

India: A Satirical Case Or Is There One, Already?

written by Prithiviraj Senthil Nathan | May 21, 2020



HC outlines Satire in *Ashutosh Dubey vs Netflix Inc*

The Delhi High Court in the matter of *Ashutosh Dubey vs Netflix, Inc & Ors*^[1], dated May 5, 2020, refused to grant an interim stay on the Netflix's web series "Hasmukh" against the contention of the plaintiff who alleged certain dialogues in the show to be disparaging and highly defamatory to the legal profession, in the eyes of the general public.

The court reasoned its order on the ground that the impugned comments did not cause injury to the plaintiff or to a definite group to which the plaintiff belonged. While doing so, the court made some interesting observations on satire as well. This article will take note of the said observations of the Delhi High Court and analyses satire from the perspective of intellectual property laws.

Brief Facts^[2]

Netflix aired a web series *Hasmukh* which is a dark comedy about a small-town comedian namely *Hasmukh* ('Protagonist') who arrives in Mumbai to pursue his career in stand-up comedy. In the web series, the Protagonist has been shown to have a unique trait whereby he can only successfully perform his stand-up comedy act if he commits murders prior to his performances and makes satirical jokes in relation to the murder victims during such performances. In line with the central theme, in Episode 4 of the web series titled 'Bambai Mein Bambu', the Protagonist has been shown to have a harrowing experience with an aberrant lawyer upon his arrival in Mumbai.

The character of the said lawyer in the web series is an immoral, dishonest, greedy, violent, threatening lawyer with underworld connections, who not only tries to dupe the Protagonist into executing an unfavorable contract but also quotes a very high professional fee for drafting the contract. Subsequent to this instance, in sync with the theme of the web series and as would be expected by any viewer of the Web-Series, the Protagonist performs a stand-up comic act, wherein he makes reference to 'lawyers in Mumbai' (Time stamp 05:05 to 04:15).

These references, as alleged by the plaintiff contained derogatory remarks against the entire legal fraternity. The plaintiff filed a suit against Netflix seeking a stay against the further airing of the web series. The court refused to grant a temporary stay on the basis that a) no injury has been caused to the plaintiff and b) granting an interim stay would amount to

interference in the freedom of speech and expression guaranteed under Article 19 (1) (a) of the Constitution of India.

Note: Hasmukh's case was argued and decided only on the basis of the aforementioned grounds. The points with respect to the intellectual property raised in this Article are made on academic interest and have nothing to do with the said case.

While doing so, Justice Sachdeva in paras 22 and 24, made significant observations on satire and stressed its importance in the context of freedom of speech and expression. The extracts are reproduced herein below:

"22. It is a known fact that a stand-up comedian highlights a particular point and exaggerates the same to an extent that it becomes a satire and a comedy. People do not view the comments or jokes made by stand-up comedians as statements of truth but take them with a pinch of salt with the understanding that it is an exaggerations for the purposes of exposing certain ills or shortcomings.

24. 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 an exaggeration. It is a witty, ironic, and often exaggerated portrayal of a subject".

This could be one of the very few instances in India where the court has tried to interpret the legal meaning of satire. It is interesting to note that, in 2019, the Supreme Court of India in Indibily Creative Pvt. Ltd. vs Govt. Of West Bengal, on 11 April 2019[3] had for the very first time ordered compensation to the petitioner (producer of the film) whose freedom of expression under Article 19(1)(a) was violated by the State Government's decision to declare an unofficial ban on a satirical film. In a paragraph dealing with the importance of satire to any system of free expression, Chandrachud J. observed 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. It has the unique ability to quickly and clearly make a point and facilitate understanding in ways that other forms of communication and expression often do not.

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. For example, when satire targets society's marginalized, it can have the power to confirm and strengthen people's prejudices against the group in question, which only marginalizes and disenfranchises them more."[4]

Parody and Satire: One and the same?

Indian jurisprudence so far has treated parody and satire the same, be it in the light of freedom of expression or intellectual property protection. While this treatment does not impact from the prism of the freedom of expression contemplated under Article 19(1)(a) of the Constitution[5], the position would be different from the perspective of the intellectual property laws. 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. In Campbell v. Acuff-Rose Music, Inc[6]., Justice Souter, while

differentiating parody and satire observed the following:

"Parody needs to mimic an original to make its point, and so has some claim to use the creation of its victim's (or collective victims') imagination, whereas satire can stand on its own two feet and so requires justification for the very act of borrowing."^[7]

The court went on and defined satire as a 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."*^[8] About parody, he observed it be *"second work by a different author that imitates the characteristic style of an author" of prior work in such manner as to ridicule or criticize the copied work.*^[9]

It is pertinent to note that in the said case, there was a dispute that arose from a take-off of Roy Orbison's "Oh, Pretty Woman" wherein the defendant produced a version of the song with new lyrics giving an absolutely different perspective on the subject matter. The defendants claimed the defense of 'fair use' because their song was a parody. While the Supreme Court of the United States agreed, it explained that the parody was entitled to a fair use defense while satire was not.

Treatment of Satire under Indian IP laws?

Unlike in the US, in India, there are no case laws that expressly distinguish parody from satire. From the perspective of the Indian Copyright Act, 1957 satire (much like a parody) in the form of criticism should be covered under the fair dealing defense.

From *Blackwood and Sons Ltd. And Ors. vs A.N. Parasuraman And Ors*,^[10] one can make an inference that satire a) so long does not compete with the original work to derive profit and b) the motive of the satire is unfair in the sense of being improper or oblique, fair dealing defense would be entitled.

Similarly in *Civic Chandran v Ammini Amma*^[11] another inference can be made that as long as a satire criticizes original work, then this copying does not constitute improper use of the original and qualifies as fair use or fair dealing.

Further, in *R.G. Anand v. M/s Deluxe Films*^[12], the Supreme Court of India stated, *"Where the theme is the same but is presented and treated differently so that the subsequent work becomes a completely new work, no question of violation of copyright arises"*.

This means that if satire work injects creativity into the parts of the original work (that it copies) and transforms the original work, it shall be entitled to fair dealing defense and shall avail separate copyright protection as well.

In the Trademarks Law, the landmark case where the defense of satire was accepted by the Court over alleged disparagement is *Tata Sons Ltd. v Greenpeace International & Anr*^[13]. In the said case, a dispute arose over a satirical game, Pac- Man style, which portrayed Olive Ridley Turtle being hunted by the "Tata demons" in the form of their well-known trademarks. The mark was used to protest Tata's construction of a port in a sensitive area. The owner of the mark alleged the act tarnished and disparaged their trademark. However, the Court accepted the defense of parody and held that the use of the mark was not intended for commercial usage i.e., for-profit or gain but for the purposes of criticism, fair comment, and parody. It stated

the following:

"The relationship between the trademark and the parody is that if the parody does not take enough from the original trademark, the audience will not be able to recognize the trademark and therefore not be able to understand the humor. Conversely, if the parody takes too much it could be considered infringing, based upon the fact that there is too much theft and too little originality, regardless of how funny the parody is."[14] In India, until tested by the courts, satire, in all likelihood will be treated at par with parodies from the perspective of balancing the freedom of expression and intellectual property laws.

- [1] <https://indiankanoon.org/doc/170570619/>
- [2] Facts are derived from Para 8 of the Order
- [3] <https://indiankanoon.org/doc/55820570/>
- [4] Para 15 of the judgement
- [5] Subject to restrictions contemplated under Article 19(2) of the Constitution
- [6] 510 U.S. 569, 578, 581 (1994).
- [7] ID at 580-1
- [8] ID at 580
- [9] ID at 580
- [10] AIR 1959 Mad 410
- [11] 16 PTC 329 (Ker.) (India)
- [12] 1978 AIR 1613
- [13] 178(2011) DLT 705
- [14] Para 41

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