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EVOLVING AUTHORSHIP IN THE DIGITAL AGE: BRIDGING THE NORMATIVE GAP IN INDIAN COPYRIGHT LAW ON TRANSFORMATIVE USE

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ABSTRACT

The swift development of digital creativity and artificial intelligence has altered how the copyrighted content is reused and remixed, specifically in the form of parody, memes, edits, and algorithmic generation. These works are commonly examined under the doctrine of transformative use which considers whether a secondary work gives a new meaning, expression or purpose to the original one. Though transformative use has not explicitly acknowledged in the Indian copyright law, the Indian courts have been drawing on its rationale to resolve the cases of fair dealing, as a result the interpretation of transformative works under Section 52 of the Copyright Act, 1957 is uncertain and fragmented. This paper argues that India's fair dealing framework is inflexible and does not adapt well to transformative uses, something exacerbated by the emergence of artificial intelligence. Through an analyses of Indian case law, comparison with the approaches of the United States and United Kingdom, and examination of India's obligations under the Berne Convention, TRIPS and the WIPO Copyright Treaty, the paper shows that transformative use cannot be adequately addressed under the current regime of fair dealing in India. It therefore proposes statutory recognition of transformative use, which is backed by guiding criteria, special principles to AI-generated content and safeguarding of moral rights. The paper concludes that such reform is necessary to restore doctrinal coherence, protect legitimate creative practices, and ensure that Indian copyright law remains responsive to contemporary digital and technological realities.

Keywords: Transformative Use, Fair Dealing, Artificial Intelligence, Section 52, Copyright Law

INTRODUCTION

The surge in digital innovation and expansion of social media has resulted in growth of digital content such as parody, memes, satire, etc. These have become a core part of public engagement and discourse of social, cultural, and political conversations. They also form a substantial part of entertainment to the public. As of early 2025, India has over 462 million social media users, which represents a significant platform for sharing and creating content like memes, and parodies. Notably, comedy, memes and viral videos are the second most prevalent type of content consumed by around 44.1% of Indian internet users.¹

These works do not merely reproduce existing copyrighted works; they reinterpret them, comment on them, or critique them. This forms the basis of transformative use. A work is considered

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transformative when it draws upon an existing work but adds a new meaning, message, or purpose. In many jurisdictions, this concept plays a central role in distinguishing lawful creative reuse from copyright infringement. In India, however, copyright law continues to regulate unauthorised use primarily through the doctrine of fair dealing under Section 52 of the Copyright Act, 1957. This provision operates through a specified list of permitted copyright exceptions, such as private use, criticism, review, and reporting of current events, and offers limited flexibility to deal with new and evolving forms of creative practice.

This rigidity has created growing uncertainty for both creators and copyright holders. On the one hand, individuals who produce parody, memes, remixes, or AI-assisted works frequently face takedowns and infringement claims, even when their creations are socially valuable or expressive in nature. On the other hand, the absence of clear statutory boundaries enables infringers to invoke the rhetoric of “transformation” to justify uses that undermine authors’ economic and moral rights. Indian courts, confronted with this tension, have increasingly relied on implicit notions of transformation often without naming the doctrine or articulating consistent standards resulting in fragmented and unpredictable jurisprudence.

These problems have been exemplified with the emergence of artificial intelligence. AI systems routinely ingest copyrighted works for training and generate outputs that may mimic style, structure, or expression. These practices have forced courts worldwide to confront fundamental questions about reproduction, authorship, and permissible reuse.² In India, ongoing litigation concerning AI training and outputs exposes the limits of Section 52’s fair dealing framework, which offers no principled basis for assessing whether such uses are lawful, transformative, or infringing.

This paper argues that Indian copyright law can no longer rely on fair dealing to accommodate transformative use. Transformative use is conceptually distinct from fair dealing, normatively justified on different grounds, and doctrinally incompatible with strictly enumerated exceptions. Treating transformation as a subset of fair dealing risks either overprotection by granting broad immunity to derivative or AI-generated works or under-protection by excluding creative practices that fall outside statutory categories.

The central claim of this paper is that transformative use must be recognized as an independent, qualified statutory exception within Indian copyright law. Indian courts are already engaging in transformative reasoning under the guise of fair dealing; codification would bring coherence, transparency, and principled limits to this process. A carefully designed framework can preserve incentives for creation, protect authorial integrity, and remain compliant with international obligations under the Berne Convention, the TRIPS Agreement, and the WIPO Copyright Treaty.

This paper advances this argument in six parts. Firstly, it traces the conceptual evolution of transformative use and clarifies its normative foundations. Secondly, it analyses the Indian copyright framework, demonstrating how courts have implicitly applied transformative reasoning while remaining constrained by Section 52. Thirdly, it undertakes a comparative analysis of the United States and United Kingdom, identifying lessons and limitations relevant to India. Then it examines the challenges posed by artificial intelligence, followed by a draft legislative framework for recognizing transformative use in India. The paper concludes by reflecting on the limits of the proposal and the broader implications for authorship and creativity in the digital age.

THE EVOLUTION AND SCOPE OF TRANSFORMATIVE USE

Copyright grants a bundle of economic rights to the author of a work, including the right to communicate the work to public, to issue copies of the work and to make adaptations. The rationale behind these rights is to encourage creativity and to protect the interests of authors in their works. Although these rights are exclusive, they are not absolute.³ International agreements such as Berne Convention and TRIPS Agreement confer autonomy on nations to set their own limitations and exceptions on the exclusive rights of the authors, provided such limitations are not unreasonably prejudicial to the legitimate interests of the right holder and do not conflict with the normal exploitation of the work.^{4,5} The objective of these limitations is to ensure that copyright protection is balanced with public interest.⁶

The doctrines of “fair use” or “fair dealing” is one such limitation and exception, balancing the monopolistic rights of the author by enabling the public to utilize the copyright work in manner and circumstances provided by law. Any use that fall within the scope of these doctrines does not amount to copyright infringement. Transformative use has emerged within such exceptions as a way of distinguishing between infringing uses and socially valuable acts of creative reuse. This doctrine examines when an unauthorized use of a copyrighted work ceases to be an infringement and instead constitute a new act of authorship that serves distinct social purpose.

The concept of transformative use developed within the fair use framework of United States copyright law. Under Section 107 of the US Copyright Act, courts assess fair use by applying a four-factor test, one of which examines the “purpose and character of the use”. In *Campbell v Acuff-Rose Music*⁷, the US Supreme Court held that this inquiry must consider whether the secondary work merely supersedes the original or instead “adds something new, with a further purpose or different character, altering the first with new expression, meaning, or message”. It did not elevate transformation into a standalone defense. Rather, it recognized transformation as a powerful indicator that a use may be fair, particularly where the secondary work alters the original’s meaning or message and does not compete in its primary market.

The foundation of this approach was earlier articulated by Judge Pierre Leval in his influential article *Toward a Fair Use Standard*, where he argued that a use is transformative when it adds new information, insights, or aesthetics that serve a broader social purpose. Transformation, in this sense, is not about the amount taken but about whether the secondary work performs a different expressive function from the original.

Courts have since applied this reasoning to a wide range of creative practices. For example, the display of book snippets in the Google Books search service was held to be transformative because it enabled search and discovery rather than substituting for the books themselves, hence a fair use.⁸ Similarly, a satirical retelling of an existing story from a slave’s perspective was considered transformative as it provided social benefit by criticizing the earlier work and in process created a new one.⁹

While the courts have emphasized the effectiveness of transformative use in protecting creative expression varying from the original works, they have also observed that it is not an ideal doctrine either. For instance, Judge J. Clifford Wallace has remarked on its murkiness observing that many judges could simply apply their own artistic judgement to identify transformative use and that the doctrine lacks a principled approach.¹⁰ This is where the complexity arises: While *Campbell* emphasized

that new purpose, expression or meaning renders a work transformative, the evolving jurisprudence raises questions about what would constitute “new expression or meaning”. A mere aesthetic change or minor modification in the borrowing work is not transformative.¹¹ The borrowed work shall transform the character of the original work.¹²

This conceptual uncertainty poses a particular challenge for jurisdictions that do not recognize open-ended fair use. In fair dealing systems, where exceptions are exhaustively enumerated, courts may recognize a use as transformative, yet remain constrained by categories that were never designed to capture such practices. The following section examines how Indian courts have attempted often implicitly to engage with transformative reasoning within the confines of Section 52, and why these efforts have proven insufficient to address.

ANALYSIS OF INDIAN COPYRIGHT FRAMEWORK

Indian copyright law regulates unauthorized use primarily through the doctrine of fair dealing under Section 52 of the Copyright Act, 1957. Unlike open-ended fair use systems, Section 52 sets out an exhaustive list of purposes for which use of a copyrighted work is permitted, while this approach offers certainty, it also limits the law’s capacity to respond to newer forms of creative expression such as parody, memes, remix culture, and digital satire. The Act does not recognize “transformative use” as a separate doctrine. Nor does Section 52 contain any residual category through which courts can protect socially valuable uses that fall outside the enumerated purposes. Yet Indian courts are increasingly confronted with disputes in which the secondary work does not merely reproduce the original but alters its meaning, message, or function. The resulting jurisprudence reveals a growing tension between statutory structure and creative practice.

FAIR DEALING: SECTION 52(1)(A)

Section 52(1)(a) protects fair dealing with a copyrighted work for three principal purposes; private or personal use (including research), criticism or review, and reporting of current events and public lectures. These categories were designed for traditional forms of reuse and as such are incompatible with contemporary digital practices, where works often serve multiple functions simultaneously as entertainment, commentary, and social critique.

Unlike the United States, where courts may recognise fair use even outside listed categories, Indian courts remain bound by this closed statutory framework. As a result, even where a secondary work adds new meaning or performs a different expressive function, it must still be forced into one of the permitted purposes in order to escape liability. This limits the ability of courts to acknowledge transformation as an independent justification for reuse.

While the Act grants protection to derivative works, they differ significantly from transformative works. Unlike derivative works, which are premised on permission and continuity with the original, transformative works derive their value precisely from re-contextualization, critique, or repurposing. The absence of doctrinal recognition for transformative use, results in facing unfair infringement claims.

Nonetheless, in educational and non-commercial contexts, courts have occasionally adopted a liberal approach. For instance, in the, *Chancellor, Masters & Scholars of the University of Oxford v. Rameshwari Photocopy Services*,¹³ the Delhi High Court held that the reproduction of copyrighted material with alterations as course books for educational purposes, although done without license does not amount to infringement as such works were transformative in nature. The courts have also emphasized that merely because a work is educational does not immediately qualify as fair dealing when it lacks any significant transformation.¹⁴

By contrast, in cases involving commercial or entertainment-based reuse, courts have been far more restrictive. The use of copyrighted music in television programmes or commercial broadcasts has generally been held to fall outside fair dealing, even where only short portions are used.¹⁵ Courts have rejected arguments based on de minimis or altered context, focusing instead on the commercial nature of the use and its potential impact on the copyright holder's market. This illustrates how Section 52 leaves little room to accommodate transformation once commerciality is involved.

ECONOMIC AND MORAL RIGHTS

Judicial reluctance to extend fair dealing is closely tied to the protection of authors' economic and moral rights under Sections 14 and 57 of the Copyright Act. Transformative uses necessarily implicate the rights of reproduction, communication to the public, distribution, and adaptation. Even where a new work adds significant new meaning, it often relies on copying substantial portions of the original, thereby engaging these exclusive rights.

Transformative works almost inevitably engage the right of reproduction, since they require copying all or a substantial part of the original work. Even where a secondary work adds new meaning or expression, the act of reproducing the underlying work without authorisation prima facie interferes with the copyright holder's exclusive right. In the digital environment, transformative works are also commonly disseminated online, implicating the right of communication to the public. When such works are shared, streamed, or broadcast particularly in commercial contexts they affect the copyright holder's control over how and when the work is made available to audiences. Courts have occasionally recognised that new contexts of communication may alter the character of the use, as in *Super Cassettes Industries Ltd v Hamar Television Network Pvt Ltd*¹⁶ where the broadcast of copyrighted music in a news programme was held to be fair dealing because the songs acquired a different communicative function. Nevertheless, even such uses undeniably intrude upon the author's distribution and communication rights.

Similarly, the right to issue copies of the work to the public is affected when transformative works are commercially circulated, monetised, or incorporated into market-facing products. Where a remix, parody, or derivative digital creation attracts viewers or revenue, it potentially competes with or substitutes for authorised exploitation of the original work. Most significantly, transformative use places pressure on the author's right of adaptation. While adaptation traditionally refers to conversion of a work into another form or medium, transformative works also involve re-arrangement, re-contextualisation, or re-purposing of expression. Without a clear doctrinal boundary, there is a risk that even minor alterations could be mischaracterised as "transformative," thereby undermining the author's exclusive right to authorise derivative works.

Beyond economic interests, transformative use also implicates the author’s moral rights. Section 57 protects the author’s right of integrity against distortion, mutilation, or modification prejudicial to the author’s honour or reputation. Transformative works, particularly parody and satire, may deliberately distort or subvert the original in order to convey critique or humour. Without a doctrinal framework to balance these interests, courts tend to treat moral rights as overriding, even where the new work contributes to legitimate social or cultural discourse.

IMPLICIT RECOGNITION OF TRANSFORMATIVE REASONING

Despite the absence of statutory recognition, Indian courts have repeatedly employed reasoning that closely resembles transformative analysis. In *R.G. Anand v. Deluxe Films*¹⁷ the Supreme Court held that copyright protects expression, not ideas, and that a later work will not infringe so long as it presents the same idea in a substantially different form. The Court’s “ordinary observer” test, which asks whether the viewer perceives the later work as a copy of the original, implicitly mirrors the inquiry into whether the secondary work supersedes or alters the original’s expressive function.

Similarly, in *Civic Chandran v. Ammini Amma*¹⁸ the Kerala High Court examined whether a counter-drama criticising an earlier play constituted fair dealing. The Court considered the purpose of the use, the amount taken, and the likelihood of market substitution—factors that closely resemble the transformative use inquiry under U.S. law. The judgment recognised that meaningful criticism may require borrowing from the original work.

More explicitly, in *Super Cassettes Industries Ltd. v. Hamar Television Network Pvt. Ltd.*,¹⁶ the Delhi High Court acknowledged that a use may be transformative when it adds “new expression, meaning or message” to the original. In later decisions, courts have again referred to the importance of whether the secondary work merely exploits the original or serves a different expressive purpose.¹⁹

These cases demonstrate that Indian courts are already engaging with transformative logic, but only within the confines of Section 52. The absence of a clear statutory doctrine forces courts to rely on ad hoc reasoning, producing uncertainty and inconsistent outcomes.

DOCTRINAL CONSEQUENCES

Courts recognise that some unauthorised uses enrich cultural discourse without displacing the original, yet lack the doctrinal tools to protect them consistently. As digital culture and AI-generated content continue to expand the range of creative practices, the gap between statutory categories and judicial reality will only widen. The next section examines how other jurisdictions have addressed this problem and what lessons they offer for India.

COMPARATIVE ANALYSIS

The doctrine of transformative use has been well recognized and developed in other jurisdictions, particularly in the U.S. In the absence of domestic clarity, a comparative analysis is essential to

comprehend how different legal systems have adopted transformative use. Moreover, in proposing an Indian framework, such comparative analysis serves a dual purpose: Firstly, it reveals a practical mechanism to accommodate transformative use while protecting the rights of the original authors; and second, it highlights the pitfalls to be avoided.

UNITED STATES: FLEXIBILITY AND ITS DISCONTENTS

The doctrine of transformative use is most fully developed within the United States' fair use framework under Section 107 of the Copyright Act, 1976. Fair use operates through an open-ended, four-factor balancing test that enables courts to evaluate unauthorized uses beyond enumerated categories. Transformative use, while not codified, has emerged as a central interpretive principle under these factors.

Unlike the Indian Jurisprudence where the commerciality and market effect of a transformative work is heavily scrutinized, the US transformative use analyses the economic effect differently. In *Fisher v. Dees*²⁰, The court clarified that the loss caused by parody is distinct from that caused by direct reproduction. The former results from criticism, not substitution, and therefore falls within fair use. This underscores the complexity of transformative use and the need for clear standards to prevent infringers from abusing the doctrine.

By contrast, the US jurisprudence also recognizes the importance of protection of moral rights while dealing with transformative works similar to the Indian jurisprudence concern. For instance, a work even if transformative, can infringe if it diminishes the prestige of the original work thereby violating the moral rights of the author. The courts have also shown remarkable adaptability to technological developments. For instance, Google's reuse of Oracle's Java API was transformative, as it used the code for a new computing environment distinct from the original purpose.²¹

At the same time, U.S. jurisprudence demonstrates the risks of an overly expansive conception of transformation. Courts have cautioned that new meaning or message, standing alone, cannot justify extensive appropriation. In *Andy Warhol Foundation v. Goldsmith*²², the Supreme Court reaffirmed that transformative purpose must be evaluated in relation to the specific use at issue and its market effects. The decision underscored that fair use is not a license to appropriate copyrighted works merely by recasting them within a different aesthetic or commercial context.

Two lessons emerge from the U.S. experience. First, doctrinal flexibility enables courts to adapt copyright law to technological and cultural change. Second, flexibility without statutory guardrails invites unpredictability and post hoc reasoning. The U.S. model succeeds institutionally because it is embedded within a legal culture accustomed to balancing tests and judicial discretion conditions that do not readily translate to fair dealing jurisdictions such as India.

UNITED KINGDOM

The United Kingdom follows a fair dealing model similar to India, but it has partially accommodated transformative practices through legislative reform. In 2014, Section 30A was introduced into the Copyright, Designs and Patents Act, 1988, permitting fair dealing for the purposes of caricature, parody, and pastiche. Any contractual term restricting such uses was rendered void.

The UK jurisprudence also adopts a “substantial part” doctrine which may be seen as a device for protecting transformative use. The doctrine states that when a subsequent work does not retain a substantial part of the prior work²³, such work is protected as long as the portion taken from the prior work has been changed to the extent that no “substantial part of the plaintiff’s work survives in the defendant’s work.”²⁴

However, UK’s statutory recognition of transformative use is limited as a result it’s jurisprudence has conflicting views. For instance, in *Designers Guild Ltd. v. Russel Williams*²⁵ it was held that if the alterations are sufficiently extensive then there is no infringement, even in case of copying if the differences between the original and copy is so extensive it bars infringement. At the same time, the other decisions have insisted that the subsequent work’s originality does not excuse the use of the primary work.²⁶

These conflicting lines of authority reflect the structural problem of a rigid fair dealing framework: courts must either stretch statutory categories or deny protection, leading to inconsistent outcomes. The UK model provides certainty but lacks the flexibility needed for evolving digital practices.

INTERNATIONAL CONVENTIONS

International copyright treaties do not expressly recognise transformative use. Instead, they permit national exceptions subject to the three-step test under the Berne Convention, TRIPS Agreement, and WIPO Copyright Treaty. Under this test, exceptions must be confined to certain special cases, not conflict with the normal exploitation of the work, and not unreasonably prejudice the legitimate interests of the author. In *US – Section 110(5)*²⁷ the WTO Panel held that overly broad exemptions for public performance violated TRIPS because they interfered with normal exploitation. Even so, scholars have argued that the origin of three-step test was not with an intention of causing a rigid model but to be an “open formula” that reconciles with existing national exceptions. Consequently, a well-tailored transformative use exception is considered to be compliant with the international standards.²⁸

The WIPO Copyright Treaty further complicates the position by protecting technological protection measures, which affects transformative uses that rely on data scraping or circumvention, especially in the context of AI training. These international standards are to be kept in mind while tailoring statutory recognition of transformative use, in India to ensure compliance.

IMPLICATIONS FOR INDIA

Comparative experience shows that neither the U.S. nor the U.K. model can be directly transplanted into India. The U.S. model assumes broad judicial discretion, while the U.K. model sacrifices flexibility for certainty. India’s statutory culture and cautious judiciary make a hybrid approach more appropriate: a statutorily recognised transformative use exception, supported by guiding factors such as purpose, proportionality, market substitution, and moral rights safeguards. This would provide legal clarity while allowing courts to respond to new creative and technological practices. Without such reform, Indian courts will continue to rely on implicit transformative reasoning without doctrinal structure, producing uncertainty for both creators and copyright holders.

ARTIFICIAL INTELLIGENCE AND TRANSFORMATIVE USE

Artificial intelligence has fundamentally altered the way creative works are produced, used, and circulated. Generative AI systems are trained on vast datasets that include millions of copyrighted works, creating new legal and ethical issues about what authorship, ownership and legal use constitute. The two broad impacts of AI in relation to transformative user are: As a user, when copyrighted works are used as training data, and as a creator, when AI systems generate outputs that may resemble or compete with existing works. Both stages expose the limitations of India's fair dealing framework.

AI AS USER AND TRANSFORMATIVE USE

The first point of friction arises at the stage of AI training. Unlike human authorship involving the individual's own creativity and expression, AI systems require massive dataset that often include millions of copyrighted works²⁹. From a doctrinal standpoint, this process implicates the author's exclusive right of reproduction.

Proponents of AI development argue that training constitutes a transformative use, as the material is used to enable machine learning rather than conveying the content directly to human users. On this view, training serves a new functional purpose and does not substitute for the original works in their intended markets.

Courts in certain jurisdictions have begun to engage with this argument, sometimes characterizing AI training as highly transformative. For instance, in *Richard Kadrey v. Meta Platforms, inc.*,³⁰ the US district court observed that "meta's use of the plaintiff's copyrighted works to train its AI models is characterized as highly transformative as the models serve a new and distinct purpose". The court emphasized that such models result in access to more high quality data unlike the original purpose of the works. The plaintiffs argument that the AI models copy the writing style or rewrites the pre-existing work was rejected by the court stating that it does not reproduce any significant portion of copyrighted work rather the material taken is reasonable and necessary. However, such reasoning remains contested and jurisdiction-specific. More importantly, the Indian fair dealing framework offers no principled basis for evaluating these claims. Section 52 does not contemplate data analysis, machine learning, or computational reuse, nor does it provide a residual category capable of accommodating novel technological purposes. As a result, Indian courts are left with an unsatisfactory choice: either treat AI training as infringement per se, or stretch existing categories such as research or private use beyond their intended scope. Neither option is doctrinally stable. The former risks stifling technological development; the latter risks hollowing out authors' exclusive rights without clear statutory authorization.

AI AS CREATOR AND TRANSFORMATIVE USE

The second challenge concerns AI-generated outputs. These works raise complex questions about authorship, originality, and ownership, but they also implicate transformative use analysis. AI outputs may draw upon patterns derived from copyrighted works, sometimes producing content that resembles existing styles, genres, or expressive forms. While such outputs may not be substantially

similar to any single work, they may nonetheless compete with human-created works in the same markets.

From the perspective of transformative use, the key issue is not copyrightability but market impact. Even if an AI output is not protected as a copyrighted work, it may still compete with human-created works in the same market. For example, an AI-generated illustration in the style of a living artist may displace demand for that artist's commissioned work. In such cases, claims of transformation become much weaker, because the AI output functions as a market substitute rather than a distinct expressive contribution.

The U.S. Copyright Office has clarified that copyright protection subsists only in works reflecting human creativity, and that purely AI-generated works are not protected unless a human has exercised substantial creative control. A simple prompt is not sufficient. Indian copyright law currently lacks the doctrinal tools to make this assessment. Fair dealing does not permit courts to weigh transformation against market substitution in a structured manner. Nor does it allow for differentiation between AI outputs generated with substantial human control and those produced autonomously.

Nevertheless, In India, these issues are currently being tested in litigation, including proceedings brought by Asian News International against OpenAI. The case raises three interrelated questions: whether the use of copyrighted works for training large language models constitutes infringement; whether the outputs generated by such models reproduce protected expression; and whether any of these uses can be justified under Section 52. The outcome of this litigation will significantly shape how Indian law understands transformative use in the AI context.

WHY AI MAKES REFORM UNAVOIDABLE

Artificial intelligence exposes the limits of India's fair dealing regime more starkly than any earlier technological development. Section 52 was designed for discrete, human acts of reuse within narrow categories. It is ill-equipped to evaluate large-scale, functional uses such as machine learning, or to distinguish between AI outputs that enrich cultural discourse and those that merely replace human creators.

Transformative use offers a conceptual way forward, but only if it is recognised as a structured, qualified exception. Statutory recognition would allow courts to assess AI-related uses through defined factors such as purpose, necessity, proportionality and market substitution. It would also prevent technology companies from invoking vague claims of transformation to justify wholesale appropriation of creative labour.

The AI context therefore crystallises the central argument of this paper. Without legislative recognition of transformative use, Indian copyright law will continue to oscillate between rigidity and ad hoc improvisation. With it, courts can engage emerging technologies through a principled framework that protects both creative freedom and authorial rights.

STATUTORY FRAMEWORK FOR THE RECOGNITION OF TRANSFORMATIVE USE IN INDIA

The foregoing analysis demonstrates that the absence of explicit recognition of transformative use has produced sustained doctrinal strain within Indian copyright law. Courts have increasingly engaged with ideas of transformation, yet have done so within a statutory architecture that was never designed to accommodate such reasoning. At the same time, the growth of digital creativity and artificial intelligence has heightened the risk of both over-enforcement and under-protection. A principled legislative framework is therefore required. The objective is not to introduce a broad defence, but to provide structured flexibility that enables courts to evaluate transformative practices transparently, consistently, and in conformity with India's international obligations.

TRANSFORMATIVE USE AS AN INDEPENDENT EXCEPTION

Transformative use should not be incorporated as a sub-category within Section 52. Fair dealing operates through enumerated, automatically triggered purposes. Introducing transformative use within this structure would blur the line between genuinely transformative uses and derivative or minimally altered works, particularly in the context of automated or AI-generated content. Instead, transformative use should be recognised as an independent exception. This allows the defence to operate only where the party invoking it affirmatively demonstrates that the use satisfies defined doctrinal conditions. Such a design preserves the conceptual integrity of fair dealing while confining transformative use to "special cases", thereby remaining consistent with the three-step test under international copyright law.

DEFINING TRANSFORMATIVE USE

A clear statutory definition is essential to prevent misuse of the doctrine and to guide judicial analysis. Drawing from comparative jurisprudence and domestic principles, transformative use may be defined as follows:

"A use of a copyrighted work shall be considered transformative where the secondary work, through human creative judgment, introduces a new expression, meaning, or message that is independent of the original work, serves a legitimate social, educational, artistic, or critical purpose, and does not unreasonably prejudice the economic or moral interests of the author."

This definition establishes three threshold requirements: qualitative transformation, legitimate purpose, and proportional impact. It expressly excludes mere aesthetic modification or automated reproduction, while preserving space for judicial evaluation of context.

GUIDING FACTORS

To operationalise the doctrine without rendering it rigid, the statute should provide non-exhaustive guiding factors, drawn from principles already familiar to Indian copyright jurisprudence:

1. Purpose and character of the use, including whether it serves a distinct function such as criticism, commentary, education, or socially valuable reinterpretation. Commerciality should be relevant but not determinative.
2. Nature of the original work, with greater latitude for factual or informational works and closer scrutiny for highly creative expression.
3. Amount and substantiality of the portion used, both quantitatively and qualitatively, limited to what is reasonably necessary to achieve the transformative purpose.
4. Effect on the potential market, with particular attention to whether the new work operates as a substitute for the original or its legitimate licensing markets.

These factors do not replicate U.S. fair use; they channel judicial discretion within a narrower, purpose-specific inquiry focused on transformation.

PROTECTION OF MORAL RIGHTS

Recognition of transformative use must not prejudice an author's moral rights, which safeguard the integrity of their work and personal reputation. Therefore, transformative use must remain subject to Section 57. Alteration alone does not violate moral rights, but distortion that unjustifiably harms the author's honour or reputation does. Courts should therefore assess whether the modification serves a legitimate expressive purpose, such as parody, critique, or commentary, and whether any reputational harm is proportionate to the public interest served by the transformation.

JUDICIAL DISCRETION

The statute should operate as a guiding architecture, not a mechanical checklist. Judicial discretion remains essential, particularly in technologically complex contexts. At the same time, statutory recognition disciplines that discretion by requiring courts to articulate their reasoning through defined criteria, enhancing predictability and doctrinal coherence.

APPLICATION TO ARTIFICIAL INTELLIGENCE

The proposed framework is particularly suited to AI-related uses because it allows courts to distinguish between functional, non-expressive copying in training contexts and market-substituting expressive outputs. In training disputes, the inquiry would focus on whether copying is reasonably necessary for a computational purpose and whether it interferes with the normal exploitation of the work. In output disputes, courts can evaluate whether AI-generated material operates as a substitute for human-created works, and whether meaningful human creative control is present.

Crucially, the framework does not immunise AI practices. It enables a calibrated assessment that separates legitimate technological reuse from exploitative appropriation, rather than forcing courts into an all-or-nothing infringement analysis.

LIMITATIONS

The framework cannot eliminate uncertainty. Concepts such as “new expression,” “reasonable necessity,” and “legitimate purpose” are inherently evaluative and may produce inconsistent outcomes, though such flexibility is unavoidable in regulating transformative creativity.

Evidentiary burdens also remain significant. Assessing market substitution, substantiality, and the role of copied material particularly in AI training and outputs may require technical and economic expertise that courts do not always possess.

Further, the framework must be carefully calibrated to comply with the TRIPS three-step test, which restricts exceptions to “certain special cases” and prohibits interference with the normal exploitation of works.

Finally, hybrid and AI-generated works continue to pose unresolved challenges of authorship, training data, and market impact, requiring ongoing doctrinal refinement.

CONCLUSION

Transformative use has emerged as an increasingly important feature of contemporary creative practice, particularly in the context of digital platforms, user-generated content, and artificial intelligence. Yet, Indian copyright law continues to address such uses only indirectly, through a fair dealing framework that was not designed to evaluate transformation as such. This has resulted in uncertainty, both for authors seeking to protect their works and for secondary creators seeking to engage in legitimate forms of reuse. This paper has argued that a more coherent response lies in the statutory recognition of transformative use as a distinct and qualified exception. Drawing upon comparative experience and existing principles of Indian copyright jurisprudence, the proposed framework seeks to balance creative freedom with the economic and moral interests of authors, while remaining consistent with India’s international obligations. While no statutory model can fully resolve the complexities posed by evolving technologies, a structured approach to transformative use would allow Indian courts to engage with these developments in a principled manner rather than through ad hoc extensions of fair dealing. Ultimately, the recognition of transformative use is not about weakening copyright protection, but about adapting it to contemporary modes of creativity. A carefully designed statutory framework offers a way to preserve the normative foundations of copyright while accommodating new forms of cultural production in the digital age.

CONFLICT OF INTEREST

The author declares that there is no conflict of interest with respect to the authorship, funding, or publication of this article

REFERENCES

- 1 Howe S, Social Media Statistics for India [Updated 2025], Meltwater (2025), www.meltwater.com/en/blog/social-media-statistics-india (21 September 2025)
- 2 Al-Rizeiqi M & Davies G, *Redefining boundaries in innovation and knowledge domains: Investigating the impact of generative artificial intelligence on copyright and intellectual property rights*, *Journal of Innovation & Knowledge*, 9 (1) (2024) 100630
- 3 Leval P N, *Toward a Fair Use Standard*, *Harvard Law Review*, 103 (1990) 1105-1107
- 4 *Berne Convention for the Protection of Literary and Artistic Works* (1971)
- 5 *Agreement on Trade-Related Aspects of Intellectual Property Rights* (1994)
- 6 Giblin R & Weatherall K, *If We Redesigned Copyright from Scratch, What Might It Look Like?*, In: Giblin R & Weatherall K (eds), *What If We Could Reimagine Copyright?* (ANU Press, Australia), 2017, p. 7
- 7 *Campbell v Acuff-Rose Music Inc* (1994) 510 US 569
- 8 *Authors Guild v Google Inc* (2015) 804 F 3d 202 (2d Cir)
- 9 *Suntrust Bank v Houghton Mifflin Co* (2001) 268 F 3d 1257 (11th Cir)
- 10 *Cariou v Prince* (2013) 714 F 3d 694 (2d Cir)
- 11 *Leibovitz v Paramount Pictures Corp* (1998) 137 F 3d 109 (2d Cir)
- 12 *Gaylord v United States* (2010) 595 F 3d 1364 (Fed Cir)
- 13 *Chancellor, Masters & Scholars of the University of Oxford v Rameshwari Photocopy Services* 2016 SCC OnLine Del 6229
- 14 *Chancellor Masters and Scholars of the University of Oxford v Narendra Publishing House* AIR 2009 Del 85
- 15 *India TV Independent News Services Pvt Ltd v Yash Raj Films Pvt Ltd* 2012 SCC OnLine Del 4298
- 16 *Super Cassettes Industries Ltd v Hamar Television Network Pvt Ltd* (2011) 45 PTC 70 (Del)
- 17 *Eastern Book Company v D B Modak* (2008) 1 SCC 1
- 18 *Civic Chandran v Ammini Amma* (1996) 16 PTC 329 (Ker)
- 19 *Syndicate of the Press of the University of Cambridge v B D Bhandari* (2011) 185 DLT 346
- 20 *Fisher v Dees* (1986) 794 F 2d 432 (9th Cir)
- 21 *Google LLC v Oracle America, Inc* (2021) 141 S Ct 1183

- 22 *Andy Warhol Foundation for the Visual Arts, Inc v Goldsmith* (2023) 598 US 508
- 23 Laddie H and others (eds), *The Modern Law of Copyright and Designs* (Butterworths, London), 3rd edn, 2000, p. 3.137, 3.57–74
- 24 Cornish W R & Llewelyn D, *Intellectual Property: Patents, Copyright, Trade Marks and Allied Rights* (Sweet & Maxwell, London), 5th edn, 2003, p. 11-09
- 25 *Designers Guild Ltd v Russell Williams (Textiles) Ltd* (2000) 1 WLR 2416
- 26 *Williamson Music Ltd v The Pearson Partnership Ltd* (1987) FSR 97
- 27 Panel Report, United States—Section 110(5) of the U.S. Copyright Act, WT/DS160/R (15 June 2000)
- 28 Senftleben M, *Copyright, Limitations, and the Three-Step Test: An Analysis of the Three-Step Test in International and EC Copyright Law* (Kluwer Law International, The Hague), 2004
- 29 McKinsey & Co, *What is Generative AI?* (2023), <https://perma.cc/Y9RY-3PXF> (21 September 2025)
- 30 *Kadrey v Meta Platforms Inc* (2025) 3:23-cv-03417 (ND Cal)