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**A CRITICAL APPRAISAL OF THE 'FAIR DEALING'
DOCTRINE UNDER COPYRIGHT LAW IN INDIA:
HIGHLIGHTING THE IMPERATIVE NEED FOR REFORM**

MS. VISHESHTA KALRA
Student, Amity Law School, Noida

Abstract: Fair dealing is a basic piece of copyright law. In the worldwide setting, the reasonable managing precept has been a state of steady conversation for quite a while now. Nonetheless, the issue of reasonable managing is one of the least investigated regions of Intellectual Property Law in India.

The fair dealing exemptions given in the Indian Copyright Act are extremely restricted and deficient in contrast with global copyright practice. Also, the Indian Courts have seen the reasons listed in the Indian Copyright Act as thorough and like to carefully stick to the reasons specified in the Act. The creator brings up that the fixed and inflexible methodology taken by the Indian Courts has neglected to present the much-required component of adaptability.

It is brought up that a particularly unbending way to deal with reasonable managing ought not be continued in India remembering the mechanical and cultural advancement. It is additionally contended that restricting reasonable managing teaching to such severe translation of resolutions leaves positively no space for legal imagination. It is taking into account this that a basic requirement for change in the reasonable managing arrangement in India is felt.

This paper will additionally contend that taking into account the public interest, current reasonable managing special cases in Indian Copyright Act should be improved to permit a commonly valuable strength among makers and purchasers.

AN INTRODUCTORY OVERVIEW OF THE CONCEPT OF 'FAIR DEALING'

The fundamental reason why a copyright is allowed is to offer the maker or the creator of an innovative and unique work a restrictive directly over its ensuing use and distribution.¹ In request to adjust the contending interests of the general public and that of the copyright holders, certain exemptions are given in the Copyright Act for the general public in general.² The Copyright Act³ of India likewise obviously accommodates exceptions⁴ to this select option to adjust the two contending interests.

The idea of reasonable managing was achieved to work as one of the safeguards to this restrictive right allowed through a copyright to the creator of an inventive work.⁵ The idea of reasonable managing has additionally been perceived in the Berne Convention⁶ just as the TRIPS Agreement.⁷

The reasoning or support for permitting the exemption of reasonable managing is that on certain particular events an encroaching utilization of the copyrighted work may achieve more prominent public great than its total denial.

While endeavoring to take a gander at the meaning of reasonable giving, it is appropriate to put reference to the on the map instance of *Hubbard v. Vosper*⁸ where Lord Denning explicitly brought up: *“It is impossible to define what is ‘fair dealing.’ It must be a question of degree. You must consider first the number and extent of the quotations and extracts. Are they altogether too many and too long to be fair? Then you must consider the use made of them...Other considerations may come to mind also. But, after all is said and done, it must be a matter of impression.”*⁹

According to the standard of fair dealing, the proliferation or utilization of a copyrighted work is allowed by law, which would some way or another have added up to an encroachment of copyright of the substance owner.¹⁰ The idea of reasonable managing discovers its underlying foundations in the doctrine of equity¹¹ and

¹ *Miller v. Taylor*, (1769) 4 Burr 2303 (2335).

² Luis C Schmidt, *The Changing Face of Copyright*, 34 *COPYRIGHT WORLD* 190 (2009).

³ The Indian Copyright (Amendment) Act, 2012

⁴ The Copyright Act, 1957, section 52.

⁵ Stephen M. Mcjohn, *Fair dealing and Privatization in Copyright*, 35 *SAN DIEGO L. REV.* 61 (1998)

⁶ The Berne Convention for the Protection of Literary and Artistic Works, 1886.

⁷ TRIPS Agreement, art. 13.

⁸ CA 1971 [1972] 2 WLR 389.

⁹ *Id.*

¹⁰ *S.K. Dutt v. Law Book Co and Ors.*, AIR 1954 All 570.

¹¹ *Harper & Row Publishers v. Nation Enterprises*, 471 US 539.

along these lines permits the utilization of certain copyrightable works, the use of which would somehow have been unlawful and would have added up to an away from of the copyright of the proprietor. The earlier authorization of the creator of the substance is likewise not required. The reasonable managing idea capacities as a restriction and exemption for the selective and in a manner monopolistic right conceded by copyright law¹² and in this way it turns out to be an essential piece of the copyright law.¹³

On account of *Pro Sieben Media AG v. Carlton UK Television Ltd*¹⁴, it was brought up by the court that English reasonable managing arrangements "characterize with phenomenal accuracy and inflexibility the ambit of different exemptions for copyright security." It clarifies that according to the law set up in the UK, for a reasonable managing protection to be fruitful there is a two-venture test: the reason must, in any case, be counted in rule, and afterward, on the off chance that it is specified in the rule, it should be demonstrated to be reasonable – if both of the two condition isn't met or consented to, the safeguard crashes and burns. It very well may be seen from an uncovered perusing of the significant arrangements that copyright encroachments are just absolved for unmistakable and clear employments. There is definitely no room accommodated legal attentiveness at all for circumstances when utilization of a work may some way or another give the impression of being reasonable.

In different locales, the courts have endeavored to set out the test to check for the decency in reasonable dealings.¹⁵ One well known case which discovers importance here with respect to our current conversation is the Canadian instance of *CCH Canadian Ltd. v. Law Society of Upper Canada*¹⁶ where the court set out the test including two stages. The initial step of the cycle is to set up whether the managing was for the admissible reason for "exploration or private investigation" under Section 29 of the Copyright Act of Canada, "analysis or audit" under Section. 29.1 or "news announcing" under Section 29.2 of a similar Act. The second step of the cycle is for surveying whether the managing is "fair."¹⁷

In any case, it is relevant to take note of that the most normally known and by and large utilized test is known as the four-factor test, which was set somewhere near the Courts in the USA. The courts of USA brought up

¹² *Kartar Singh v. Ladha Singh*, AIR 1934 Lah 777.

¹³ *The Chancellor Masters and Scholars of the University of Oxford v. Narendra Publishing House and Ors*, 2008 (38) PTC 385 (Del)

¹⁴ [1997] E.M.L.R. 509, 516

¹⁵ T.G. Newby, *What's Fair Here is Not Fair Everywhere: Does the American Fair Use Doctrine Violate International Copyright Law?* 51 *STANFORD LAW REVIEW* 1633 (1999).

¹⁶ (2004) 1 SCR 339

¹⁷ *Id*

that the four stages engaged with this test are fundamentally: the explanation and nature of utilization; the amount and generosity of the part taken; the idea of copyrighted work; and the impact of the utilization upon the forthcoming business sector.¹⁸ The Apex Court of USA gives preeminent accentuation to the main factor of the four, which is - the reason and character of utilization, which is likewise prominently known as the groundbreaking test.

The idea of fair dealing, as founded in the copyright system of the United Kingdom is exceptionally prohibitive in nature and contains a comprehensive rundown of exceptions¹⁹ which have been characterized in the CDPA, 1988.²⁰ practically speaking, this comprehensive rundown of exemptions in the UK enactment for reasonable managing is unbending in nature and is lopsidedly unyielding.²¹ It is important to be noted here that the Indian Copyright Act, 1957 which has been generally acquired from the UK Copyright Law presents similar kind of rigidity in the issues of fair dealing²²

FAIR DEALING IN INDIAN COPYRIGHT LAW

Indeed, even before the English Act was explicitly made relevant in India, the Bombay High Court had articulated the Copyright Act of the United Kingdom to be pertinent in India on account of *McMillan v. Khan Bahadur Shamsul Ulama Zaka*.²³ The idea of reasonable managing was first achieved in Quite a while in a resolution in the year 1914. That legal arrangement of reasonable managing was nevertheless a simple duplicate of the comparable arrangement of the resolution present in the United Kingdom. The said legal arrangement given that copyright would not be encroached by 'any reasonable managing any work for the motivations behind private examination, research, analysis, audit or paper synopsis'.²⁴ The current Copyright Statute of India which was passed path back in 1957 likewise had broadly acquired from the new Copyright Act of UK of the year 1956.²⁵

¹⁸ Rich Stim, 'Measuring Fair Use: the Four Factors' COPYRIGHT & FAIR USE, STANFORD UNIVERSITY LIBRARIES (2010)

¹⁹ Singh Jayakumar, Hansard Parliamentary Debates 78 (2004) 10.

²⁰ Copyright, Designs and Patents Act, 1988.

²¹ Justice Laddie, Copyright: Over-strength, over-regulated, over-rated, 18 (5) EUROPEAN INTELLECTUAL PROPERTY REVIEW 253-260 (1996).

²² *Blackwood and Sons Ltd and Others v. A.N. Parasuraman and Others*, AIR 1959 Mad 410.

²³ (1895) ILR Bom 557.

²⁴ Burrell Robert, Reining in copyright law: Is fair use the answer? 4 INTELLECTUAL PROPERTY QUARTERLY 361-388 (2001).

²⁵ NARAYAN P, COPYRIGHT AND INDUSTRIAL DESIGNS 8 (3rd ed. Eastern Law House, Calcutta 2002).

The idea of fair dealing is basically managed in Section 52 of the Copyright Act, 1957. This part has been exposed to revisions ordinarily since 1957. This part was first changed by the Copyright (Amendment) Act of the year 1983²⁶, and consequently by the Copyright (Amendment) Act of the year 1994²⁷ and of the year 1999²⁸ lastly by the latest Copyright (Amendment) Act of 2012.

The arrangement under segment 52 clarifies that for the “dealing” to be "reasonable," the purposes need to fall inside the legally settled motivations behind private use, examination, analysis and audit as completely gave under Section 52 of the Copyright Act of India. Despite the fact that this segment of the Copyright Act essentially manages the convention of „fair dealing“ and accommodates when the managing is viewed as reasonable; still, the term „fair dealing“ has not been characterized anyplace in the Copyright Act, 1957. The said segment does the work of indicating what will not add up to an infringement of copyright.

The 2012 change to the Copyright Act was gotten request to for the most part expand these arrangements. This alteration has, entomb alia, stretched out the reasonable managing arrangement to cinematograph and melodic works. The arrangement under Section 52 (1)(a) has been exposed to alteration to give reasonable managing any work for the motivations behind private and individual use except for it being a PC program.²⁹ Another new statement under Section 52(1) (w) brought through the 2012 correction gives that the creation of 3D article from a 2D design will not comprise encroachment of the copyright.³⁰ Further, provision (zc) of Section 52 added by the 2012 revision has been acquainted with give that importation of abstract or aesthetic works, for example, names, organization logos or special or logical material that is accidental to items or products being imported is to be under the umbrella of exceptions.³¹ Moreover, this condition bolsters the equal import arrangement which is available in the Trade Marks Act, 1999. Aside from the above options, conditions (zb) and (zc) under Section 52 added by the 2012 change accommodates reasonable managing in the utilization of handicapped people. It accommodates the reasonable utilization of the work for the upside of the incapacitated, encourages variation, multiplication, issue of duplicates or correspondence to people in general of any work in any open organization, for people with handicap to get to works for instructive purposes or exploration including the opportunity of offering to any individual with inability for private or individual use.

²⁶ The Copyright (Amendment) Act, 1983 (Act 23 of 1983).

²⁷ The Copyright (Amendment) Act, 1994 (Act 38 of 1994).

²⁸ The Copyright (Amendment) Act, 1999 (Act 49 of 1999).

²⁹ The Copyright Act, 1957, section 52 (1)(A).

³⁰ The Copyright Act, 1957, section 52 (1)(w).

³¹ The Copyright Act, 1957, section 52 (1)(zc).

The classified purposes clarified under Section 52 have been distinctively deciphered as thorough, unyielding and clear since any utilization or managing which gets itself not falling solidly inside the identified grounds as indicated in segment 52 is viewed as an encroachment of the copyright.

Note that the Indian Copyright Act under the arrangements of Section 52 cuts out fair dealing from copyright as one of the certifiable guards which put the weight of demonstrating the protections upon the client once the copyright proprietor builds up at first sight encroachment by indicating broad break of copyright of articulation. In any case, as it is obvious from the situation of Civic Chandran v. Ammini Amma³² the reasonable managing cases in India don't consistently set up at first sight encroachment prior to contemplating a utilization of reasonable managing.

It is obvious from the above agreement that reasonable managing structures a fundamental and vital piece of the copyright law. It is additionally certain that this idea of "fair dealing" isn't sensibly evolved in India and ends up at an early stage. The law in such manner is still at its developmental stage and this can be seen from the way that "fair dealing" has not indeed, even been characterized in the Act. A more prominent need is felt for an examination on the methodology, be it exacting or liberal towards the entire circumstance encompassing the convention of reasonable managing. The trouble that exists and makes obstacle with deference this safeguard is the way that the Indian courts and governing body are yet to completely investigate the extent of reasonable managing which is an extremely important special case in the copyright system.

THE POSITION OF INDIAN JUDICIARY WITH REGARDS TO THE DOCTRINE OF FAIR DEALING

Cases managing this principle have been uncommon in India until the new many years. Indeed, even in the current day, just a simple small bunch of cases managing this issue show up to the courts. This piece of the piece investigates the situations where the idea of 'reasonable managing' has been discussed constantly in the Indian courts. The Courts have on different events clarified that it is totally difficult to concoct a certain „rule of thumb“ which would discover its application in all the instances of reasonable managing as every single

³² 1996 PTC 16 670.

case relies on its own fluctuated realities and conditions.³³ However, the courts believe the interest of the general population to be foremost consideration.

On account of *Wiley Eastern Ltd and Ors v. IIM*³⁴ the court noted and drew an association of the reason for the safeguard of reasonable managing the Constitution of India. The court called attention to that the essential reason for Section 52 of the Copyright Act is to ensure the opportunity of articulation pervasive under Article 19 (1) of the Constitution of India - so that reasons like exploration, private examination, analysis or survey or detailing of recent developments could be protected.³⁵ The court additionally noticed that Section 52 is not really proposed by Parliament to unconstructively specify what a demonstration of encroachment is.

the instance of *Syndicate of Press University of Cambridge v. Kasturi Lal*,³⁶ for this situation, the Court in its property called attention to that there undoubtedly was encroachment, not falling inside the domain of reasonable managing for the explanation that Section 52(1) (h) permits proliferation to respond to inquiries in an assessment and not inquiries and answers in general. The court also noticed that regardless of whether it is accepted that the litigant's work might have encouraged understudies to offer successful responses in assessments, such a circumstance can't allow purloining in exactly the same words writings of the first work.

The Courts in India have additionally held that an encroachment of Copyright can't be allowed simply on the ground that it has been asserted in light of a legitimate concern for people in general. It has been noted by the courts that the law as to copyright in India is represented by a rule which gives no alleviation at all to contemplations of the utilization being in open interest.

Besides, as it is obvious from arrangements of Section 52, it is to be noticed that the protection of reasonable managing is additionally accessible for occasions of analysis or survey. Be that as it may, the protection of reasonable managing is accessible for analysis or survey just when the demonstration obliges an affirmation as committed under the arrangement of Section 52 (1).

The standard concerning this was in all likelihood previously set down in the popular instance of *Hubbard v. Vosper*. The essential target of this arrangement of law is to shield or secure an analyst who needs to advance

³³ *ESPN Star Sports v. Global Broadcast News Ltd and Ors.*, 2008 (36) PTC 492 (Del).

³⁴ 61 (1996) DLT 281 Para 19.

³⁵ INDIA CONST. art. 19.

³⁶ 2006 (32) PTC 487 (Del.)

his assessment or perspectives or remarks on a specific copyrighted work by utilizing certain pertinent concentrates from that work.

Unmistakably, the Indian Courts have seen the reasons identified in the Indian Copyright Act as exhaustive.³⁷ Even however just a simple small bunch of cases managing this issue show up to the courts the above case laws clarify that the courts in India like to carefully stick to the reasons listed in the demonstration and they give the arrangement a confined understanding.

THE IMPERATIVE NEED FOR REFORMS IN THE INDIAN COPYRIGHT LAW AND THE QUEST FOR THE FAIREST APPROACH SUITING THE CONTEMPORARY NEEDS

A straightforward perusing of these arrangements makes it sufficiently evident that our lawmakers have overlooked considering public interest in getting to data contained in those secured works while allowing total rights under the Indian Copyright Act to creators and proprietors. In spite of the presence of protracted arrangements in the Indian Copyright Act, these exemptions are exceptionally restricted and insufficient in contrast with worldwide copyright practice.

It is effectively perceptible that the courts in India like to remain devoted to the language utilized in the rule and in this manner carefully cling to the reasons identified in the demonstration and thus wind up giving the arrangement a confined understanding. Also, it is to be noticed that the courts have neglected to consider the other significant factors, for example, need and need.

The fixed and inflexible methodology taken by the Indian Courts has neglected to present the component of adaptability which is given in the Fair Use convention present in the United States enactment. It is to be noticed that the reasonable use convention depends on utilitarian standards and reasonable managing depends on the common law hypothesis where the creator is of preeminent consideration.³⁸ It is somewhat awful that the reasonable managing arrangements in the Indian Copyright laws are so prohibitive in nature that they are suffocating the copyright framework. Such compelling and prohibitive arrangements are raising doubt about both the validity and adequacy of the laws managing the equivalent. A prohibitive methodology places the validity and proficiency of this exemption into question. In this manner, there is a prerequisite of change in the copyright arrangement to make it a more detailed and more extensive plan.

³⁷ Supercassette Industries v. Nirulas Corner House Pvt Ltd, 148 (2008) DLT 487.

³⁸ Harry N. Rosenfield, Customary use as "fair dealing" in copyright law, 25 BUFF. L. REV. 119 (1975-1976).

A more adaptable methodology permits the courts to build up the law dependent upon the situation as new issues arise and in this way dependence on an adaptable methodology is better when contrasted with a classified system. Flexibility is needed to be acquired for the laws to be made more fit to the current day prerequisites. Accordingly, it is to be understood that there is a basic need of execution of a more slim and open-finished reasonable managing arrangement in the Copyright Act of India to guarantee significance of the Copyright laws and for the laws to addressing the necessities and prerequisites of the current innovative progressions.

CONCLUSION

To close, obviously fair dealing is a necessary piece of the copyright law. It very well may be said most assuredly that "reasonable managing" is a fundamental principle, concerning the Copyright laws as well as with respect to reinforcing the security ensured under Article 19 of the Constitution of India. Be that as it may, the part of the reasonable managing convention in the general plan of copyright law is still to be characterized in India. A few rudimentary and principal issues, for example, its job, reason, which means and application are likewise yet to be tended to by the courts in India.

Despite the fact that it can't be rejected that the domain of the Indian idea of reasonable managing is enormous and the rundown of special cases gave contains different exercises still the exemptions gave are getting repetitive in the contemporary occasions because of the fast innovative and cultural headways.

As it was noted before in the paper, the Indian Courts have seen the reasons identified in the Indian Copyright Act as thorough and like to carefully cling to the reasons specified in the demonstration and they give the arrangement a limited understanding. The fixed and inflexible methodology taken by the Indian Courts has neglected to present the much-required component of adaptability which is given in the Fair Use precept present in the United States enactment. It is considering this that a basic requirement for change in the reasonable managing arrangement in India is felt.

It is brought up by the creator that a particularly unbending way to deal with reasonable managing ought not be continued in India remembering the mechanical and cultural advancement and keeping reasonable managing principle to such exacting translation of resolutions would rule out legal innovativeness.

At long last, by delivering the changes, and by making the reasonable managing guard adaptable and open-finished, however with ensures for rights holders, a trustworthy copyright situation would be made and genuinely necessary authenticity and equilibrium can be taken back to the copyright system.

