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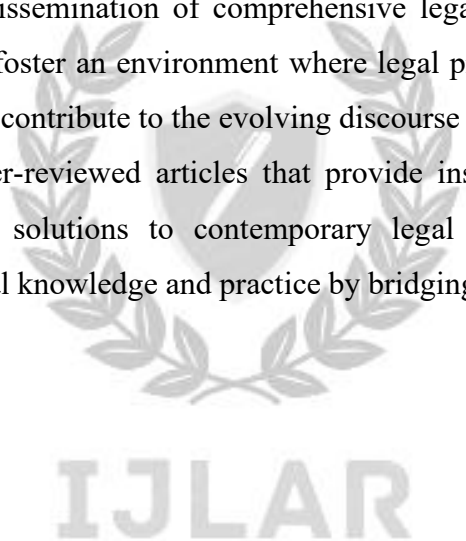
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Introduction

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Preface

The Indian Journal of Legal Affairs and Research is a testament to our unwavering commitment to excellence in legal scholarship. This volume presents a curated selection of articles that reflect the diverse and dynamic nature of legal studies today. Our contributors, ranging from esteemed legal scholars to emerging academics, bring forward a rich tapestry of insights that address critical legal issues and offer novel contributions to the field. We are grateful to our editorial board, reviewers, and authors for their dedication and hard work, which have made this publication possible. It is our hope that this journal will serve as a valuable resource for researchers, practitioners, and policymakers, and will inspire further inquiry and debate within the legal community.

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Description

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COPYRIGHT PROTECTION OF MEMES AND SOCIAL MEDIA CONTENT: A CHALLENGE UNDER INDIAN COPYRIGHT LAW

AUTHORED BY - ANWAR FIRTHOS,
HEMA PRIYADARSHINI & SUBHIKSHA
Sathyabama Institute of Science and Technology

Abstract

The rapid growth of social media has changed how creative content is produced, shared and reproduced. Memes, photographs, videos, illustrations, reels and other social media content are now widely used for entertainment, education, criticism and communication, often reaching vast audiences within hours. The ease with which such content is copied and redistributed raises pressing questions under copyright law. This paper examines whether memes and similar social media content can receive copyright protection under the Indian Copyright Act, 1957. It analyses the statutory requirements of originality, authorship and ownership as applied to digital content, and considers whether a meme creator can claim copyright when the meme is built upon an existing photograph, film scene, artwork or other copyrighted material. The paper examines the fair dealing exceptions under Section 52 of the Act, particularly where memes are created for criticism, review, satire or reporting. It further explores the difficulties faced by copyright owners in controlling unauthorised reproduction on social media platforms, the responsibilities of intermediaries under Indian information technology law, and the challenge of identifying the original creator of viral content. Relevant Indian judicial decisions, including *Eastern Book Company v D.B. Modak*, *R.G. Anand v Deluxe Films*, *Civic Chandran v Ammini Amma* and *Amar Nath Sehgal v Union of India*, are analysed alongside comparative approaches from the United States and the European Union. The paper concludes that Indian copyright law provides a workable foundation for protecting social media content, but its application to memes and viral digital expression remains uncertain, and argues that a balanced, context-sensitive approach is required to protect creators while preserving freedom of expression and the sharing culture that defines social media today.

Keywords: Copyright Act 1957; Memes; Fair Dealing; Originality; Social Media Content.

I. Introduction

Social media has transformed the manner in which people create, circulate and consume creative expression. Photographs, short videos, reels, illustrations and, most visibly, memes now travel across platforms within minutes of being posted, reaching audiences that traditional publishers could never have imagined. A meme, typically an image, video clip or short piece of text combined with humorous or critical commentary, is rarely created from nothing. It usually borrows a still from a film, a photograph, a dialogue, or an existing artistic work, and adds a new layer of meaning through juxtaposition, captioning or parody. This layered, participatory and often anonymous mode of creation sits uneasily within a copyright framework that was designed around discrete, identifiable works and authors.¹

The Copyright Act 1957 continues to be the primary legislation governing creative works in India, and it has been amended only periodically to keep pace with technological change.² It was drafted long before user-generated content, hashtags or viral sharing existed, and its provisions on originality, authorship, ownership and fair dealing must therefore be stretched, interpreted and sometimes reinterpreted to address memes and similar social media content. This paper examines whether such content can receive copyright protection under Indian law, whether meme creators can claim rights over works that are visibly derivative of pre-existing material, and whether the fair dealing exceptions under Section 52 offer meaningful protection to those who create memes for criticism, review or commentary. It further considers the practical difficulties that copyright owners face in controlling the unauthorised reproduction of their work online, the responsibilities of intermediaries under Indian information technology law, and the approaches adopted in other jurisdictions. The paper argues that although the existing statutory framework supplies a workable foundation, its application to memes and viral digital content remains uncertain, and a more balanced, context-sensitive approach is required.

II. The Statutory Framework: Originality, Authorship and Ownership

Copyright protection in India subsists in original literary, dramatic, musical and artistic works, cinematograph films and sound recordings under Section 13 of the Copyright Act 1957.³ The

¹Natalia Mielczarek and W Wat Hopkins, 'Copyright, Transformativeness, and Protection for Internet Memes' (2021) *Journalism & Mass Communication Quarterly* <<https://doi.org/10.1177/1077699020950492>> accessed 27 August 2026.

²Copyright Act 1957 (India) <<https://www.indiacode.nic.in/handle/123456789/1367?locale=en>> accessed 27 August 2026.

³Copyright Act 1957 (India), s 13 <<https://www.indiacode.nic.in/bitstream/123456789/1367/5/a1957-14.pdf>> accessed 27 August 2026.

term “original” is not defined in the Act itself, but Indian courts have developed the standard through case law. For decades, Indian courts, following the English “sweat of the brow” doctrine, treated any work produced through labour, skill and investment as original, regardless of whether it displayed any creative spark. This position changed significantly with the Supreme Court's decision in *Eastern Book Company v D.B. Modak*, where the Court rejected pure “sweat of the brow” reasoning in favour of a “modicum of creativity” standard, drawing upon the Canadian and American jurisprudence on originality, including the well-known *Feist* compromise.⁴ The Court held that mechanical, routine or trivial additions to an existing work do not attract copyright, and that some independent intellectual effort, however minimal, is required before a derivative work can be treated as original.⁵ This standard is directly relevant to memes, because most memes are, by definition, derivative: they take an existing image or scene and add new material to it.

Authorship and ownership are dealt with separately under the Act. Section 2(d) defines the “author” of a work, and in the case of an artistic work other than a photograph, the author is the person who creates the work, while for a photograph it is the person who takes the photograph.⁶ Section 17 then vests the first ownership of copyright in the author, subject to exceptions such as works made in the course of employment.⁷ These provisions assume a traceable, identifiable creator, an assumption that becomes difficult to sustain when a meme template is copied, modified and recirculated by thousands of anonymous users, each adding their own captions or edits, often without any record of who first created the version in question.

III. Memes as Derivative Works: The Originality Question

A meme is almost always built upon a pre-existing photograph, film still, artwork or piece of writing. This raises two distinct copyright questions. The first is whether the underlying material used in the meme is itself protected, and if so, whether its use without permission constitutes infringement. The second, more interesting question for this paper, is whether the meme itself, as a new composite work, can independently attract copyright protection in favour

⁴*Eastern Book Company v D.B. Modak* (2008) 1 SCC 1 (SC) <<https://indiankanoon.org/doc/1062099/>> accessed 27 August 2026.

⁵*Eastern Book Company v. D.B. Modak'* (Lawbhoomi, 21 February 2025) <<https://lawbhoomi.com/eastern-book-company-v-db-modak/>> accessed 27 August 2026.

⁶Copyright Act 1957 (India), s 2(d) <<https://www.indiacode.nic.in/bitstream/123456789/1367/5/a1957-14.pdf>> accessed 27 August 2026.

⁷Copyright Act 1957 (India), s 17 <<https://www.indiacode.nic.in/bitstream/123456789/1367/5/a1957-14.pdf>> accessed 27 August 2026.

of the person who created it.

On the first question, the position under Indian law is reasonably clear: photographs, film stills and illustrations are protected as artistic works, and cinematograph film frames are protected under Section 13(1)(b) read with the definition of cinematograph film.⁸ Reproducing such material without licence or without falling within a statutory exception would, in principle, amount to infringement under Section 51 of the Act. The idea-expression dichotomy, famously articulated by the Supreme Court in *R.G. Anand v Deluxe Films*, is instructive here. The Court held that copyright protects the particular expression of an idea and not the idea, theme or subject matter itself, and that only a substantial reproduction of the protected expression will amount to infringement.⁹ Applying this principle to memes, the “idea” behind a widely used meme format, such as a particular facial expression or a recurring visual gag, may not itself be protectable, but the specific photograph or film frame used to convey that idea remains an expression capable of protection, and a meme reproducing that specific frame arguably reproduces a substantial part of the underlying work, even where new text is layered over it.¹⁰ On the second question, the Eastern Book Company standard suggests that a meme could, in principle, attract independent copyright protection if the creator has exercised sufficient skill and judgment in selecting, arranging or combining the underlying material with new commentary, so that the resulting work displays a “modicum of creativity” beyond the mechanical superimposition of text on an image.¹¹ A meme that merely places a stock caption on an unaltered photograph is unlikely to meet this threshold, since the creative contribution is minimal. A meme that combines original photography, distinctive captioning, editing and visual composition to produce genuinely new expressive content stands on a stronger footing. The difficulty, however, is that most memes fall somewhere between these two poles, and Indian courts have not yet had occasion to apply the originality standard specifically to memes, leaving the position genuinely uncertain.

⁸Copyright Act 1957 (India), s 13(1)(b) <<https://www.indiacode.nic.in/bitstream/123456789/1367/5/a1957-14.pdf>> accessed 27 August 2026.

⁹*R.G. Anand v Deluxe Films* AIR 1978 SC 1613 <https://en.wikipedia.org/wiki/R._G._Anand_v._Deluxe_Films> accessed 27 August 2026.

¹⁰*R.G. Anand v M/S Deluxe Films and Ors* (Lawbhoomi, 11 January 2025) <<https://lawbhoomi.com/r-g-anand-v-m-s-deluxe-films-and-ors/>> accessed 27 August 2026.

¹¹*Eastern Book Company v. D.B. Modak — Copyright in Compilations (2008)* (Luke & Luka) <<https://lukeandluka.in/insights/eastern-book-company-v-db-modak-copyright-judicial-decisions-2008/>> accessed 27 August 2026.

IV. Fair Dealing under Section 52 and Its Application to Memes

Section 52 of the Copyright Act 1957 lists acts that do not constitute infringement, including fair dealing with a literary, dramatic, musical or artistic work for the purposes of private use, criticism or review, and the reporting of current events.¹² Unlike the open-ended American “fair use” doctrine, Indian fair dealing is narrower, being confined to specified purposes, and Indian courts have consistently distinguished the two concepts.¹³ For memes, the most relevant exception is fair dealing for the purpose of “criticism or review”, which has been read broadly enough in Indian case law to cover commentary, satire and even parody, provided the primary purpose is genuine critique rather than exploitation of the original work's commercial value.

The leading Indian authority on this point remains the Kerala High Court's decision in *Civic Chandran v Ammini Amma*, where a counter-drama that borrowed substantial portions of an earlier play was held to fall within fair dealing because its dominant purpose was to criticise the ideology of the original work.¹⁴ The Court articulated a three-factor test, considering the quantum and value of the material taken, the purpose for which it was taken, and the likelihood of competition between the two works.¹⁵ This test, though developed in the context of a stage play, translates reasonably well to memes that comment upon, criticise or satirise the content, personalities or events depicted in the underlying photograph or film clip. A meme that uses a film still to mock or critique the film, a public figure, or a social phenomenon can plausibly claim the protection of fair dealing, particularly where the meme adds substantial new commentary rather than merely reproducing the original for entertainment value alone.

The application of fair dealing becomes considerably more difficult, however, where memes are used for straightforwardly commercial purposes, such as brand promotion or influencer marketing, since Indian courts have been reluctant to extend fair dealing to uses that primarily exploit another's goodwill rather than offer genuine criticism.¹⁶ Similarly, where a meme reproduces an entire photograph or artwork without adding any real commentary, the “quantum and value” factor from *Civic Chandran* would likely weigh against a fair dealing defence, since

¹²Copyright Act 1957 (India), s 52 <<https://indiankanoon.org/doc/1013176/>> accessed 27 August 2026; see also Copyright Act 1957 (India), s 52(1)(a) <<https://indiankanoon.org/doc/1247029/>> accessed 27 August 2026.

¹³'Fair Dealing Under Section 52 of the Copyright Act: What India Actually Allows' (IPForte, 25 May 2026) <<https://filetrademark.co.in/pages/blog/fair-dealing-section-52-india/>> accessed 27 August 2026.

¹⁴*Civic Chandran v Ammini Amma* (1996) 16 PTC 329 (Ker) <https://en.wikipedia.org/wiki/Civic_Chandran_v._Ammini_Amma> accessed 27 August 2026.

¹⁵'*Civic Chandran v Ammini Amma*' (Lawbhoomi, 30 July 2025) <<https://lawbhoomi.com/civic-chandran-v-ammini-amma/>> accessed 27 August 2026.

¹⁶'Parody as fair use under Indian Copyright Laws' (The IP Matters, 17 March 2022) <<https://www.theipmatters.com/post/parody-as-fair-use-under-indian-copyright-laws>> accessed 27 August 2026.

the use adds little beyond decoration. The result is a spectrum: purely commentary-driven, transformative memes sit comfortably within fair dealing, while memes that are essentially unaltered reproductions used for entertainment or commercial gain sit outside it, with a large and legally uncertain middle ground in between.¹⁷

V. Ownership and Authorship Ambiguity in Viral Content

Even where a meme or piece of social media content is capable of copyright protection, identifying its owner in practice is often impossible. Viral content frequently loses its attribution as it circulates: a meme first posted on one platform is screenshotted, reposted on another platform without a watermark, translated into another language, and eventually reaches audiences with no trace of its original creator. Because Indian copyright law, like most copyright systems, does not require registration for protection to subsist, ownership exists from the moment of creation, but proving that ownership years or even days later, once a work has been stripped of context, becomes a significant evidentiary burden.¹⁸

This anonymity is compounded by collaborative and iterative meme culture, where users deliberately build upon a popular format created by someone else, producing hundreds of derivative versions within hours. Under a strict application of copyright principles, each derivative version could itself require permission from the creator of the underlying meme template, yet in practice no such permission is ever sought or granted, and the entire ecosystem operates on an informal, unlicensed basis that copyright law does not comfortably accommodate. Enforcement in such an environment is largely theoretical: the cost, delay and difficulty of identifying an infringer, particularly one operating anonymously or from outside India, makes individual litigation impractical for the vast majority of creators, leaving platform-level mechanisms as the primary, if imperfect, avenue of recourse.

A related complication arises where a meme is created jointly, whether by a single user editing a template posted by another, or through the cumulative contributions of successive users who each add a new caption, translation or visual tweak to an earlier version. The Act does contemplate works of joint authorship, but its provisions presuppose a limited, identifiable group of collaborators working towards a common design, a scenario far removed from the

¹⁷'Parody - fair dealing versus infringement' (Lexology, 28 September 2020) <<https://www.lexology.com/library/detail.aspx?g=1b1dd945-5284-4f9a-859c-367f79aab942>> accessed 27 August 2026.

¹⁸Berne Convention for the Protection of Literary and Artistic Works (Paris Act, 24 July 1971, as amended 28 September 1979) <<https://www.wipo.int/wipolex/en/text/283698>> accessed 27 August 2026.

diffuse, sequential and often unintentional collaboration that characterises meme evolution online. It is rarely possible to say with confidence which contribution transformed an unremarkable image into a recognisable meme format, and Indian law offers little guidance on apportioning rights among successive, unconnected contributors to what has effectively become a single evolving cultural artefact.

VI. Platform Responsibility and Intermediary Liability

Because individual enforcement against millions of anonymous users is impractical, the regulatory burden increasingly falls on the platforms that host and distribute social media content. Indian law addresses this through the safe harbour framework under Section 79 of the Information Technology Act 2000, read with the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, which require intermediaries to observe due diligence, including operating a notice-and-takedown mechanism, in order to retain immunity from liability for third-party content.¹⁹ These obligations have been progressively tightened, most recently through the 2025 amendments strengthening the transparency and accountability of takedown processes.²⁰

The scope of intermediary liability specifically for copyright infringement was considered by the Delhi High Court in *Super Cassettes Industries Ltd v MySpace Inc*, where a division bench held that an intermediary could not be expected to proactively screen all user-uploaded content for infringement, and that “actual knowledge” for the purposes of safe harbour under Section 79 should be read as specific knowledge of particular infringing content, communicated through a proper notice, rather than a general awareness that infringement might be occurring somewhere on the platform.²¹ The Court reasoned that requiring platforms to actively monitor and filter content would impose an unworkable burden and could have a chilling effect on legitimate speech, a concern that is especially significant for memes, since automated content-recognition systems struggle to distinguish transformative, critical or parodic use from

¹⁹Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021 (India), Ministry of Electronics and Information Technology <https://www.meity.gov.in/writereaddata/files/Intermediary_Guidelines_and_Digital_Media_Ethics_Code_Rule_s-2021.pdf> accessed 27 August 2026; Information Technology Act 2000 (India), s 79.

²⁰Press Information Bureau, 'Government notifies amendments to Rule 3(1)(d) of the IT Rules, 2021 to enhance transparency, accountability and safeguards' (Government of India) <<https://www.pib.gov.in/PressReleasePage.aspx?PRID=2181719>> accessed 27 August 2026.

²¹*My Space Inc v Super Cassettes Industries Ltd* (Delhi HC, 23 December 2016) <<https://indiankanoon.org/doc/12972852/>> accessed 27 August 2026.

straightforward piracy.²² Consequently, most social media platforms respond to specific takedown notices from rights holders rather than pre-emptively removing meme content, meaning that infringing memes commonly remain available, and often go viral, before any takedown occurs, by which time the practical harm, or the practical benefit to public discourse, has already been realised. This notice-based, reactive model places the initiative and cost of enforcement squarely on the copyright owner, which disadvantages individual photographers, artists and smaller content creators who lack the resources of large media houses to monitor infringement across multiple platforms.²³

VII. Moral Rights and Attribution

Beyond economic rights, Section 57 of the Copyright Act 1957 recognises the author's special or moral rights, including the right to claim authorship of a work and the right to restrain distortion, mutilation or other modification that would be prejudicial to the author's honour or reputation.²⁴ The Delhi High Court's decision in *Amar Nath Sehgal v Union of India* remains the leading authority recognising the strength of these moral rights, holding that they survive even after the economic rights or physical custody of a work have passed to another party.²⁵ In the meme context, this raises the question of whether captioning or otherwise altering a photograph or artwork, particularly in a manner that mocks or distorts the original subject matter, could amount to an infringement of the original creator's moral rights, independent of any economic loss. Photographers and artists whose work is repeatedly stripped of attribution and repurposed in memes arguably suffer precisely the kind of reputational and attributional harm that Section 57 was designed to address, yet in practice these rights are almost never invoked against meme creators, both because of the difficulty of identifying individual infringers and because the scale of everyday meme circulation makes case-by-case enforcement unrealistic.

²²*Super Cassettes v. MySpace (Redux)* (Centre for Internet and Society) <<https://cis-india.org/a2k/blogs/super-cassettes-v-myspace>> accessed 27 August 2026.

²³'Intermediary Liability in Copyright Infringement: Analysis of Myspace Inc. v. Super Cassettes Industries Ltd. Judgment' (CaseMine) <<https://www.casemine.com/commentary/in/intermediary-liability-in-copyright-infringement-analysis-of-myspace-inc.-v.-super-cassettes-industries-ltd.-judgment/view>> accessed 27 August 2026.

²⁴Copyright Act 1957 (India), s 57 <<https://www.indiacode.nic.in/bitstream/123456789/1367/5/a1957-14.pdf>> accessed 27 August 2026.

²⁵*Amar Nath Sehgal v Union of India* (Delhi HC, 21 February 2005) <https://en.wikipedia.org/wiki/Amar_Nath_Sehgal_v._Union_of_India> accessed 27 August 2026; 'Amar Nath Sehgal v Union of India: AIDing the Delhi High Court in Recognizing Moral Rights in India' (Anand and Anand, 4 September 2016) <<https://www.anandanand.com/news-insights/amar-nath-sehgal-v-union-india-aiding-delhi-high-court-recognizing-moral-rights-india/>> accessed 27 August 2026.

VIII. International Approaches: A Comparative Perspective

India's fair dealing model can usefully be compared with the approaches adopted elsewhere. The United States applies an open-ended fair use doctrine under which courts weigh the purpose and character of the use, the nature of the copyrighted work, the amount used, and the effect on the market for the original, a flexible four-factor test that has allowed American commentators to argue that most memes, being highly transformative, low in market substitution and largely non-commercial, are likely to qualify for protection.²⁶ This flexibility, however, has not stopped meme-related disputes from arising in the United States, particularly where original photographs have been used commercially without permission, illustrating that even a broad fair use doctrine does not eliminate uncertainty for meme creators and platforms.²⁷ The European Union, by contrast, has moved towards codifying protection for memes more explicitly. Article 17(7) of the Directive on Copyright in the Digital Single Market requires member states to ensure that users can rely on existing exceptions for quotation, criticism, review, caricature, parody or pastiche when uploading content to online platforms, a provision widely understood to have been drafted with memes specifically in mind following public concern during the Directive's negotiation.²⁸ This approach gives meme creators a clearer, EU-wide statutory foothold than either the American fair use doctrine or the Indian fair dealing provision currently offers. India's Section 52, being limited to an enumerated list of purposes and lacking any explicit reference to parody, pastiche or transformative use, occupies a middle position: narrower than the American model in its textual scope, but potentially broadened through judicial interpretation, as Civic Chandran demonstrates, to cover much of the same ground.²⁹ International conventions, in particular the Berne Convention, to which India is a party, set only minimum standards of protection and leave considerable latitude to member states in designing exceptions, meaning that India remains free to adopt a more explicit meme-specific exception if it chooses to do so.³⁰

²⁶'Copyright Enforcement Across the Meme Spectrum' (Chicago-Kent Journal of Intellectual Property, 7 April 2022) <<https://studentorgs.kentlaw.iit.edu/ckjip/copyright-enforcement-across-the-meme-spectrum/>> accessed 27 August 2026.

²⁷'The Copyright "Meme" Game: Can an Internet Meme Containing a Copyrighted Work Be Considered Infringing?' (Finnegan, INCONTESTABLE Blog) <<https://www.finnegan.com/en/insights/blogs/incontestable/the-copyright-meme-game-can-an-internet-meme-containing-a-copyrighted-work-be-considered-infringing.html>> accessed 27 August 2026.

²⁸Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on Copyright and Related Rights in the Digital Single Market, art 17(7) <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L0790>> accessed 27 August 2026.

²⁹Civic Chandran v Ammini Amma (1996) 16 PTC 329 (Ker) (n 14).

³⁰Berne Convention for the Protection of Literary and Artistic Works (n 18).

IX. Towards a Balanced Approach

The preceding analysis suggests that Indian copyright law is neither wholly incapable of addressing memes nor fully equipped to do so. The originality standard from Eastern Book Company provides a workable, if imprecise, threshold for assessing whether a meme attracts independent protection. The idea-expression dichotomy from R.G. Anand offers a coherent way of separating unprotectable formats and templates from protectable specific expression. The fair dealing test from Civic Chandran offers a purposive framework capable of protecting genuinely critical or satirical memes. What is missing is legislative clarity tailored to the realities of viral, collaborative digital content: an explicit reference to parody or transformative use within Section 52, clearer guidance on the ownership of derivative user-generated content, and a proportionate, tiered approach to intermediary obligations that distinguishes between commercial piracy and non-commercial, transformative meme culture. Any reform must be calibrated carefully, since overly aggressive protection risks stifling the participatory, expressive and often democratically valuable culture of memes, satire and commentary that thrives precisely because of the low-friction, low-cost nature of social media sharing, while under-protection leaves photographers, artists and other original creators without meaningful recourse against wholesale commercial exploitation of their work.

X. Conclusion

Memes and other forms of social media content occupy an uneasy position within the framework of the Copyright Act 1957. They are frequently derivative, often anonymous, and typically created and circulated without any regard to formal licensing, yet many memes nevertheless display a genuine degree of creative judgment capable of satisfying the “modicum of creativity” standard recognised by Indian courts. The idea-expression dichotomy allows unprotectable templates and formats to circulate freely while, in principle, still protecting the specific underlying photographs, film stills and artworks from unauthorised commercial exploitation. Fair dealing under Section 52, as interpreted through cases such as Civic Chandran v Ammini Amma, offers meaningful, if imperfectly defined, protection to memes created for genuine criticism, review or satire. At the same time, the practical realities of viral circulation, anonymous authorship and platform-mediated distribution mean that both meme creators and the owners of the underlying works face real difficulty in asserting and enforcing their rights. A balanced approach, combining clearer statutory guidance on transformative use, proportionate intermediary obligations and continued judicial willingness to apply existing

doctrines purposively, is necessary if Indian copyright law is to protect genuine creators without undermining the participatory, critical and often democratically valuable culture that memes and social media content have come to represent.

