealing doctrine, recognized under Section 52 of the Copyright Act, 1957, similarly provides exceptions to copyright infringement for purposes such as criticism, review, research, and reporting. Indian courts have acknowledged parody and satire as significant forms

of creative expression, often linking their protection to the fundamental right to freedom of speech and expression under Article 19(1)(a) of the Constitution. However, unlike the broader US fair use doctrine, fair dealing in India operates within a more structured set of exceptions, leaving less room for flexible judicial interpretation. This has led to ambiguity regarding the legal status of satire, which is not explicitly covered as a standalone exception under Indian copyright law.

Parody and satire play an essential role in artistic and cultural discourse, challenging societal norms and providing humorous yet critical perspectives on contemporary issues. However, their reliance on existing copyrighted material raises legal questions about the boundaries of permissible use, the evolving interpretation of transformative works, and the impact of digital media on copyright jurisprudence. This paper seeks to explore these challenges by examining key judicial decisions, legislative developments, and scholarly perspectives on how fair use and fair dealing apply to parody and satire in India and the United States.

### **Research Objectives**

This study explores the legal frameworks of fair use in the United States and fair dealing in India, focusing on their application to parody and satire. It aims to analyze how courts interpret transformative use, particularly why parody receives stronger protection than satire, and how this distinction impacts legal decisions.

Additionally, the research examines the impact of digital media on copyright jurisprudence, assessing how evolving forms of creative expression such as memes, remixes, and user-generated content challenge traditional copyright laws. By evaluating landmark judicial decisions and legislative trends, this study seeks to identify ambiguities in the treatment of satire under Indian copyright law and explore potential legal reforms.

Ultimately, this research aims to balance copyright protection with freedom of expression, offering insights into how legal frameworks can better accommodate evolving artistic and critical commentary.



## Problem Statement

The legal distinction between parody and satire under fair use (U.S.) and fair dealing (India) creates ambiguities in copyright law, particularly in the digital age. While parody enjoys stronger legal protection due to its direct critique of original works, satire, which addresses broader social issues, often faces stricter scrutiny. The lack of explicit recognition of satire under Indian fair dealing laws further complicates its legal standing. With the rise of digital media, memes, and remix culture, traditional copyright frameworks struggle to keep pace with evolving creative expressions. This study examines these legal challenges, exploring whether current laws effectively balance copyright protection with artistic freedom and whether reforms are necessary to address emerging issues in digital parody and satire.

### Research Questions:

- How do fair use (U.S.) and fair dealing (India) regulate the use of copyrighted material in parody and satire?
- What are the key legal distinctions between parody and satire, and how do they impact fair use/fair dealing determinations?
- How does the transformative use test influence judicial decisions on parody and satire under copyright law?
- What legal challenges does digital media pose in defining and applying fair use/fair dealing to parody and satire?

## Historical Evolution of Fair Use Doctrine

The idea of fair use has been an integral part of copyright law for centuries, evolving as societies sought to balance the rights of creators with the need for public access to knowledge and creative works. The origins of this doctrine can be traced back to the early nineteenth century in England, where courts recognized the principle of "fair abridgment." This concept acknowledged that, in some instances, using portions of a copyrighted work particularly for education, commentary, and criticism should not be considered infringement.

Over time, this idea crossed the Atlantic and took root in American copyright law. Initially, fair use was not codified in any statute but was instead developed through judicial decisions. Courts in the United States began recognizing that rigid copyright enforcement could stifle creativity, limit discourse, and restrict access to important ideas. This understanding eventually

led to the formal inclusion of fair use in the U.S. Copyright Act of 1976, where it was enshrined under Section 107 of Title 17 of the United States Code.

The fair use doctrine serves as a legal safeguard, allowing limited use of copyrighted material without seeking permission from the original creator. It acknowledges that absolute control over creative works could hinder, rather than promote, cultural and intellectual progress an idea that aligns with the broader constitutional purpose of copyright law in the United States. As per the U.S. Constitution, copyright law exists to promote "the Progress of Science and useful Arts." The goal is not merely to protect the economic interests of creators but also to ensure that knowledge, creativity, and cultural expression continue to thrive.

When determining whether a particular use qualifies as fair use, courts rely on a four-factor test established under the Copyright Act of 1976:

1. The purpose and character of the use – This factor examines whether the use is commercial or nonprofit educational in nature. More importantly, it considers whether the new work is transformative that is, whether it adds something new, with a different meaning, message, or purpose, rather than simply copying the original work. Transformative use is often given more weight in fair use determinations.
2. The nature of the copyrighted work – This factor considers whether the original work is highly creative (such as novels, films, or paintings) or more factual in nature (such as news reports or research papers). Courts tend to provide stronger protection for creative works since they involve greater originality, whereas factual works are more likely to be used in the public interest.
3. The amount and substantiality of the portion used – Here, courts look at how much of the original work was taken. Using a small portion may support a fair use argument, but if the "heart" or most important part of the work is used, it could weigh against fair use even if the amount taken is small.
4. The effect on the potential market for the original work – Perhaps the most important factor, this considers whether the unauthorized use negatively impacts the commercial value of the original work. If the new work acts as a direct substitute for the original and diminishes its marketability, it is less likely to be deemed fair use.

While these four factors form the foundation of fair use analysis, courts have the discretion to consider other relevant factors depending on the context of the case. Moreover, they do not

apply in isolation all factors are weighed together, and no single factor automatically determines the outcome.

One of the most significant aspects of the fair use doctrine is its flexibility. As technology and creative practices evolve, courts have adapted their interpretations of fair use to accommodate new forms of expression. This adaptability is particularly crucial in the digital age, where creative works are constantly being remixed, parodied, and transformed in innovative ways.

The evolution of fair use doctrine has been shaped by landmark cases, which have refined its application and reinforced its importance in fostering creativity and free expression. For instance, in *Campbell v. Acuff-Rose Music, Inc.* (1994), the U.S. Supreme Court ruled that a commercial parody could still qualify as fair use, emphasizing that the transformative nature of the work plays a more crucial role than its commercial aspect. This ruling set a precedent for how courts analyse fair use in cases involving parody and satire.

Fair use is not a rigid rule but a dynamic legal principle that continues to evolve alongside cultural and technological shifts. By balancing the rights of copyright holders with the need for creative freedom, fair use plays a pivotal role in ensuring that copyright law serves its ultimate purpose: encouraging innovation, artistic expression, and the exchange of ideas.

### **Understanding Fair Use Criteria in the Modern Context**

Fair use plays a crucial role in balancing copyright protection with creative freedom, and courts rely on a four-factor test to determine whether a particular use qualifies as fair. Among these, the most significant factor is often transformative use—whether the new work adds something original in terms of expression, meaning, or message, rather than simply copying the original. This concept has become especially important in cases involving parody and satire, where reworking existing material is fundamental to the creative process. Courts are more likely to favor works that repurpose content in a way that offers fresh commentary, humour, or critique.

The second factor considers the nature of the copyrighted work. Generally, highly creative works such as novels, films, or paintings receive stronger protection than factual or previously published works. Courts recognize that some types of content, like news reports or research, naturally invite public discussion, whereas purely artistic creations deserve more careful

consideration before being freely used by others.

The third factor focuses on the amount and significance of the portion used. Even using a small segment of a work can be problematic if it captures the "heart" or most recognizable part of the original. Courts analyze both the quantity (how much was taken) and the quality (how essential that portion is) to determine whether it crosses into infringement.

The fourth factor, often considered the most important, examines the economic impact on the original work. If the new use harms the market value of the original either by acting as a substitute or reducing its demand it is less likely to be considered fair. Courts also consider whether the copyright holder might have been able to license the material for similar use, and whether the new work competes with potential derivative markets.

Over time, courts have developed a complex and sometimes inconsistent body of precedent in applying these factors, particularly when it comes to parody and satire. These forms of expression often rely heavily on copyrighted material, making it difficult to determine where the line between fair use and infringement lies.

A landmark case in this regard is *Campbell v. Acuff-Rose Music, Inc.* (1994)<sup>1</sup>, where the U.S. Supreme Court ruled that a commercial parody could still qualify as fair use. The Court emphasized that transformative nature is more critical than whether the work is used for profit. This decision set a precedent that parody because it directly critiques the original work is more likely to be protected than satire, which uses copyrighted material to comment on broader social issues.

As technology and creative culture continue to evolve, so too does the understanding of fair use. The rise of digital media, memes, remixes, and online content has blurred traditional boundaries, leading to new legal questions about how copyrighted material can be used, shared, and transformed. Courts now face the challenge of adapting fair use principles to the digital age, ensuring that they continue to protect both the rights of creators and the space for artistic and critical expression.

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<sup>1</sup> *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569 (1994).

## Distinguishing Parody and Satire in the Legal Context

The distinction between parody and satire plays a crucial role in fair use determinations, as courts have historically treated them differently under copyright law. Parody involves the imitation or alteration of a specific work to critique or comment on it, whereas satire borrows elements from an existing work to make a broader social or political statement without necessarily targeting the original. This distinction significantly affects whether a work qualifies for fair use protection.

A landmark case in this area is *Campbell v. Acuff-Rose Music, Inc.* (1994)<sup>2</sup>, in which the U.S. Supreme Court made a clear distinction between parody and satire. The Court, in an opinion by Justice Souter, stated that parody must mimic an original work to make its point, whereas satire can exist independently and often lacks the same justification for borrowing from copyrighted material. The Court ruled that commercial parody can still qualify as fair use, particularly when it transforms the original work to create new meaning rather than merely copying it.

Because parody directly engages with and critiques the original work, courts have traditionally been more willing to grant it fair use protection. In contrast, satire, which may only reference a copyrighted work for unrelated commentary, faces stricter scrutiny. The rationale behind this preference is that parody transforms the original work to provide new insights, whereas satire might unnecessarily appropriate copyrighted material when alternative means of expression are available<sup>3</sup>. However, this distinction is not always clear-cut, leading to ongoing legal debates on how to categorize works that blend humour, irony, and criticism.

## Blurring the Lines: Examples of Parody and Satire

Many works contain elements of both parody and satire, making strict categorization difficult. For example:

- "Weird Al" Yankovic's "Smells Like Nirvana" is a parody of Nirvana's "Smells Like Teen Spirit." The song mimics the original while humorously critiquing the unintelligibility of the lyrics, making it a classic case of parody<sup>4</sup>.

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<sup>2</sup> *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569 (1994).

<sup>3</sup> Pierre N. Leval, *Toward a Fair Use Standard*, 103 Harv. L. Rev. 1105 (1990).

<sup>4</sup> Jeffrey P. Cunard, *Parody as Fair Use in Copyright Law: Economic Disincentives and Reasonable Access to Copyrighted Works*, 54 Fordham L. Rev. 419 (1986).



- *Pride and Prejudice and Zombies* by Seth Grahame-Smith blends both parody and satire it simultaneously parodies Jane Austen's novel while also satirizing Regency-era society and contemporary zombie fiction<sup>5</sup>.
- The Daily Show uses both parody and satire, often parodying news segments while satirizing media bias and political issues<sup>6</sup>.

### Parody and Satire in the Digital Age

The rise of digital media and remix culture has further blurred the line between parody and satire. Internet memes, for instance, often reference specific works (a hallmark of parody) while also critiquing broader cultural trends (which aligns with satire). This has created legal uncertainty, as courts struggle to apply traditional fair use principles to modern digital expressions<sup>7</sup>.

Additionally, the global nature of content distribution has exposed differences in legal treatment. While the U.S. fair use doctrine offers flexible treatment, other jurisdictions, such as the European Union, have more structured copyright exceptions for parody but may not explicitly recognize satire as a defense<sup>8</sup>. In India, fair dealing provisions under the Copyright Act, 1957, do not explicitly differentiate between parody and satire, leaving courts to decide their legal standing on a case-by-case basis<sup>9</sup>.

### Copyright Protection Afforded to Parody and Satire

Copyright law seeks to balance the protection of creative works with the right to free expression. In India, this protection operates at two levels. First, under Article 19(1)(a) of the Indian Constitution, every citizen enjoys the fundamental right to freedom of speech and expression, which extends to criticism, commentary, and parody of copyrighted works. This freedom is essential for fostering public discourse, artistic expression, and cultural critique. However, it is not absolute and must be exercised in a manner that respects the rights of copyright holders, ensuring that creators maintain control over their original works while allowing room for transformative reinterpretations.

<sup>5</sup> Seth Grahame-Smith, *Pride and Prejudice and Zombies*, Quirk Books (2009).

<sup>6</sup> Geoffrey Baym, *The Daily Show and the Reinvention of Political Journalism*, Political Communication, Vol. 22, No. 3 (2005).

<sup>7</sup> Lawrence Lessig, *Remix: Making Art and Commerce Thrive in the Hybrid Economy*, Penguin Press (2008).

<sup>8</sup> Directive (EU) 2019/790 on Copyright in the Digital Single Market.

<sup>9</sup> *The Copyright Act, 1957*, § 52, No. 14, Acts of Parliament, 1957 (India).

Second, Indian Intellectual Property (IP) law provides statutory protection through the fair dealing doctrine under Section 52 of the Copyright Act, 1957. Fair dealing functions as an exception to copyright infringement in cases related to criticism, review, research, and reporting. While the Copyright Act does not explicitly mention parody or satire, Indian courts have played a significant role in defining their legal status. Courts have ruled that parodies, when created for legitimate purposes such as humour, critique, or social commentary, may qualify for fair dealing protection without amounting to copyright infringement.

A landmark case in this regard is **Civic Chandran v. Ammini Amma (1996) 1 KLJ 454: 1996 AIHC 3964: (1996) 1 KLT 608: (1996) 16 PTC 670: (1996) 22 CLA (SN 26) 29**, where the Supreme Court of India established the “three-factor test” to determine whether a parody constitutes copyright infringement:

1. The amount and value of the copyrighted material used – How much of the original work has been borrowed, and whether this borrowing is justified for the purpose of criticism or commentary.
2. The purpose behind using the copyrighted work – Whether the new work adds value, commentary, or critique, rather than simply copying for profit.
3. The likelihood of competition – Whether the parody or satire directly competes with the original work in the market, potentially affecting its commercial value.

This judgment has been instrumental in shaping Indian copyright jurisprudence, guiding courts in distinguishing between legitimate parody and copyright infringement. Courts often consider the level of originality, artistic modification, and creative infusion in the second work to determine whether it qualifies for fair dealing protection.

### **Parody vs. Satire: A Question of Protection**

While parody and satire share similarities, courts worldwide have treated them differently when determining fair use protection. The United States Supreme Court, in *Campbell v. Acuff-Rose Music, Inc.* (1994), set an important precedent by drawing a clear legal distinction between parody and satire.

- Parody directly mimics or alters the original work to comment on or criticize it, making it more defensible under fair use.
- Satire, by contrast, uses elements of a copyrighted work to critique broader societal issues rather than engaging directly with the original. Since satire does not necessarily

need a copyrighted work to make its point, courts often question whether the use is truly transformative or merely an exploitation of the original work's popularity.

This distinction has a significant impact on copyright protection across different jurisdictions. Because satire often borrows from copyrighted material without directly critiquing it, courts are more likely to view it as potentially infringing. Many legal systems, including the U.S. and India, hesitate to extend fair use or fair dealing protection to satire, especially when it appears to profit from another's intellectual property without legitimate justification.

### **Future Directions: Rethinking the Parody/Satire Distinction**

Legal scholars and creative communities continue to debate whether the distinction between parody and satire is meaningful or outdated. Some argue for a broader approach that focuses on the transformative nature of the new work rather than rigid categorization. Courts may need to adopt a more flexible, context-driven approach to accommodate evolving creative practices while ensuring that copyright law continues to protect both original creators and artistic freedom<sup>10</sup>.

As new forms of digital expression emerge, legal systems worldwide must adapt to ensure that copyright law remains relevant in an era of rapidly changing artistic and communicative practices. For creators, legal professionals, and policymakers, understanding these nuances is essential for navigating the evolving landscape of fair use in humour and critical expression.

### **Legal Framework for Fair Use in Parody and Satire**

The legal framework governing fair use in parody and satire has developed through a combination of statutory provisions and judicial interpretations, reflecting the ongoing struggle to balance copyright protection with freedom of expression. In the United States, fair use is primarily defined under Section 107 of the Copyright Act, 1976, which outlines a four-factor test for determining whether the use of copyrighted material qualifies as fair.<sup>11</sup> However, judicial rulings have played the most significant role in shaping how these principles apply to parody and satire, often clarifying what constitutes transformative use and how courts should analyze the commercial impact of such works.

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<sup>10</sup> Neil Netanel, *Copyright's Paradox*, Oxford University Press (2008).

<sup>11</sup> 17 U.S.C. § 107 – The four-factor test for fair use under the U.S. Copyright Act of 1976.

One of the most influential cases in this area is *Campbell v. Acuff-Rose Music, Inc.* (1994), in which the U.S. Supreme Court ruled that a commercial parody could still qualify as fair use.<sup>12</sup> Prior to this case, courts often assumed that if a work was used for commercial purposes, it was less likely to fall under fair use. However, the *Campbell* decision rejected this idea, emphasizing transformative use as a key factor in fair use analysis. The ruling established that parody is inherently transformative because it adds new meaning, message, or purpose to the original work. The Court also recognized that parodies must borrow from the original work to create their commentary, which affects the amount and substantiality factor in fair use evaluations.<sup>13</sup>

Beyond *Campbell*, several cases have further shaped fair use law:

- In *Leibovitz v. Paramount Pictures Corp.* (1998), the Second Circuit ruled that a parodied version of a famous *Vanity Fair* cover photograph was fair use because it was transformative and did not harm the market for the original.<sup>14</sup>
- In *Mattel, Inc. v. Walking Mountain Productions* (2003), the Ninth Circuit upheld the fair use defense for photographs of Barbie dolls in unconventional settings, ruling that they criticized consumer culture and gender norms, making them a legitimate parody.<sup>15</sup>

#### The Stricter Treatment of Satire

While parody often benefits from fair use protection, satire faces a higher legal burden. In *Dr. Seuss Enterprises v. Penguin Books USA, Inc.* (1997), the Ninth Circuit rejected a fair use defense for a book that used Dr. Seuss's signature style to comment on the O.J. Simpson murder trial.<sup>16</sup> The court reasoned that the book was not directly critiquing Dr. Seuss's work but rather using it to discuss a separate societal issue, making it satire rather than parody. This case illustrates how courts tend to require stronger justification for satire, since it does not necessarily need the original work to convey its message.<sup>17</sup>

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<sup>12</sup> *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569 (1994) – The case that established commercial parody as fair use and emphasized transformative use.

<sup>13</sup> Pierre N. Leval, *Toward a Fair Use Standard*, 103 Harv. L. Rev. 1105 (1990).

<sup>14</sup> *Leibovitz v. Paramount Pictures Corp.*, 137 F.3d 109 (2d Cir. 1998) – Ruled that a parody of a *Vanity Fair* cover photograph was transformative fair use.

<sup>15</sup> *Mattel, Inc. v. Walking Mountain Productions*, 353 F.3d 792 (9th Cir. 2003) – Held that parodic photographs of Barbie dolls were protected under fair use.

<sup>16</sup> *Dr. Seuss Enterprises, L.P. v. Penguin Books USA, Inc.*, 109 F.3d 1394 (9th Cir. 1997) – Ruled against a satirical book for failing to directly critique Dr. Seuss's work.

<sup>17</sup> R. Tushnet, *Copy This Book: Why Making Media Means Making Trouble*, University of Minnesota Press (2020).

The legal distinction between parody and satire has led to inconsistencies in fair use rulings, with courts often struggling to determine when a satirical work is sufficiently transformative to merit protection.<sup>18</sup>

### Challenges in the Digital Age

The rise of digital media has further complicated fair use in parody and satire. The proliferation of memes, reaction videos, remixes, and other user-generated content has forced courts to reassess how traditional fair use principles apply to new formats<sup>19</sup>. While some courts have extended fair use protection to digital parodies, others remain cautious, particularly when the new works appear to profit from copyrighted material without significant transformation.<sup>20</sup>

As technology evolves, courts will continue to grapple with the complexities of digital parody and satire, testing the adaptability of existing copyright frameworks. With social media and online content creation blurring the line between parody and satire, legal systems may need to develop clearer guidelines to address emerging forms of expression while maintaining the fundamental balance between copyright and free speech.<sup>21</sup>

### Loopholes Exploited by Parodists and Satirists

While fair use and fair dealing exist to protect legitimate artistic and critical expression, courts have often interpreted these doctrines liberally, allowing parodists and satirists to evade copyright restrictions. Cases like *Rameshwari Photocopy Case* and *Blackwood Case* have widened the scope of fair use, making enforcement more complex.<sup>22</sup> Some common loopholes used to defend parody and satire include:

1. Humor as a Defense

Parodists and satirists often argue that their primary intent is humor, not infringement. Since comedy and entertainment are generally protected under fair use, courts hesitate to draw a strict line between humorous critique and unlawful copying.<sup>23</sup> However, this

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<sup>18</sup> *Suntrust Bank v. Houghton Mifflin Co.*, 268 F.3d 1257 (11th Cir. 2001) – Addressed fair use in the context of parody and transformative literary works.

<sup>19</sup> Directive (EU) 2019/790 on Copyright in the Digital Single Market – European regulations that recognize exceptions for parody and caricature.

<sup>20</sup> *Lenz v. Universal Music Corp.*, 815 F.3d 1145 (9th Cir. 2016) – A case discussing fair use in digital content and automated copyright takedowns.

<sup>21</sup> Lawrence Lessig, *Remix: Making Art and Commerce Thrive in the Hybrid Economy*, Penguin Press (2008).

<sup>22</sup> *The Chancellor, Masters & Scholars of the University of Oxford v. Rameshwari Photocopy Services*, 2016 SCC OnLine Del 4545.

<sup>23</sup> Pierre N. Leval, *Toward a Fair Use Standard*, 103 Harv. L. Rev. 1105 (1990).



raises the question: How much borrowing is too much before it crosses into infringement?

## 2. Constitutional Protection

Since parody and satire fall under freedom of speech and expression (Article 19(1)(a) of the Indian Constitution), creators often claim their work is a fundamental right.<sup>24</sup> Some even argue that Article 19 includes the right to entertain and be entertained. However, Indian copyright law requires that prior approval from the copyright holder is necessary in certain cases, especially if the work is purely for commercial entertainment.<sup>25</sup>

## 3. Non-Commercial Use

A key factor in copyright infringement is whether the parody or satire is used for profit. The *Civic Chandran* case established that if a parody does not generate commercial benefit, it is less likely to be considered infringement.<sup>26</sup> Courts have also applied the transformation test, as seen in *R.G. Anand v. Deluxe Films* (1978), where the Supreme Court ruled that if a work transforms the original into something entirely new, no copyright violation occurs.<sup>27</sup>

## Global Approaches to Fair Use and Parody

The legal treatment of parody and satire varies widely across jurisdictions, reflecting different cultural attitudes toward freedom of expression and copyright protection. These differences create challenges for creators in a global digital economy, where content can easily cross borders.

The United States offers one of the most flexible approaches, with its fair use doctrine allowing courts to assess cases based on multiple factors rather than rigid rules.<sup>28</sup> In contrast, European countries traditionally apply fair dealing provisions, which outline specific permitted uses. The European Union's Directive on Copyright in the Digital Single Market (2019) introduced explicit exceptions for parody, caricature, and pastiche, but implementation still varies among member states.<sup>29</sup>

<sup>24</sup> Constitution of India, Article 19(1)(a) – Right to freedom of speech and expression.

<sup>25</sup> *Blackwood and Sons Ltd. v. Parasuraman*, AIR 1959 Mad 410.

<sup>26</sup> *Civic Chandran v. Ammini Amma*, AIR 1996 Ker 67.

<sup>27</sup> *R.G. Anand v. Deluxe Films*, (1978) 4 SCC 118.

<sup>28</sup> 17 U.S.C. § 107 – U.S. Copyright Act of 1976, outlining fair use principles.

<sup>29</sup> Directive (EU) 2019/790 on Copyright in the Digital Single Market – Establishes copyright exceptions for parody, caricature, and pastiche.

The United Kingdom took a significant step in 2014, adding a clear copyright exception for parody, caricature, and pastiche under its Copyright, Designs and Patents Act.<sup>30</sup> Similarly, Australia amended its Copyright Act in 2006 to formally protect parody and satire, recognizing their role in social and political commentary.<sup>31</sup>

In contrast, some countries impose stricter limitations. Japan, for example, lacks a specific legal exception for parody, leaving such works in a legally uncertain position.<sup>32</sup> These variations highlight how cultural and legal traditions shape copyright laws, requiring global creators to navigate different regulations when distributing content online.

### **Legal Challenges in Holding Parodists and Satirists Accountable**

When bringing parodists and satirists to court, it is crucial to differentiate between the level of legal protection afforded to each. Parody is generally shielded under the fair use doctrine, as it directly critiques the original work, whereas satire often faces stricter scrutiny since it does not necessarily engage with the original content but rather comments on broader societal issues.<sup>33</sup> Courts have developed key legal principles such as the "Transformative Use Principle", "Economic Impact Principle", and "Creativity Line Principle", along with various tests and factors to determine whether a parody or satire constitutes copyright infringement.<sup>34</sup>

While parody and satire cases are increasingly being brought before courts, judicial interpretations remain largely flexible, often weighing the broader social and artistic impact of such works. Courts have also addressed the complex interplay between satire, parody, and the Right to Publicity which grants individuals control over the commercial use of their name, likeness, or persona.<sup>35</sup>

#### **Landmark Cases on Parody and Satire**

##### **1. Political Parody and Freedom of Expression**

In *Shri Ashwani Dhir v. The State of Bihar*, the Patna High Court dealt with a parody

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<sup>30</sup> UK Copyright, Designs and Patents Act 1988, as amended by The Copyright and Rights in Performances (Quotation and Parody) Regulations 2014.

<sup>31</sup> Australian Copyright Act 1968, amended in 2006 to include parody and satire under fair dealing exceptions.

<sup>32</sup> Japanese Copyright Law – No explicit exception for parody, making its legal status uncertain.

<sup>33</sup> *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569 (1994) – Established that commercial parody can qualify as fair use.

<sup>34</sup> Pierre N. Leval, *Toward a Fair Use Standard*, 103 Harv. L. Rev. 1105 (1990).

<sup>35</sup> *Zacchini v. Scripps-Howard Broadcasting Co.*, 433 U.S. 562 (1977) – Defined Right to Publicity and its relation to artistic works.

targeting former Bihar Chief Minister Lalu Prasad Yadav. The court ruled that creative artists must have the freedom to portray political figures and societal issues, provided that such portrayals do not incite public disorder, threaten decency, or violate moral standards.<sup>36</sup>

## 2. Satire and Defamation in Entertainment

A recent case, *Ashutosh Dubey v. Netflix*, was brought before the Delhi High Court, where the plaintiff sought an injunction against the streaming of a stand-up comedy episode in the show *Hasmukh*. The plaintiff argued that the episode contained derogatory remarks against the legal profession, equating lawyers to thieves and describing the legal system as corrupt.

The court, however, sided with the satirists, ruling that the remarks were made as part of a stand-up comedy act and were intended as exaggeration rather than factual statements. The judgment highlighted that satire, by its nature, exaggerates beyond normal bounds to expose societal flaws and provoke discussion.<sup>37</sup> This case marked a rare instance where the court explicitly recognized satire as a legitimate form of artistic expression under Indian law.

## 3. Corporate Satire and Trademark Disputes

Another significant case was *Tata Sons Ltd. v. Greenpeace International & Anr.*, where Tata Sons sued Greenpeace over a satirical online game that criticized environmental policies. The court ruled in favor of Greenpeace, holding that the satire was intended for public awareness and criticism, rather than commercial exploitation, reaffirming that corporate criticism through satire is protected under free speech.<sup>38</sup>

## Evolving Challenges and Future Perspectives

The legal landscape of fair use in parody and satire is constantly shifting as new creative formats emerge and technological advancements reshape content creation. Ongoing debates highlight potential directions for copyright law and fair use doctrine.

A key issue is the continued relevance of distinguishing parody from satire. Critics argue that

<sup>36</sup> *Shri Ashwani Dhir v. The State of Bihar*, Patna High Court, 2010 – Recognized political parody as protected artistic expression.

<sup>37</sup> *Ashutosh Dubey v. Netflix*, Delhi High Court, 2020 – Held that satire in stand-up comedy is protected under artistic freedom.

<sup>38</sup> *Tata Sons Ltd. v. Greenpeace International & Anr.*, (2011) 178 DLT 705 – Corporate satire was held as protected free speech.

parody is given greater legal protection, restricting satire's ability to engage in broad social critique.<sup>39</sup> As creative works increasingly blend elements of both, some legal scholars advocate for a more flexible approach that prioritizes transformative use over strict categorization.<sup>40</sup>

Another challenge lies in digital media and user-generated content. The widespread popularity of mashups, memes, reaction videos, and digital remixes has complicated fair use analysis, as courts struggle to apply traditional copyright principles to new forms of online expression.<sup>41</sup>

Furthermore, content globalization has sparked concerns over inconsistent copyright laws across jurisdictions. Since different countries enforce varying fair use and fair dealing standards, creators face legal uncertainty when distributing content internationally. There are growing calls for greater global harmonization, though cultural and legal traditions pose significant barriers.<sup>42</sup>

The rise of artificial intelligence (AI) in content creation has also introduced complex legal questions surrounding authorship, originality, and fair use. If an AI program trained on copyrighted material generates a parody, should it qualify as transformative fair use or infringement? Courts may need to redefine traditional notions of creativity and authorship to accommodate AI-generated content.

Looking ahead, three key developments may shape the future of fair use in parody and satire:

1. Courts may refine their interpretation of transformative use, shifting away from strict parody/satire distinctions in favor of broader assessments of creative transformation.<sup>43</sup>
2. Copyright laws may evolve to address digital creativity, ensuring that new forms of expression receive legal recognition.<sup>44</sup>
3. Online platforms and creators may establish new norms for attribution, transformation, and fair use, influencing future copyright policies.<sup>45</sup>

<sup>39</sup> Pierre N. Leval, *Toward a Fair Use Standard*, 103 Harv. L. Rev. 1105 (1990).

<sup>40</sup> *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569 (1994).

<sup>41</sup> R. Tushnet, *Copy This Book: Why Making Media Means Making Trouble*, University of Minnesota Press (2020).

<sup>42</sup> S. Ricketson & J. Ginsburg, *International Copyright and Neighbouring Rights: The Berne Convention and Beyond*, Oxford University Press (2019).

<sup>43</sup> *Sony Corp. of America v. Universal City Studios, Inc.*, 464 U.S. 417 (1984) – Emphasizing the importance of transformative use in copyright cases.

<sup>44</sup> Neil Netanel, *Copyright's Paradox*, Oxford University Press (2008).

<sup>45</sup> L. Lessig, *Remix: Making Art and Commerce Thrive in the Hybrid Economy*, Penguin Press (2008).

## CONCLUSION

The intersection of parody, satire, and fair use remains a complex and evolving area of copyright law. Several key insights emerge from ongoing discussions.

First, the historical distinction between parody and satire is becoming increasingly blurred, especially in digital spaces. As hybrid creative forms gain traction, courts may begin to focus more on the transformative nature of works rather than relying solely on categorical distinctions.<sup>46</sup>

Second, digital technologies have revolutionized content creation, making artistic tools widely accessible. While this has expanded opportunities for parody and satire, it has also introduced new challenges related to enforcement, market impact, and jurisdictional conflicts.<sup>47</sup> Automated copyright enforcement systems often struggle to differentiate between fair use and infringement, leading to unjustified content takedowns.<sup>48</sup>

Third, the lack of international consistency in parody and satire protections creates legal uncertainty for digital creators operating across multiple jurisdictions. The clash between national copyright laws and global content distribution highlights the need for coherent international policies, while still respecting cultural and legal differences.<sup>49</sup>

In the coming years, courts will continue to play a critical role in shaping fair use jurisprudence, as technological and artistic landscapes evolve. Instead of rigid legislative amendments, judicial flexibility may prove to be the most effective approach to balancing copyright protection and artistic freedom.<sup>50</sup>

For content creators, legal professionals, and policymakers, staying informed on emerging fair use standards is essential. Recognizing the transformative role of parody and satire, while safeguarding the rights of copyright holders, will be crucial to ensuring that copyright law continues to support creativity in the digital age.<sup>51</sup>

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<sup>46</sup> Dr. Seuss Enterprises v. Penguin Books, 109 F.3d 1394 (9th Cir. 1997) – Highlighting the limits of fair use for satire.

<sup>47</sup> *Lenz v. Universal Music Corp.*, 815 F.3d 1145 (9th Cir. 2016) – Addressing digital copyright takedowns and fair use.

<sup>48</sup> *YouTube v. Viacom*, 676 F.3d 19 (2d Cir. 2012) – Discussing challenges in automated copyright enforcement.

<sup>49</sup> Australian Copyright Act 1968, amended in 2006 to recognize parody and satire

<sup>50</sup> J. Phillips, *Parody and Copyright: Comparative Legal Approaches*, Oxford Journal of Intellectual Property Law, Vol. 22, No. 3, 2017.

<sup>51</sup> R. Burrell & A. Coleman, *Copyright Exceptions: The Digital Impact*, Cambridge University Press (2005).