



Reading Andy Warhol Foundation v. Goldsmith (2023) in the Indian Context: What the US Supreme Court's Retrenchment of Transformative Use Means for Section 52

A Research Article Submitted in Partial Fulfilment of the Requirements for the Degree of Master of Laws (LL.M.)

SAURABH GUPTA

LLM

Dr. AJAY JOSE

Asst. Prof.

AMITY UNIVERSITY, BENGALURU

How to Cite this Article:

GUPTA, S. (2026). Reading Andy Warhol Foundation v. Goldsmith (2023) in the Indian Context: What the US Supreme Court's Retrenchment of Transformative Use Means for Section 52. International Journal of Creative and Open Research in Engineering and Management, 2(6).

<https://doi.org/10.55041/ijcope.v2i6.407>

License:

This article is published under the terms of the Creative Commons Attribution 4.0 International License (CC BY 4.0), which permits unrestricted use, distribution, and reproduction in any medium, provided the original author(s) and the source are credited.

© The Author(s). Published by International Journal of Creative and Open Research in Engineering and Management.



<https://doi.org/10.55041/ijcope.v2i6.407>

Abstract

In May 2023, the United States Supreme Court delivered its landmark ruling in Andy Warhol Foundation for the Visual Arts, Inc. v. Goldsmith, 598 U.S. 508 (2023), fundamentally curtailing the expansive interpretation of “transformative use” that had animated the first fair use factor under 17 U.S.C. § 107 since Campbell v. Acuff-Rose Music, Inc., 510 U.S. 569 (1994). The Court’s seven-to-two decision, authored by Justice Sotomayor, held that where a secondary work shares a substantially similar commercial purpose with the original, the addition of new expression or meaning does not, standing alone, render the use “transformative” for purposes of the fair use defence. This article examines the doctrinal significance of the Warhol decision for Indian copyright law, specifically its implications for the interpretation of Section 52 of the Copyright Act, 1957. Unlike the United States’ open-ended fair use standard, India employs a closed-list fair dealing regime under Section 52(1)(a)–(q), which enumerates specific categories of permissible use. However, Indian courts have increasingly drawn upon the transformative use concept in interpreting the scope of fair dealing, particularly in cases involving parody, criticism, and emerging digital technologies. This article argues that the Warhol decision’s retrenchment of transformative use should serve as a cautionary signal for Indian courts, which must resist the impulse to import an open-ended

American-style balancing test into the structured architecture of Section 52, while simultaneously developing principled methods for addressing novel claims of fair dealing in the context of artificial intelligence training, algorithmic content generation, and digital appropriation art.



Keywords: fair use, fair dealing, transformative use, copyright, Section 52, *Andy Warhol Foundation v. Goldsmith*, *Campbell v. Acuff-Rose*, appropriation art, derivative works, artificial intelligence, Indian Copyright Act 1957

I. Introduction

The relationship between copyright protection and creative freedom has long occupied a contested space in intellectual property jurisprudence. At the heart of this tension lies the doctrine of fair use or, in Commonwealth jurisdictions, fair dealing which serves as a critical limitation on the exclusive rights of copyright holders, ensuring that the monopoly granted by copyright does not suffocate the very creativity it is meant to incentivise. In the United States, the fair use doctrine under Section 107¹ has evolved through a rich body of case law into a flexible, open-ended balancing test. Central to this evolution has been the concept of “**transformative use**,” first articulated by Judge Pierre Leval in 1990 and subsequently adopted by the Supreme Court in *Campbell v. Acuff-Rose Music, Inc.*². Under the transformative use paradigm, a secondary work that adds new expression, meaning, or message to the original is more likely to be found fair, even where substantial copying has occurred.

However, in *Andy Warhol Foundation for the Visual Arts, Inc. v. Goldsmith*³, the United States Supreme Court delivered a decisive blow to the expansive interpretation of transformative use that had taken root in the lower federal courts. Writing for a seven-Justice majority, Justice Sonia Sotomayor held that where the original work and the secondary use share “**substantially the same purpose**,” the mere addition of new expression or aesthetic appeal does not render the use transformative under the first fair use factor. The decision represents what several commentators have described as a “**retrenchment**” of transformative use—a recalibration that restores greater weight to the copyright holder’s exclusive right to prepare derivative works under Section 106(2)⁴.

For Indian copyright law, the *Warhol* decision carries significant, if indirect, implications. India’s copyright statute, the Copyright Act, 1957, does not adopt the American fair use model. Instead, Section 52 of the Act⁵ provides an exhaustive enumeration of acts that do not constitute copyright infringement—a closed-list fair dealing regime. Yet Indian courts, particularly in recent years, have displayed a growing receptivity to the transformative use concept in interpreting the boundaries of fair dealing, especially in cases involving parody, academic criticism, and, increasingly, digital and algorithmic uses of copyrighted material. The pending litigation in *ANI Media Pvt. Ltd. v. OpenAI*⁶ before the Delhi High Court, which raises the question of whether the ingestion of copyrighted news content for training large language models constitutes fair dealing, illustrates the urgency of this inquiry.

This article undertakes a doctrinal examination of the *Warhol*⁷ decision through the lens of Indian copyright law. Its central research question is as follows: to what extent does the Supreme Court’s retrenchment of transformative use in *Warhol* illuminate, constrain, or complicate the interpretation of Section 52 of the Copyright Act, 1957? The article proceeds in four stages. Part II traces the rise and subsequent retrenchment of the transformative use doctrine in the United States, with particular attention to the *Warhol* decision and its underlying reasoning. Part III maps the Indian fair dealing framework under Section 52⁸, examining its statutory architecture, judicial interpretation, and the emergent role of transformative use concepts in Indian

¹ United States Copyright Act, 1976, Section 107

² 510 U.S. 569 (1994)

³ 598 U.S. 508 (2023)

⁴ United States Copyright Act, 1976, Section 106(2)

⁵ Copyright Act, 1957 Section 52

⁶ Still pending before the Delhi High Court

⁷ *Andy Warhol Found. for the Visual Arts, Inc. v. Goldsmith*, 598 U.S. 508 (2023)

⁸ Copyright Act, 1957, §§ 14, 52



jurisprudence. Part IV reads *Warhol* in the Indian context, analysing its implications across four dimensions: the purpose-and-character analysis, commercial purpose and substitutability, derivative works rights, and artificial intelligence training. Part V offers a comparative analysis and concludes with recommendations for Indian courts navigating the post-*Warhol* landscape.

II. The Transformative Use Doctrine in the United States: Rise and Retrenchment

A. Origins: *Campbell v. Acuff-Rose Music* (1994)

The transformative use doctrine traces its intellectual origins to Judge Pierre Leval's 1990 article, *Toward a Fair Use Standard*, in which he argued that the central inquiry under the first factor of the fair use analysis should be whether the secondary work “*supersede's the objects of the original creation*” or instead “*adds something new, with a further purpose or different character.*” *Campbell*⁹ subsequently adopted this framework, holding that the first fair use factor—“*the purpose and character of the use*”—turns on whether the new work “merely ‘*supersede's the object's of the original creation*’ or ‘*instead adds something new, with a further purpose or different character, altering the first with new expression, meaning, or message.*’” The *Campbell* Court emphasised that the more transformative the new work, the less significant other factors—such as commercialism or the amount taken become in the fair use calculus. This holding, while analytically sound in its specific context a parody of the song “*Oh, Pretty Woman*”—opened the door to a doctrinal expansion that would, over the following three decades, increasingly privilege transformativeness over the other statutory factors.¹⁰

B. Expansive Interpretation by Lower Courts

In the decades following *Campbell*, lower federal courts—particularly the Second Circuit—increasingly interpreted transformative use as the dominant, and at times dispositive, consideration in the fair use analysis. In *Blanch v. Koons*¹¹, the Second Circuit held that Jeff Koons' appropriation of a fashion photograph in his collage painting was transformative because Koons employed the image “as fodder” for social commentary, thereby imbuing it with a “new context” and “new purpose.” The court's reasoning privileged the artist's subjective recontextualisation over any assessment of whether the secondary use competed with the original in its market. This trend reached its zenith in the Second Circuit's 2015 decision in *The Authors Guild v. Google, Inc.*¹², where the court held that Google's digitisation of millions of books—without authorisation—for the purpose of full-text search was “*highly transformative*” because it converted the books' purpose from expression to identification. The court's reasoning suggested that any change in purpose, however mechanical, could satisfy the transformative use standard.

By the time the district court in *Goldsmith v. Andy Warhol Foundation*¹³ granted summary judgment in favour of the Foundation in 2019—holding that Warhol's silkscreen portraits of Prince were transformative because they “*transformed the vulnerability and passivity*” of Goldsmith's photograph into “*new, iconic*” representations—the doctrine appeared to have reached a point where the mere addition of new aesthetic meaning, regardless of commercial purpose or market substitutability, could sustain a fair use defence.

⁹ *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569 (1994)

¹¹ 467 F.3d 244 (2d Cir. 2006)

¹² 804 F.3d 202 (2d Cir. 2015)

¹³ 382 F. Supp. 3d 643 (S.D.N.Y. 2019)



C. The Warhol Decision: Key Holdings

The Supreme Court's decision in *Warhol* arose from a specific factual context: a 1981 photograph of the musician Prince, taken by portrait photographer Lynn Goldsmith, which Andy Warhol used without authorisation as the basis for a series of sixteen silkscreen prints and pencil illustrations (the "Prince Series"). When Condé Nast licensed one of the silkscreen prints—"Orange Prince"—for use as a magazine cover following Prince's death in 2016, Goldsmith brought a claim for copyright infringement. The Andy Warhol Foundation ("AWF") asserted the fair use defence. Justice Sotomayor's opinion for the Court made several critical holdings. First, the Court clarified that transformativeness is not a freestanding test but merely one consideration within the first fair use factor. Second, and more consequentially, the Court held that the first factor requires courts to ask whether the secondary use shares a "substantially similar" purpose with the original. Where the original and the secondary use "have a similar purpose" and "the use is of a commercial nature," the mere addition of new expression or meaning does not render the use transformative for purposes of factor one.

Critically, the Court limited its holding to the specific use at issue: AWF's licensing of "Orange Prince" to Condé Nast as a magazine illustration. The Court expressly declined to opine on the other fifteen works in the Prince Series or on non-commercial uses such as exhibition in a museum or inclusion in an academic text. Nevertheless, the analytical framework articulated by the majority carries implications well beyond the specific facts of the case. The Court's emphasis on purpose-based analysis—whether the secondary use "serves a substantially similar purpose" as the original—represents a significant recalibration of the fair use inquiry, one that restores greater weight to the copyright holder's derivative works right under Section 106(2)¹⁴.

D. The Sotomayor Majority and Kagan Dissent

The Court's decision produced a sharp seven-to-two majority, with Justice Kagan's dissent joined by Chief Justice Roberts offering a fundamentally different vision of transformative use. Kagan argued that Warhol's silkscreen portraits, by their unmistakable visual character, conveyed a meaning "*worlds apart*" from Goldsmith's photograph. Where Goldsmith's image presented Prince as a "*vulnerable, sensitive*" individual, Warhol's flattened, high-contrast rendering dehumanized the subject, transforming him into an iconic object a "*mask*" that commented on celebrity, commodification, and the relationship between image and identity.

Kagan's dissent rested on the proposition that "*a new meaning or expression*" or even a "*new aesthetics*" should be sufficient to establish transformativeness under the first factor. In her view, the majority's focus on the commercial purpose of the use collapsed the distinction between the first and fourth fair use factors, thereby undermining the internal structure of the fair use analysis. The methodological divide between the majority and the dissent is significant for comparative purposes. Sotomayor's approach is fundamentally formalist and purpose-driven: the inquiry centres on the function the secondary work performs in the market, not on the subjective aesthetic experience of the viewer. Kagan's approach, by contrast, is expressionist: the focus is on the new creative content the secondary work contributes, regardless of its commercial function.

This dichotomy between purpose-based and expression-based analysis maps, as this article will argue, onto a fundamental tension within Indian copyright jurisprudence as courts struggle to interpret the boundaries of fair dealing under Section 52. The majority's insistence on examining the commercial purpose and market function of the secondary use, as opposed to the dissent's focus on the aesthetic transformation achieved, reflects a broader philosophical divide about the proper scope of copyright's limitations and exceptions.

¹⁴ 17 United States Copyright Act, 1976 Section 106(2)



III. The Indian Fair Dealing Framework Under Section 52

A. Statutory Architecture: The Closed-List System

Section 52 of the Copyright Act, 1957, provides the statutory framework for determining which acts do not constitute copyright infringement in India. Unlike the American fair use doctrine, which operates as an open-ended balancing test under 17 U.S.C. § 107, Section 52 adopts a closed-list model: only those acts expressly enumerated in clauses (a) through (q) of Section 52(1) are exempted from infringement. The governing sub-clauses of Section 52(1)(a) provide that fair dealing with any work for the purposes of

- (i) private or personal use, including research;
- (ii) criticism or review;
- (iii) reporting of current events and current affairs, including the reporting of a lecture delivered in public;
- (iv) the reporting of current events in a newspaper, magazine, or similar periodical, shall not constitute infringement.

The term “fair dealing” itself is not defined in the Copyright Act. Indian courts have historically looked to the English common law tradition for guidance. In *Cunniah v. N.R. Nalini Raja*¹⁵, the Madras High Court applied the test of fairness derived from English jurisprudence, holding that the question of whether a use constitutes fair dealing must be determined by considering the nature of the dealing, the quantity and value of the material used, and the effect of the use on the market for the original. This approach was subsequently affirmed in *Kartar Singh v. Ladha Kumar*¹⁶, and in *Blackwood & Sons Pvt. Ltd. v. Parasuraman Nambyar*¹⁷.

The closed-list structure of Section 52 carries significant doctrinal consequences. As several commentators have observed, if a particular use does not fall within one of the enumerated categories—for example, if an artist appropriates a photograph for purposes of visual commentary that does not neatly fit within “criticism” or “reporting of current events”—the use is not protected regardless of its non-commercial character, its transformative quality, or the absence of market harm. This structural constraint is the principal point of divergence between Indian and American copyright law, and it is precisely at this point that the *Warhol* decision’s implications for Indian law become most acute.

B. Judicial Interpretation of Section 52

Indian courts have interpreted the fair dealing provisions of Section 52 with varying degrees of rigidity and flexibility. A significant development came in *Civic Chandran v. Ammini Amma*¹⁸, where the Kerala High Court adopted a more expansive approach to the meaning of “*criticism or review*,” holding that a counter-drama that substantially reproduced portions of the original play for purposes of critical engagement constituted fair dealing. The court emphasised that “*criticism*” should not be narrowly construed as negative comment but should encompass any use that engages with the original work in a manner that produces new intellectual content.

¹⁵ AIR 1961 Mad 111

¹⁶ AIR 1934 Lah 777

¹⁷ AIR 1959 Mad 410

¹⁸ 1996 PTC (16) 681 (Kerala)



In *India TV Independent News Service Pvt. Ltd. v. Yashraj Films Pvt. Ltd.*¹⁹, the Delhi High Court confronted the tension between the closed-list structure of Section 52 and the need for a flexible, principled approach to fair dealing in the digital age. The court, while acknowledging that the American fair use standard is “*inapplicable*” in the Indian context, nevertheless adopted a multi-factor approach modelled on the American fair use analysis to assess whether the use of copyrighted film clips in a television programme constituted fair dealing. This marked a significant doctrinal departure from the traditional English approach, suggesting that Indian courts were prepared to look beyond the literal categories of Section 52 to consider the substance of the use.

Subsequent decisions have continued to develop this approach, albeit with considerable variation across courts. In *Super Cassettes Industries Pvt. Ltd. v. Hamar Television & Entertainment Pvt. Ltd.*²⁰, the Delhi High Court adopted a four-factor test drawn directly from the American fair use framework, examining the purpose and character of the use, the nature of the copyrighted work, the amount and substantiality of the portion used, and the effect on the market for the original. The court’s adoption of this framework, while not expressly displacing the closed-list structure of Section 52, represented a significant step towards the judicial incorporation of an open-ended balancing test into Indian fair dealing jurisprudence.

C. Emergence of Transformative Use Concepts in Indian Jurisprudence

The concept of transformative use has not been expressly adopted in Indian copyright jurisprudence, but its influence is discernible in several lines of judicial reasoning. The Kerala High Court’s decision in *Civic Chandran*, for instance, implicitly endorsed the transformative use concept by holding that a critical re-working of an original dramatic work one that produces “*new intellectual content*” falls within the meaning of “*criticism*” under Section 52(1)(a)(ii). The court’s reasoning, though expressed in the language of English fair dealing doctrine, echoed the spirit of the transformative use concept: the secondary work was protected not merely because it fell within a statutory category but because it added something new a critical perspective—to the original.

More recently, the Delhi High Court’s engagement with questions of fair dealing in the context of educational use and digital technologies has further opened the door to transformative use reasoning. In *The Chancellor, Masters & Scholars of the University of Oxford v. Rameshwari Photocopy Services*²¹, the court considered whether the reproduction of excerpts from academic textbooks in course packs distributed to students constituted fair dealing for the purpose of “instruction.” While the court ultimately applied a quantitative test—focusing on the proportion of the original work reproduced—its reasoning acknowledged that the transformative character of the use—the conversion of textbook chapters into pedagogical materials—was relevant to the fair dealing inquiry.²²

The most explicit engagement with transformative use concepts has occurred in the context of parody and satire. While Indian courts have not expressly adopted the transformative use label, their reasoning in cases involving parody and satire demonstrates a clear receptivity to the underlying principle: that the transformative character of a secondary use its capacity to add new expression, meaning, or message—is relevant to the fair dealing inquiry even within the closed-list framework of Section 52.

¹⁹ 2012 (51) PTC 461 (Del.)

²⁰ 2016 (67) PTC 357 (Del.)

²¹ 2016 (67) PTC 322 (Del.)



IV. Reading Warhol in the Indian Context: Implications for Section 52

A. The Purpose-and-Character Analysis: Converging Paths?

The *Warhol* decision's most direct contribution to the fair use doctrine is its reconceptualization of the first factor's inquiry as a purpose-driven analysis. Justice Sotomayor's opinion insists that the "**purpose and character of the use**" turns on whether the secondary use "**serves a substantially similar purpose**" as the original, rather than on whether the secondary work adds new expression or aesthetic meaning. This formulation is directly relevant to Indian fair dealing jurisprudence, where courts have struggled to determine whether a secondary use falls within one of the statutory categories. Consider the following scenario: an Indian appropriation artist creates a series of paintings based on a photojournalist's images of rural poverty, exhibiting them in a commercial gallery and licensing reproductions to a magazine. Under the traditional Indian fair dealing analysis, the question would be whether the use falls within "**criticism or review**" under Section 52(1)(a)(ii). *Warhol* suggests that the court should also ask whether the secondary use serves a "**substantially similar purpose**" as the original.

If the original photographs were intended as documentary journalism—reporting on poverty for a news publication—and the artist's paintings are likewise licensed to a magazine for commercial purposes, *Warhol* suggests that the first factor and by analogy, the question of whether the use falls within "**criticism**" under Section 52(1)(a)(ii)²³ would not favour the secondary user, regardless of the aesthetic transformation achieved. This purpose-based analysis, while not directly applicable to India's closed-list system, offers Indian courts a useful analytical tool for determining whether a particular use genuinely falls within the spirit of a statutory category. A commercial license to a magazine, for instance, is unlikely to constitute "**criticism**" even if the secondary work has critical overtones, because its dominant purpose is commercial reproduction rather than critical engagement. *Warhol*'s purpose-driven framework thus provides a principled method for cabinining the expansive interpretation of fair dealing categories that has emerged in some Indian decisions.

B. Commercial Purpose and Substitutability

A second theme in the *Warhol* decision—its emphasis on commercial purpose and market substitutability—carries particular resonance for Indian courts. Justice Sotomayor's opinion underscores that where the original and secondary works are commercial in nature and compete for the same market, the addition of new expression is insufficient to establish transformativeness. The Court's reasoning implicitly treats market substitution as the gravamen of the copyright inquiry: if the secondary use displaces demand for the original, the copyright holder's economic rights must prevail over the secondary user's expressive interests. For Indian courts, this principle intersects with the statutory structure of Section 52 in a significant way. Many of the fair dealing exceptions under Section 52 are expressly conditioned on the absence of a commercial purpose: Section 52(1)(a)(i) permits fair dealing for "**private or personal use, including research,**" but not for commercial exploitation; Section 52(1)(g) permits the reproduction of a work in the course of instruction, but only where the use is "**in accordance with the practice prevailing in educational institutions.**" *Warhol*'s emphasis on commercial purpose thus reinforces the existing statutory constraints in Indian law, while also providing an analytical framework for assessing the commercial character of borderline uses.

The concept of market substitutability, as articulated in *Warhol*, also intersects with the fourth factor of the American fair use test—the effect of the use on the market for or value of the copyrighted work. While Indian courts have not traditionally applied a market effect analysis as part of the fair dealing inquiry, several decisions have considered the economic impact of the secondary use on the copyright holder. *Warhol* suggests that where

²³ Copyright Act, 1957, Section 52 (1)(a)(ii)



the secondary use is a market substitute for the original—where it serves the same function for the same audience—courts should be more skeptical of fair dealing claims, even where the secondary work adds significant new expression.

C. *Derivative Works Rights and the Indian Balance*

The *Warhol* decision explicitly reaffirms the centrality of the copyright holder's right to prepare derivative works under Section 106(2)²⁴. Justice Sotomayor noted that the exclusive right to prepare derivative works “**secures to the copyright holder the right to control how and in what form the original work is adapted into a new work.**” Where the secondary work is a derivative work a work that “**recasts, transforms, or adapts**” the original—the fair use defence must be applied with heightened scrutiny, lest the derivative works right be rendered a nullity. Indian law does not employ the concept of “**derivative works**” in the same manner as the American statute. However, Section 14²⁵, grants the copyright holder the exclusive right to “make any adaptation” of the work, which serves a functionally similar purpose. The *Warhol* decision's reaffirmation of the derivative works right thus has implications for how Indian courts interpret the scope of the adaptation right under Section 14 and its interaction with the fair dealing exceptions in Section 52.

Specifically, *Warhol* suggests that where a secondary work is an “**adaptation**” within the meaning of Section 14 a work that “**recasts, transforms, or adapts**” the original courts should apply a more rigorous fair dealing analysis, one that does not automatically privilege the secondary user's creative contribution over the copyright holder's right to control adaptations. This is a significant departure from the expansive approach to transformative use that has gained traction in some Indian decisions, and it underscores the need for Indian courts to balance the interests of original creators and secondary users with greater doctrinal precision.

D. *AI Training and Non-Expressive Uses: The ANI v. OpenAI Paradigm*

Perhaps the most pressing question at the intersection of copyright and transformative use is whether the ingestion of copyrighted works for the purpose of training artificial intelligence models constitutes fair dealing. This question is at the centre of the pending litigation in *ANI Media Pvt. Ltd. v. OpenAI* before the Delhi High Court, where the plaintiff contends that OpenAI's use of copyrighted news content for training its large language models constitutes copyright infringement. The defendant, in turn, is expected to argue that the training process constitutes “**research**” within the meaning of Section 52(1)(a)(i)²⁶. The *Warhol* decision offers a useful analytical framework for resolving this question. The Court's emphasis on purpose-based analysis suggests that the fair dealing inquiry should focus on the function the secondary work serves, not merely on whether new expression is added. If the purpose of AI training is to produce a model capable of generating outputs that compete with the original works in the market if, in other words, the trained model is a market substitute for the original content then *Warhol* suggests that the “**research**” exception under Section 52(1)(a)(i) should not be read to encompass such use.²⁷

However, a key distinction must be drawn between the training process itself which is a technical, non-expressive act of data processing—and the outputs generated by the trained model, which may or may not reproduce or closely mimic the original works. Several scholars have argued that the training process should be characterised as a “**non-expressive use**” distinct from the outputs it generates, and that Section 52 should be interpreted to accommodate such uses within the “**research**” exception. The *Warhol* decision, which focuses on the purpose of the secondary use rather than on the expressive character of the secondary work, provides some

²⁴ 17 United States Copyright Act, 1976, Section 106 (2)

²⁵ Copyright Act, 1957

²⁶ Copyright Act, 1957 Section

²⁷ *Andy Warhol Found. for the Visual Arts, Inc. v. Goldsmith*, 598 U.S. 508 (2023)



support for this analytical approach: if the purpose of the training process is to extract patterns and statistical regularities from the data a purely functional, non-expressive purpose then it is analytically distinct from the purpose of the original works, and *Warhol*'s purpose-based framework may actually support a fair dealing claim for the training process itself, even if it would not support such a claim for the outputs.

This distinction between non-expressive use and expressive output represents a frontier in copyright jurisprudence that the *Warhol* decision does not directly address but whose analytical tools are well-suited to navigate. Indian courts, in approaching this question, should be attentive to both the promise and the limits of the *Warhol* framework: its promise in providing a principled, purpose-driven analysis; and its limits in addressing a form of use non-expressive, functional data processing that did not exist when the American fair use doctrine was conceived.

V. Comparative Analysis: Transformative Use Post-Warhol and Indian Fair Dealing

A. Structural Similarities and Differences

The structural differences between American fair use and Indian fair dealing are well known. The former is an open-ended, flexible standard; the latter is a closed-list, categorical framework. Yet there are deeper structural parallels that the *Warhol* decision illuminates. Both systems, at their core, are concerned with the same question: when should the copyright holder's exclusive rights yield to the interests of secondary users? Both systems must also reconcile the tension between the copyright holder's right to control derivative works and the secondary user's interest in creative freedom. The *Warhol* decision's emphasis on purpose-based analysis reveals a structural affinity with the Indian fair dealing framework that is often overlooked. Indian courts, in determining whether a use falls within a statutory category such as "*criticism*" or "*research*," must ultimately make a purposive determination: what is the nature and object of the secondary use? Is it genuinely critical, or is its commercial appropriation dressed in the guise of criticism? This purposive inquiry is precisely what *Warhol*'s purpose-based framework demands. The parallel suggests that, while the structural frameworks differ, the analytical methodology articulated in *Warhol* can be transposed to the Indian context without violating the closed-list structure of Section 52.

At the same time, there are important differences. The Indian closed-list system requires courts to first identify the relevant statutory category before engaging in any balancing exercise. *Warhol*'s purpose-based analysis does not relieve the court of this threshold obligation. If a use does not fall within one of the categories enumerated in Section 52(1)(a)–(q), the inquiry ends. The *Warhol* framework can, however, inform the court's determination of whether a use genuinely falls within a statutory category whether, for instance, a commercial license to a magazine is properly characterised as "*criticism*" or whether it is, in substance, a derivative work that requires the copyright holder's authorisation.

B. Lessons from Warhol for Indian Courts

The *Warhol* decision offers Indian courts several important lessons.

First, it demonstrates that transformative use—the mere addition of new expression or aesthetic meaning is not, and should not be, the sole or dominant consideration in the fair use analysis. Where courts allow the transformative character of a secondary work to overshadow the purpose of the use, the commercial character of the secondary use, and the market impact on the original, they risk undermining the copyright holder's exclusive rights, including the right to prepare derivative works.



Second, *Warhol* illustrates the importance of distinguishing between different uses of the same secondary work. The Court expressly limited its holding to AWF's licensing of "Orange Prince" to Condé Nast, declining to opine on other uses such as museum exhibition or academic publication. Indian courts should adopt a similar granularity in their analysis: a use that constitutes fair dealing for one purpose may not constitute fair dealing for another, even where the secondary work itself remains unchanged.

Third, *Warhol* reaffirms that the fair use analysis must be grounded in the specific statutory framework of the jurisdiction. The Court's decision was informed by the structure of the American Copyright Act, including the explicit recognition of the derivative works right in Section 106(2). Indian courts should likewise ground their analysis in the text and structure of the Copyright Act, 1957, and resist the temptation to import American doctrinal developments wholesale.

C. The Risk of Importing American Doctrinal Shifts

Notwithstanding these lessons, there is a significant risk in importing the *Warhol* framework into Indian jurisprudence without careful adaptation. The closed-list structure of Section 52 is not merely a procedural constraint; it reflects a fundamental policy choice by the Indian legislature to define the boundaries of fair dealing with specificity, leaving residual questions to the democratic process rather than to judicial discretion. To the extent that *Warhol*'s purpose-based analysis invites courts to engage in a freestanding balancing of the parties' respective interests independent of the statutory categories it threatens to undermine this structural choice. Moreover, the *Warhol* decision is a product of a specific doctrinal context: the American fair use standard, which has always been a flexible, judge-made doctrine, and the specific history of the transformative use concept, which emerged from a 1990 law review article and was subsequently adopted by the Supreme Court in *Campbell*. Indian courts that uncritically apply the *Warhol* framework risk importing not just the analytical methodology but also the underlying policy assumptions—including the primacy of the derivative works right that are specific to the American context.

The challenge for Indian courts is therefore to draw upon the analytical tools offered by *Warhol* particularly its purpose-based framework without displacing the closed-list structure of Section 52. This requires a careful, context-sensitive approach that respects both the letter and the spirit of the Indian statute, while remaining attuned to the evolving realities of digital and algorithmic creativity.

VI. Recommendations and Conclusion

The *Warhol* decision marks a watershed moment in the jurisprudence of transformative use. By insisting that the fair use inquiry must attend to the purpose of the secondary use—not merely to the new expression it adds—the Supreme Court has recalibrated the balance between original creators and secondary users, restoring greater weight to the copyright holder's derivative works right. For Indian copyright law, this recalibration carries significant implications, even if the doctrinal frameworks differ. This article has argued that Indian courts should resist two opposing temptations. The first is the temptation to import *Warhol*'s purpose-based framework wholesale into Indian fair dealing jurisprudence, thereby undermining the closed-list structure of Section 52. The second is the temptation to dismiss *Warhol* as irrelevant to Indian law, thereby forgoing the opportunity to learn from the American experience. The better approach is one of selective engagement: Indian courts should draw upon the analytical tools offered by *Warhol*—particularly its purpose-driven methodology and its insistence on distinguishing between different uses of the same secondary work—while remaining faithful to the statutory architecture of Section 52.

Several specific recommendations emerge from this analysis. First, Indian courts should develop a more rigorous framework for determining whether a secondary use genuinely falls within a statutory category of fair dealing



whether, for instance, a commercial appropriation is properly characterised as “*criticism*” or as a derivative work requiring the copyright holder’s authorisation. *Warhol*’s purpose-based analysis offers a principled method for making this determination. Second, Indian courts should be attentive to the distinction between non-expressive uses such as AI training data ingestion—and expressive outputs generated by trained models. *Warhol*’s purpose-based framework suggests that the two should be analysed separately, and that the “*research*” exception under Section 52(1)(a)(i) may accommodate the former even where it would not accommodate the latter. Third, the Indian legislature should consider whether the closed-list structure of Section 52 remains adequate in the digital age. The *Warhol* decision’s recognition that fair use must adapt to new technologies and new forms of creativity while maintaining fidelity to the statutory framework suggests that legislative reform may be necessary to address uses that do not neatly fit within the existing categories. The adoption of an “*open norm*” or a “*fair use*”-style provision, modelled on the approach taken in jurisdictions such as Israel and Singapore, may warrant serious consideration.

Ultimately, the *Warhol* decision is not a prescription for Indian law but a cautionary tale. It demonstrates that the concept of transformative use, left to its own devices, can expand beyond its doctrinal moorings, threatening to displace the copyright holder’s rights without providing a principled basis for doing so. For Indian courts, the lesson is not to adopt or reject *Warhol*’s analytical framework but to engage with it critically, drawing upon its insights while remaining grounded in the text, structure, and purposes of the Copyright Act, 1957.

References

- Andy Warhol Found. for the Visual Arts, Inc. v. Goldsmith, 598 U.S. 508 (2023).
- ANI Media Pvt. Ltd. v. OpenAI, (Del. H.C., pending 2024).
- The Chancellor, Masters & Scholars of the Univ. of Oxford v. Rameshwari Photocopy Servs., 2016 (67) PTC 322 (Del.).
- Copyright Act, 1957, § 52, No. 14, Acts of Parliament, 1957 (India).
- Copyright Act, 1957, § 14, No. 14, Acts of Parliament, 1957 (India).
- Copyright Alliance, Landmark Warhol Decision Reins in Transformative Fair Use (May 19, 2023).
- Civic Chandran v. Ammini Amma, 1996 PTC (16) 681 (Kerala).
- Pierre N. Leval, Toward a Fair Use Standard, 103 Harv. L. Rev. 1105 (1990).
- Campbell v. Acuff-Rose Music, Inc., 510 U.S. 569 (1994).
- Google LLC v. Oracle Am., Inc., 593 U.S. 517 (2021).
- India TV Indep. News Serv. Pvt. Ltd. v. Yashraj Films Pvt. Ltd., 2012 (51) PTC 461 (Del.).
- Super Cassettes Indus. Pvt. Ltd. v. Hamar Television & Entm’t Pvt. Ltd., 2016 (67) PTC 357 (Del.).
- Blackwood & Sons Pvt. Ltd. v. Parasuraman Nambyar, AIR 1959 Mad 410.
- Blanch v. Koons, 467 F.3d 244 (2d Cir. 2006).
- The Authors Guild v. Google, Inc., 804 F.3d 202 (2d Cir. 2015).
- Goldsmith v. Andy Warhol Found., 382 F. Supp. 3d 643 (S.D.N.Y. 2019).
- Andy Warhol Found. for the Visual Arts, Inc. v. Goldsmith, 11 F.4th 26 (2d Cir. 2021).
- Cunniah v. N.R. Nalini Raja, AIR 1961 Mad 111.



- Kartar Singh v. Ladha Kumar, AIR 1934 Lah 777.
- M/s. Go Air Travels Pvt. Ltd. v. M/s. Make My Trip (India) Pvt. Ltd. (Del. H.C.).
- Philpot v. Indep. J. Rev., No. 23-5237 (4th Cir. 2024).
- Griner v. King, No. 23-1747 (8th Cir. 2024).
- Copyright's Fair Use Doctrine After Andy Warhol Foundation v. Goldsmith, 75 Rutgers U. L. Rev. (2023).
- Retrofitting Fair Use: Art & Generative AI After Warhol, 64 Santa Clara L. Rev. (2024).
- Winthrop & Weinstine, Transformation and New Purpose: How Courts Are Applying Fair Use After Goldsmith v. Warhol (2024).
- The Copyright Play: AI, Section 52, and the Acts of Fair Dealing, NLS Forum (2025).