

THE LEGALITY OF PARODY AND SATIRE IN INDIA

by

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ABSTRACT

Parody and satire are valuable to democracies as they provide fresh narratives on contemporary issues in public forums without any form of violence. However, archaic legislations such as the sedition law and the anti-blasphemy laws have allowed powerful groups to mislabel them to invoke criminal sanction and suppress any form of political dissent or controversial issues. Moreover, the status of Intellectual Property Laws is not elaborate or descriptive enough to clearly demarcate satire from parody as it broadly classifies them as one and the same under the defence of fair use. Hence, the defence of fair use is applicable to both the forms, regardless, thereby making it eligible for copyright protection as well. The paper focuses to discuss the scope of parody and satire under the right to freedom of speech and its legality under the present intellectual property laws by comparing them with the laws of other countries such as the USA in order to highlight the differences between them. It also discusses the various obstacles to achieving freedom of expression in the form of parody and satire within the country.

Research Problems:

Claim statement: Legal recognition of satire and parody will provide the sanction necessary to promote free speech regarding societal issues necessary to impart public thought and discussion. Thus, the following research paper is structured in such a way to address the following research questions.

How legal recognition of satire and parody under the intellectual property legislations in India would promote the scope of free speech regarding societal issues and advocate artistic expression of topical matters?

What are the constitutional and legal roadblocks to freedom of expression of satire and parody in the public forum?

Whether there are any distinctions between the legal status of parody and satire in the USA and India and why they are demarcated in such a way?

What are the reasons for the slow advancement or hesitation surrounding the legal recognition of satire and parody under Intellectual Property Laws?

Research Objectives:

This research paper aims to explore how the legal recognition of satire and parody under the intellectual property legislations in India would promote the ambit of free speech regarding societal issues and raise concerns regarding topical matters without disturbing peace and harmony in the community. The power of free speech in the effective functioning of governments and its correlation to censorship on satire and parody would be studied through various case studies and theories published in legal literature. The impact of the intellectual property laws on the promulgation of satirical and parodical works is also discussed through several instances from the modern era of Intellectual Property Rights supremacy.

Research Methods and Sources:

In order to fulfil the above research objectives, the following research paper has been done using qualitative and comparative methods. The comparison of the legal status and framework of parody and satire in India as well as international countries have been done to observe the key differences that exist in our country's laws and regulations. This has been done with the help of various case laws, case studies, research articles and journals, as well as other legal sources. The following is a qualitative research paper as it deals with non-numerical values and no quantifiable variables.

Introduction to Parody and Satire:

Comedy has manifested itself into a diverse field, be it stand-up comedians performing in live shows or cartoonists mocking the dramatic nature of politics of the country or even cryptic tweets that make you and think at the same time. Comedians have taken over the role of the fourth pillar of democracy in the absence of a "free press." However, restrictions in free speech have allowed revolutionary groups to publicly attack and threaten comedians who do not align with their agendas. Freedom of speech and expression should be inclusive of the right to comedy as society progresses only through the exchange of new narratives on existing landscapes.

Parody and Satire are two similar, yet distinct forms of humour that have manifested as a popular mode of communicating strong messages and ideas through media content. The term parody has been derived from the word 'parôidia', which in turn is made of two words 'para' meaning other and 'ode' meaning 'song' ¹. Hutcheon, in his work, defines parody as 'one of the major forms of self-reflexivity in twentieth-century art forms, making the intersection of creation and re-creation, of invention and critique.' ²

Parody refers to the mocking of an existing work in a different contrast to highlight the deficiencies or flaws of the actual work ³. The Black's law dictionary attempts to define a parody as "A transformative use of a well-known work for the purposes of satirizing, ridiculing, critiquing, or commenting on the original work, as opposed to merely alluding to the original to draw attention to the later work." ⁴. Satire on the other hand, has been in existence for a long time, and is widely recognized and appreciated especially in socio-political literary works. Satire generally

¹ Nidhi Sinha and Priyank Jagawanshi, *The Stance of Parody under Copyright Law*, International Journal of Law Management & Humanities, Vol. 3 Iss 2, 50-63 (2020) <https://www.ijlmh.com/wp-content/uploads/2020/04/The-Stance-of-Parody-under-Copyright-Law.pdf>

² L. Hutcheon, *A Theory of Parody*, The Teachings of Twentieth-Century Art Forms (1985)

³ Alan J Yogyaveedu, *Nuisance in the Parody and Copyright Infringement in the Indian Context*, Lex Forti Legal Journal, Vol I Issue III (2020) <https://lexforti.com/legal-news/wp-content/uploads/2020/08/Nuisance-In-The-Parody-And-Copyright-Infringement-In-The-Indian-Context-Alan-J-Yogyaveedu.pdf>

⁴ *Parody*, Black's Law Dictionary, (10th ed. 2014)

involves the over exaggeration of a particular person or his work beyond its intended meaning for the purpose of humour or ridicule.

Status of Parody and Satire in the International Scenario:

In countries like the United States of America, Political Satire and parody is protected as free speech protected under the First Amendment as it is believed to be a long-standing part of American culture and tradition. In the amicus brief of *Lafayette City v. John Merrifield*, it was stated that “Facetious speech may be frivolously funny, sharply political, and everything in between, and it is all fully protected by the First Amendment, even when not everybody finds it humorous.”⁵ It was constitutionally protected under most circumstances. Secondly, satire by definition was not meant to cause serious harm or incite any criminal liability. Thus, Political satire, humour and parody have been clearly defined and provided enough leeway to be carried out in public discourse without infringing the rights of the people.

The Constitutional Court of South Africa attempted to define and explain the reverence of humour in a democracy in the case of *Laugh It Off Promotions CC v South African Breweries International (Finance) BV t/a Sabmark International & Freedom of Expression Institute*⁶. The case was regarding trademark dilution and more importantly on the interrelationship between intellectual property rights and the fundamental right to freedom of speech. Justice Sachs labelled humour as the ‘elixir of constitutional health.’⁷ He emphasized that humour was essential in public discourse to voice out the ambiguities and contradictions that exist in everyday life. He further stated that, if every act of irreverence was to be considered a threat to the security of the State, it would lead to the detriment of the society. The act of satire under freedom of expression was placed above the protection of intellectual property rights in this case.

⁵ *Lafayette City v. John Merrifield* (2020)

⁶ *Laugh It Off Promotions CC v South African Breweries International (Finance) BV t/a Sabmark International & Freedom of Expression Institute* 2005 (2) SA 46 (SCA)

⁷ Madhavi Goradia Divan, *Why humour in public discourse is necessary for social wellbeing*, (February 5, 2016 10:51:16 am) <https://indianexpress.com/article/opinion/columns/in-defence-of-humour/>

Parody and Satire under the Indian Context:

In India, the question regarding the legality of satire was made in the case of *Ashutosh Dubey v. Netflix, Inc and Others*, 2020⁸. The contention of the plaintiff was regarding the portrayal of the legal profession in the dark comedy series “*Hasmukh*” and intended to procure a stay on the web series⁹. The court refused to grant the interim stay order as no injury was caused to the plaintiff and it would in violation of freedom of speech and expression under Article 19 1 (a)¹⁰. Justice Sachdeva attempted to define the nature and importance of satire in his judgement-

“One of the satirical techniques to criticize a particular subject or character is to exaggerate it beyond normal bounds so that it becomes ridiculous and its faults can be seen. Satire is a work of art. It is a literary work that ridicules its subject through the use of techniques like as exaggeration. It is a witty, ironic and often exaggerated portrayal of a subject.”

In an earlier judgement, the court went a step ahead and even granted compensation to the petitioner, the producer of a satirical film, since the state government had declared an unofficial ban on it. Highlighting the importance of satire as a part of free speech Justice Chandrachud in the case of *Indibily Creative Pvt. Ltd. vs Govt. Of West Bengal* stated that-

"Satire is a literary genre where "topical issues" are "held up to scorn by means of ridicule or irony. It is one of the most effective art forms revealing the absurdities, hypocrisies and contradictions in so much of life. However, we cannot ignore that like all forms of speech and expression, satirical expression may be restricted in accordance with the restrictions envisaged under Article 19(2) of the Constitution."¹¹

However, despite all the measures taken to broaden the scope of satire and parody as a part of freedom of expression, Indian jurisprudence still fails to distinguish the two unlike other contemporaries. In the US, parody is differentiated from satire as the former falls under the exception of ‘fair use’ under copyright law. As elaborated in the case of *Campbell v. Acuff-Rose*

⁸ *Ashutosh Dubey v. Netflix, Inc and Others*, 2020

⁹ Prithviraj Senthil Nathan, *India: A Satirical Case Or Is There One, Already?*, (27 May 2020) <https://www.mondaq.com/india/trademark/941350/a-satirical-case-or-is-there-one-already>

¹⁰ The Constitution of India, 1950, Art. 19(1)(a).

¹¹ *Indibily Creative Pvt. Ltd. vs Govt. Of West Bengal* (2019) WP No. 306.

Music, Inc by Justice Souther "Parody needs to mimic an original to make its point, and so has some claim to use the creation of its victim's imagination, whereas satire can stand on its own two feet and so requires justification for the very act of borrowing. " Further satire was defined as the work "in which prevalent follies or vices are assailed with ridicule or attacked through irony, derision or wit and parody often shades into satire when society is lampooned through its creative artifacts in some manner. ¹²”

In India, there is yet to be a judicial decision which clearly demarcates the two. Hence the defense of fair use is applicable to both the forms, regardless, thereby making it eligible for copyright protection as well. Courts in India have repeatedly considered both to be works of art and commonly classified them as artistic expression. The defence of satire was accepted in the case of Tata Sons Ltd. v Greenpeace International & Another by the Supreme Court where a satirical game involving ‘Tata’ trademarks were used in order to protest the construction of a port in an environmentally sensitive region¹³. The court accepted the defence of parody as the game was not created for commercial benefit but with the intent of fair comment and criticism. The conditions for parody under Indian laws were laid down in the case of Blackwood and Sons Ltd. And Others. vs A.N. Parasuraman and Others. Firstly, one should not have intended to compete with the copyright holder. This is also called the Market Substitution Test. And secondly, one should not have made ‘improper’ use of the original work ¹⁴.

The Indian judiciary has still not taken a definitive stand regarding the legality of political satire and humour due to the criminal nature of laws restricting freedom of speech such as sedition and blasphemy laws, which are more resemblant of a police state rather than a welfare state. Then chilling effect of these laws on the democracy has been used to justify its continued existence.

Reasons for stringent laws governing free expression of satire and parody in public:

Just like other forms of expression of free speech and ideology, the field of comedy too is restricted by the State through application of archaic machinery in order to suppress the dissent. Criminal defamation laws and sedition laws have been routinely implemented in an unreasonable

¹² Campbell v. Acuff-Rose Music (1994) 510 U.S. 569.

¹³ Tata Sons Ltd. v Greenpeace International & Another, (2011) 178 (2011) DLT 705.

¹⁴ M/s. Blackwood & Sons Ltd. v. A.N. Parasuraman (1959) AIR Mad. 410.

manner by the State to curb any discussion regarding religion or political narratives in public forums. India as a country has always prioritized collective morality over individual rights post-independence. Ambiguity surrounding the terms “hurting sentiments” under Section 295 A of the Indian Penal Code ¹⁵. Certain groups are actively involved in the curbing of free speech regarding topics such as Islam, Hindutva, public figures, government policy and political agendas. The active role censorship plays in online and offline platforms indicates the ambit of creativity one is permitted to express. In a democracy, only two alternatives are available to threats against free speech. Political cartoons are effective only when they are in the critique of authoritative figures.

These legislations have benefitted a certain portion of the population (majority being holders of public office and religious leaders) which is why they are still prevalent. Censorship has always been a practice of authoritative regimes due to the control it holds over public discussions and narratives. Freedom of speech and expression in its truest sense includes political satire and humour and its ability to represent public dissatisfaction in a non-violent form. The main reason for this issue is not because of the lack of guarantee of freedom of speech by the Constitution but the various loopholes it provides to suppress free speech.

In the case of the “puppeteers” on TVE news and in ABC texts, a specific issue regarding the broadcast of the case of ‘puppeteers’ aired on TVE news was kept in custody for four days under the provisions of Act 17/2006. This case highlighted the restrictions placed on the creative freedom of thought and how the public system tried to label the use of satire as linked to the glorification of terrorism and incitement to hatred (Arts. 578 and 510 of the Spanish Criminal Code) ¹⁶. The democracy’s health can be determined through the level of free criticism and scrutiny that is permitted within the country. In this situation, a particular play which was considered to be offensive as it was said to provoke hate and discrimination while also glorifying terrorism. In reality, it was parallel to a similar real life incident involving the arrest of an editor for publishing satirical political cartoons. The cast of the puppet show were arrested on the above mentioned grounds. Several international organisations such as Amnesty International, the

¹⁵ Indian Penal Code, 1860, Section 295 A, Acts of Parliament, 1860 (India).

¹⁶ Gutiérrez Jiménez, María Eugenia, *Satire as a radical practice of freedom of expression. The case of the “puppeteers” on TVE news and in ABC texts*, Observatorio (OBS*), 085-109, (2018).

Human Rights Association of Spain (APDHE), and the Asociación Libre de Abogadas y Abogados (Free Bar Association – ALA), condemned the acts of the government as it was arbitrary and unethical.

Satire is a tool of scrutiny that is essential in a democratic setup as it adopts the role of a watchdog much to the dislike of public corporations. The public display of freedom of thought has been viewed as a civic duty as it reflects the democratic health of a country in an alternative form.

Criticism for the legal recognition of satire and parody:

Though forms of comedy like parody and satire are comical and informative in public discourse, they are very often used for immoral reasons. The advocacy for more protection and legal recognition of the same would result in the watering down of the stringent implementation of protective measures under the Indian Intellectual Property Law against the use of parodies and satire. The broad application of the defence of fair use under Section 52(1)(a) of the Copyright Act emphasizes more on intent rather than dependency on the original work¹⁷. Parodies despite being an art form, also exist for economic reasons which are in direct violation of Intellectual Property laws. It also affects the commercial competitiveness of the original work, thus resulting in loss of revenue to the creator. Including it under defence of fair use as a part of freedom of speech and expression may affect the chilling effect it has on a democracy.

Infringement of personality rights, especially over social media platforms, is overlooked most of the time even though they are in contravention of the law. When content creators' author an original work, they expect it to be highly respected, however parodies result in its ridicule and reduces the integrity and value. Moral rights refer to those rights that continue to exist with the owner even after the expiry of the copyright term. These rights ensure that a creator's original work is not distorted or altered in any manner whatsoever. Section 57 of the Copyright Act 1957 deal with the moral rights which encompasses rights such as integrity rights, divulgation rights, attribution rights and retraction rights. They are more relevant in countries like the United

¹⁷ Indian Copyright Act, 1957, Section 52(1)(a), Acts of Parliament, 1957, (India).

Kingdom and India, whereas they play an insignificant role in countries like USA¹⁸. Several critics argue that parodies are violative of these moral rights, hence should not be provided legal recognition. Further, they also call for more stringent copyright laws that would criminalize parodies in order to preserve the sanctity of the original work.

However, while analyzing this one does not take into consideration the loss incurred by the public due to the protection provided under Intellectual property laws. It reduces the total availability of material and topics, which leads to the production of lesser works of lower quality ultimately resulting in a reduction of social utility. Further, Several US cases do not allow public figures to recover from infringement of their personality rights unless it included false claims, due to the protection provided under the First and Fourteenth Amendments of the Constitution¹⁹.

Conclusion:

Humour, satire and parody are all vital to the right to freedom of speech and expression enshrined in Article 19(1) of the Indian Constitution. Humour is utilised not to incite agitation or tension but to present contradictions of public life in a non-violent form. Political comedy is not to be suppressed through tools of the government as they are a unique form of communication which question the existent reality from a different perspective. Countries like USA have entwined freedom of speech as an absolute right, which permits criticism of even the President. India is still one of the few countries that still have de facto blasphemy laws that are vague and applied as per the whims and fancies of the State for purposes not intended by the Act. By analysing the various theories of humour along with the comparison to laws of countries such as South Africa and the United States of America, the research paper aims to justify the vital role played by humour in a democracy. The present status of Intellectual Property laws is not complex enough to differentiate between satire and parody. Political satire has to be recognized in its true context, in order for a democracy to flourish. Through comparison with statutes of other countries, the lack of era-appropriate definitions and freedoms are highlighted.

¹⁸ Indian Copyright Act, 1957, Section 57, Acts of Parliament, 1957, (India).

¹⁹ U.S. Const. amend. I,
U.S. Const. amend. XIV.

Another important classification is with respect to satire and parody, under Indian jurisprudence as well as intellectual property protection. Several attempts have been made by the judiciary to define them, but in the light of intellectual property laws in India, they are considered one and the same. In the context of the Indian Copyright Act, 1957 satire (much like parody) in the form of criticism falls under the ambit of fair dealing defence. However, since they are similar, the original content creator can sue them for copyright infringement, but if they are not alike, the audience would not be able to interpret the message.

Distinguishing parody and satire under intellectual property laws will provide artists more freedom to express their opinions in the form they wish to without having to water it down for legal reasons. Parodies are meant to mock the original source they refer to in order to evoke the emotions of the viewer and form a diverse opinion regarding the same. Satires are meant to be exaggerating to ridiculous extents in order to highlight the ironies in everyday life. In the United States, the courts have differentiated parody and satire in the context of the applicability of the 'fair use' exception under its copyright law.

Through this research paper, the legislations involving freedom of expression of humour and political satire in India and other countries, have been highlighted, compared and analysed. The lack of proper definition has allowed powerful groups to mislabel free speech as hate speech, which is a cognizable offence. This calls for specific amendments in certain archaic legislation such as section 124 (a)²⁰ and section 295 (A) of the Indian Penal Code. Political satire and humour are necessary for the wellbeing and functioning of a democracy. The Indian Copyright Law lacks adequate definitions of these terms, without which it is impossible to implement in judicial practice. These legislations have benefitted a certain portion of the population (majority being holders of public office and religious leaders). Censorship has always been a practice of authoritative regimes due to the control it holds over public discussions and narratives. Freedom of speech and expression in its truest sense includes political satire and humour and its ability to represent public dissatisfaction in a non-violent form. The main reason for this issue is not because of the lack of guarantee of freedom of speech by the Constitution but the various loopholes it provides to suppress free speech.

²⁰ Indian Penal Code, 1860, Section 124 A, Acts of Parliament, 1860, (India).



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