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The Rise of Meme Culture, Fair Dealing, and Platform Liability: An Analysis of Indian Content Moderation Practices

VISHNUPRIYA SURAJ*

ABSTRACT

Meme culture has evolved alongside the internet and social media, developing from informal amusement into a potent form of political, social and cultural expression on digital platforms. Memes now exert considerable influence over public opinion, yet their regulation remains unclear under Indian law. Limited guidance may be located in the Copyright Act, 1957 and the Information Technology Act, 2000, through the fair dealing exceptions for purposes such as criticism, review and reporting of current events. Online platforms operating under the Information Technology Act, 2000 and the Intermediary Guidelines, 2021 frequently adopt risk-averse takedown practices that overlook these statutory protections, leaving creators largely dependent on the platforms' own community standards. A further concern is that such moderation should not infringe the freedom of speech and expression guaranteed under Article 19, within which memes fall as a form of artistic and creative expression; unexplained or automated takedowns of such content may therefore be arbitrary. This paper identifies the disconnect between the fair dealing framework of Indian copyright law and the content moderation practices adopted by digital platforms in relation to meme-based content. Even where meme content falls within the statutory exceptions, takedown decisions are frequently driven by automated enforcement and compliance-oriented intermediary obligations rather than by meaningful engagement with domestic copyright standards, so that determinations traditionally reserved for judicial interpretation are increasingly displaced by private, platform-centric enforcement. Combining statistical data with judicial interpretation, the paper locates a gap in India's intermediary liability regime, namely its inability to reconcile copyright exceptions with content governance obligations, and argues that platform moderation must operate in harmony with statutory protections to preserve the balance between copyright enforcement and creative freedom.

Keywords: *Meme culture, fair dealing, copyright law, intermediary liability, content moderation, platform governance, digital expression, Indian copyright law.*

* Author is an LL.M. student at Government Law College, Ernakulam, Kerala, India.

I. INTRODUCTION

Consider a situation in which a popular political meme page on Instagram, with hundreds of thousands of followers, discovers that three of its posts have been removed overnight. The offending content consisted of image macros satirising a sitting minister's policy remarks using stills from a Bollywood film. The administrator is offered no counter-notice system, and no explanation cites the relevant copyright provision. The creator receives only a standardised notification of copyright infringement, the content disappears, and no meaningful recourse remains.

This is neither a hypothetical situation nor an isolated one. It is the predictable consequence of a structural misalignment between the rights that Indian copyright law nominally guarantees and the enforcement mechanisms that platforms have built in response to regulatory requirements. The result is a regime of private censorship that operates beneath the radar of judicial review.

Memes are digitally circulated images, short video clips and GIFs. They have become an integral part of communication through electronic media and are now highly influential.¹ They are deployed in electoral campaigns, used to criticise governmental policy and even to shape public opinion. Their power lies in their appropriative nature: they take existing copyrighted material and overlay new meaning, transforming the source into commentary.

Under Section 52 of the Copyright Act, fair dealing is permitted for certain purposes, and the Indian courts have shown some flexibility in accommodating transformative uses.² Difficulty arises, however, when platforms take the matter into their own hands. These platforms operate automated content-recognition systems, incentivised by the safe harbour conditions of the Information Technology Act and amplified by the Intermediary Guidelines, 2021. Such systems remove content without the legal reasoning a court would be required to apply.³

This paper situates meme culture within the framework of copyright expression and explains why memes are legally complex. It examines fair dealing and its judicial interpretation, and analyses the intermediary liability framework and its effect on platforms' moderation behaviour.

¹ LAWRENCE LESSIG, REMIX: MAKING ART AND COMMERCE THRIVE IN THE HYBRID ECONOMY 76-82 (Penguin Press 2008).

² The Copyright Act, 1957, § 52, No. 14, Acts of Parliament, 1957 (India).

³ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, r. 3 (India).

II. MEME CULTURE AS COPYRIGHTED EXPRESSION

A meme may take the form of an image macro (a photograph or film still overlaid with text), a short video clip with dubbed audio or superimposed captions, or an animated GIF repurposed with new contextual meaning. All of these rely heavily on pre-existing copyrighted material.⁴

What makes memes legally interesting and complex is their transformative character. A meme does not merely reproduce the source material; it confers new meaning, most often through irony, incongruity or direct commentary.⁵ A meme creator who takes a film still and overlays it with text mocking governmental action does not intend viewers to watch the film. The purpose is to make a political statement through satire.

This distinction between mere reproduction and transformative use determines the outcome in fair dealing and fair use jurisdictions across the world. In the United States, the Supreme Court in *Campbell v. Acuff-Rose Music* acknowledged that the aim of parody is to use original expression in order to comment on the original itself.⁶ The Indian courts have not adopted the four-factor fair use balancing test; they have, however, recognised that purpose and transformation matter in evaluating copyright defences.

India was home to approximately 490 million social media user identities in early 2025. Platforms such as Instagram, X and YouTube serve as primary sites of meme circulation, giving meme culture considerable economic and cultural significance in India. Political memes circulated virally during the 2019 and 2024 general elections, prompting both platform takedowns and calls from advocacy groups for greater regulatory clarity.⁷ Meme creators are often young, independent and resource-constrained individuals who operate in a space where the legal risks of copyright infringement outweigh their capacity to litigate.

The absence of any dedicated regulatory framework governing memes is a matter of concern. This does not signify an absence of disputes; rather, such disputes are resolved privately at the platform level, without any application of copyright doctrine.⁸

⁴ Ryan Tay, The Meme-Copyright Dilemma: User-Generated Content and the Limits of Fair Use, 18 CHI.-KENT J. INTELL. PROP. 1 (2018).

⁵ Rebecca Tushnet, Copy This Essay: How Fair Use Doctrine Harms Free Speech and How Copying Serves It, 114 YALE L.J. 535 (2004).

⁶ *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569 (1994).

⁷ Press Trust of India, Instagram Removes Meme Pages Ahead of 2019 General Elections, ECON. TIMES (Mar. 24, 2019).

⁸ Arpan Banerjee, Contemporary Challenges of Online Copyright Enforcement in India, in INNOVATION, ECONOMIC DEVELOPMENT, AND INTELLECTUAL PROPERTY IN INDIA AND CHINA 173 (Kung-Chung Liu & Uday S. Racherla eds., Springer 2019).

III. FAIR DEALING UNDER COPYRIGHT LAW

Fair dealing is governed by Section 52 of the Copyright Act, 1957, as amended in 2012. Whereas the American fair use doctrine is open-ended and administered through a judicial balancing test, Indian fair dealing takes the form of a closed list of permitted purposes. These purposes are limited to research, criticism or review of a work or of another work, and the reporting of current events. The 2012 amendment slightly extended the scope by permitting certain acts for the benefit of educational institutions, persons with disabilities and certain computational uses.

In *Civic Chandran v. Ammini Amma*, the Kerala High Court recognised that fair dealing must be assessed holistically, having regard to the purpose, nature and extent of the use, and not merely to the quantum of reproduction. The Court's reasoning proceeded on the basis that a transformative purpose mitigates a finding of infringement.

In *India TV Independent News Service Pvt. Ltd. v. Yashraj Films Pvt. Ltd.*, the Delhi High Court addressed the fair dealing defence in the context of television broadcast. A court must examine whether the use serves a purpose recognised by Section 52 and whether the extent of reproduction is no more than the purpose demands. This necessity test is equally applicable to memes: the reproduction of a recognisable cultural image is integral, and not merely incidental or supplementary, to the communicative act.

The Delhi High Court in *Super Cassettes Industries Ltd. v. Hamar Television Network Pvt. Ltd.* refined this analysis further, distinguishing between incidental reproduction in the course of news reporting and deliberate appropriation for entertainment. The decision signals that Indian courts will scrutinise purpose carefully, but it also revealed the absence of clear guidance on parody as a standalone fair dealing category.

The closed-list structure of Section 52 is constitutionally problematic in an era of digital creativity, as it is insufficiently flexible to accommodate the forms of user-generated expression that digital culture enables. There is a need for legislative reform to expand Section 52 so as to include parody and satire expressly. In the meantime, however, the doctrinal framework that platforms are required to apply already affords more protection than they choose to deploy.

Critically, Section 52 is not a defence that arises only in court proceedings; it defines what counts as infringement. Content that falls within fair dealing is not infringing content. A platform that removes non-infringing content in response to a copyright complaint is not merely over-enforcing; it is suppressing expression that the law expressly permits.

IV. PLATFORM LIABILITY AND CONTENT MODERATION IN INDIA

Although the Indian intermediary liability framework is architecturally modelled on its American counterpart, it is more demanding than the original. Section 79 of the Information Technology Act, 2000 establishes a safe harbour for intermediaries, defined broadly to include social media platforms, and protects them from third-party liability for hosted content. This protection was affirmed by the Supreme Court in *Shreya Singhal v. Union of India*. An intermediary loses this protection when it acquires actual knowledge, in the form of a court order or a government notification, of unlawful content and fails to act upon it.

The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 implemented these conditions with considerable specificity. Under Rule 3, significant social media intermediaries, being those with more than five million registered users in India, are required to appoint a grievance officer, to remove content within thirty-six hours of a government or court order, and to endeavour to deploy automated tools to identify and remove certain categories of unlawful content. The Rules thereby create a compliance architecture that is structurally biased towards removal.

The difficulty is not that platforms remove infringing content, but that the legal categories of infringement and fair dealing are conflated or, in some cases, that fair dealing is disregarded altogether. When a copyright complaint is filed through a platform's reporting system, it usually triggers an automated or semi-automated review process. Systems such as YouTube's Content ID and Instagram's Rights Manager detect whether uploaded material matches existing content, but they do not examine whether the use qualifies as fair dealing. The technology assesses identity, not legality.

This approach is a calculated response to legal risk rather than a misunderstanding of the law. Platforms are more likely to face legal exposure for failing to remove infringing content than for removing too much. A missed infringement complaint may result in a copyright suit, whereas an excessive takedown produces only disgruntled creators with no practical remedy. The asymmetry of consequences drives systemic over-removal.

The absence of a statutory counter-notice mechanism in Indian law compounds the problem. In the United States, the Digital Millennium Copyright Act provides a clear procedure through which creators can contest takedowns and have content restored. No equivalent mechanism exists under Indian law. The Rules of 2021 provide a grievance redressal process, but it is oriented towards complaints against platforms rather than towards the restoration of wrongly removed content. The creator who loses a meme to a copyright strike has no legal lever to pull.

The current framework treats intermediaries as de facto regulators of digital content without requiring them to observe procedural constraints such as notice, hearing and reasoned decision, which would apply were a court or government authority making the same determination. The result is a form of private adjudication insulated from the constitutional norms of due process and from the substantive standards of copyright law.

The broader implication is that platform content moderation has become a site of lawmaking. When Content ID removes a meme and no counter-notice mechanism exists to contest the removal, the platform has effectively determined that fair dealing does not apply, a legal conclusion that neither its algorithm nor its human reviewers are equipped to reach and that no court has sanctioned.

V. REGULATORY GAPS AND POLICY CONCERNS

Several discrete but interconnected regulatory failures, taken together, explain the systematic marginalisation of fair dealing in platform content moderation.

First, the Rules of 2021 do not require platforms to consider copyright exceptions before executing takedowns. The Rules impose due diligence obligations, including proactive monitoring, but these obligations are framed entirely in terms of identifying and removing content, not in terms of preserving lawful expression. This omission is not accidental; it reflects a regulatory philosophy that treats content moderation as a removal enterprise rather than as a process of legal adjudication.

Second, there is no statutory counter-notice mechanism under Indian law equivalent to Section 512(g) of the Digital Millennium Copyright Act. In the absence of any procedural safeguard for wrongly removed content, creators have no legal pathway to restoration. The grievance mechanism under the Rules focuses on user complaints against platforms' failures to remove content, and not on the restoration of content wrongly removed. This procedural imbalance confirms that the system is designed for enforcement rather than for exceptions.

Third, the delegation of legal interpretation to private platforms is democratically problematic. When a platform's algorithm determines that a meme infringes copyright, it effectively declines to apply the fair dealing exception that Section 52 provides, making a legal determination of the kind that ordinarily requires judicial reasoning. This delegation is unaccountable and unreviewable: no court scrutinises the output of Content ID, and no regulator audits platform moderation decisions for compliance with copyright exceptions.

Comparative law offers some guidance, though no model is directly transplantable. Under Article 17 of the European Union's Copyright Directive, platforms must ensure that licensed or non-infringing content remains available, including content uploaded for the purposes of quotation, criticism, review, caricature, parody or pastiche, which is protected from automated removal. The European framework thus builds the exception expressly into the enforcement architecture. India has no equivalent provision. A Parliamentary Standing Committee reviewing intermediary regulation noted concerns about the balance of power in content moderation, but its recommendations did not address copyright exceptions specifically.

There is also a concern about the stratification of access to fair dealing. Large media organisations with legal counsel can negotiate licensing arrangements, contest takedowns through formal channels and, where necessary, litigate copyright disputes. Independent meme creators, who are disproportionately young and without institutional affiliation, lack the resources to do so. The consequence is that the class of creators most likely to use copyrighted material for transformative, socially valuable commentary is also the class least able to defend its right to do so.

VI. CONCLUSION AND RECOMMENDATIONS

Indian copyright law provides fair dealing protection that platform content moderation systematically fails to honour. The failure is structural. It is driven by the incentive architecture of the Rules of 2021 and by the technical incapacity of automated enforcement systems to apply legal nuance. Creators experience this failure acutely, through unexplained takedowns, failed appeals and pre-emptive self-censorship, and its consequences extend beyond individual disputes to the broader culture of democratic expression.

Memes should be recognised as a protected form of creative expression. They are not incidental to digital discourse; they are often its sharpest instrument. The fair dealing provisions of copyright law extend to them, at least in principle, and the task of reform is to ensure that this protection is realised in practice.

The following recommendations are offered. First, the legislature should amend Section 52 of the Copyright Act to include parody and satire expressly as recognised fair dealing purposes, thereby removing the current ambiguity and providing clearer guidance to platforms and courts. Second, the Rules of 2021 should be amended to require platforms to assess fair dealing before executing copyright takedowns, mirroring the standard articulated by the Ninth Circuit in *Lenz v. Universal Music Corp.* Third, a statutory counter-notice mechanism should be enacted, conferring on creators a procedural right to contest takedowns and to seek restoration of

wrongly removed content within a defined timeframe. Fourth, platforms operating in India above the significant social media intermediary threshold should be required to publish transparency reports detailing the volume of copyright takedowns, the proportion contested and the outcome of such contests, disaggregated by type of content. Fifth, the higher judiciary should, in an appropriate case, issue guidance on the application of fair dealing to memes and other forms of user-generated digital content, supplying the doctrinal clarity that the current absence of precedent denies.

Copyright law was never designed to be an instrument of censorship. When its enforcement architecture is captured by private actors who have neither the legal obligation nor the technical capacity to apply it faithfully, the result is precisely what obtains here: the silent erasure of expression that the law was meant to protect. Restoring the balance demands not merely doctrinal refinement, but structural reform of the governance ecosystem in which copyright is actually enforced.

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