

The Idea–Expression Dichotomy in Indian Copyright Law

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Abstract—The idea–expression dichotomy in copyright law ensures that while creative expression is protected, underlying ideas remain free for public use. Exceptions such as the merger doctrine and *scènes à faire* prevent monopolization of ideas but often blur the line between idea and expression, complicating copyright enforcement. This paper examines the evolution of the dichotomy, explores these key exceptions, and analyses comparative approaches in the U.S., U.K., and France. Under comparative analysis in India, contradicting judicial decisions such as *Zee Telefilms*, *Anil Gupta*, and *Singardaan* are also discussed to highlight judicial inconsistency. It also highlights the challenges in Indian law due to the absence of statutory codification and argues for clearer legislative guidance. Proposed solutions include defining “idea” and “expression,” codifying relevant exceptions, clarifying the burden of proof, and aligning Indian law with TRIPS and the Berne Convention. The study aims to provide a roadmap for enhancing legal certainty, protecting creators, and promoting innovation while keeping ideas accessible to all.

I. INTRODUCTION

Copyright law is founded on a delicate balance: it seeks to reward creativity by granting exclusive rights to authors while simultaneously ensuring the free flow of knowledge and ideas. Central to this balance is the doctrine of the idea–expression dichotomy, which distinguishes between unprotectable ideas and protectable expressions. While an idea remains in the public domain as the common property of humankind, its creative articulation in the form of an expression enjoys the shield of copyright. This principle ensures that authors are encouraged to create without stifling subsequent innovation or imitation that builds upon shared ideas.

However, the line between idea and expression is often blurred. Doctrines such as the Doctrine of Merger and *scènes à faire* have developed to refine these boundaries. The doctrine of merger prevents monopolization where there are limited ways of

expressing an idea, while the *scènes à faire* doctrine excludes stock elements and standard devices dictated by subject matter or genre. These exceptions are vital to prevent overprotection, but they also complicate the neat application of the idea–expression dichotomy.

In India, the dichotomy has not been expressly codified in legislation and has largely evolved through judicial interpretation. The absence of statutory recognition has led to interpretative uncertainties, particularly when exceptions like merger and *scènes à faire* are invoked. These uncertainties are further compounded by inconsistent judicial decisions that have applied the doctrine differently, leading to ambiguity in distinguishing ideas from expressions. In contrast, other jurisdictions have adopted clearer approaches, either through codification or through consistent jurisprudence, thereby offering greater predictability.

This research paper examines the contours of the idea–expression dichotomy, explores its exceptions, and analyses their impact on India’s copyright framework. It argues for the codification of the doctrine in India, drawing on a comparative analysis with jurisdictions such as the United States, the United Kingdom etc., to demonstrate the necessity of clarity, legal certainty, and alignment with international standards.

II. THE EVOLUTION OF THE IDEA–EXPRESSION DICHOTOMY

The idea–expression dichotomy has evolved as a fundamental principle of copyright law across multiple jurisdictions and international frameworks, ensuring that copyright protects the form of expression rather than underlying ideas, methods, or themes.

In the *United Kingdom*,

the doctrine was judicially developed. In *Hollinrake v. Truswell* (1894),¹ the court held that copyright protects only the form of expression, not the idea or method conveyed in the work. The case concerned dressmaking charts and instructions, and the court clarified that the underlying method or idea of making garments was free for public use; only the specific presentation of that method could be protected.

University of London Press Ltd. v. University Tutorial Press Ltd. (1916)²

The court stated that “originality” under copyright law did not pertain to originality in idea or thought but to the expression of such idea or thought.³ While the Act does not require that the expression be original in form, it must originate from the author and not be copied from another work. This case highlighted that copyright protects the expression of ideas, such as the arrangement, wording, and presentation of examination papers, rather than the ideas themselves. Later, in *Designers Guild Ltd. v. Russell Williams* (2000),⁴ the House of Lords reinforced this by saying that no one can own an idea (like the idea of flowers in a fabric design), but copying the specific details of how that idea is expressed (the colours, shapes, arrangement) amounts to infringement. Thus, through these cases, UK courts shaped the doctrine by making it clear that copyright protects the form and detail of expression, while leaving ideas free for everyone.

In the *United States*,

the idea-expression dichotomy was firmly established in *Baker v. Selden* (1879).⁵ Selden had authored a book entitled “Selden’s Condensed Ledger, or Book-keeping Simplified” (1859), in which he explained a

new system of bookkeeping and included tables and forms illustrating how the system worked. He held copyrights over this book and subsequent improvements. Baker later published a book using a similar system but with different tables and headings. The issue before the Court was whether Baker had infringed Selden’s copyright by using the same accounting system. The U.S. Supreme Court held that while Selden’s book (the expression) was protected, the system of bookkeeping (the idea) was not. To hold otherwise would effectively grant Selden a monopoly over a method, which copyright law does not allow. The Court clarified that copyright protects the author’s particular expression—the text, explanations, and specific tables—but not the underlying method or idea itself. This case fortified the principle that copyright law draws a line between ideas, which remain free for all to use, and expressions, which are protectable.⁶

The doctrine was later refined in *Nichols v. Universal Pictures Corp.* (1930),⁷ where Judge Learned Hand, in the Second Circuit, dealt with similarities between a play and a film. He emphasized that copyright does not protect general themes or stock characters, only the detailed expression of those ideas. In this case, the Jewish-Irish romance and family conflict was considered a general theme (unprotectable), while only specific dialogue and characterizations could qualify as protected expression. Judge Hand introduced the “abstractions test”, which asks how far a work can be stripped of detail before it becomes an unprotectable idea, and remains a guiding tool in distinguishing idea from expression in U.S. copyright law.⁸

In India,

Hollinrake v. Truswell, [1894] 3 Ch. 420 (Eng.)

² *University of London Press Ltd. v. University Tutorial Press Ltd.*, [1916] 2 Ch. 601 (Eng.)

³ Iyer, A. (2021) *University of London Press v. university tutorial press*, IP Matters. Available at: <https://www.theipmatters.com/post/university-of-london-press-v-university-tutorial-press> (Accessed: 21 September 2025)

⁴ *Designers Guild Ltd. v. Russell Williams* (Textiles) Ltd., [2000] 1 W.L.R. 2416 (H.L.) (appeal taken from Eng.)

⁵ *Baker v. Selden*, 101 U.S. 99 (1879)

⁶ KM, J. (2021) *Baker v. Selden*, IP Matters. Available at: <https://www.theipmatters.com/post/baker-v-selden> (Accessed: 21 September 2025).

⁷ *Nichols v. Universal Pictures Corp.*, 45 F.2d 119 (2d Cir. 1930)

⁸ Rantanen, J. (2024) *Nichols v. Universal Pictures* (2nd cir. 1930), Introduction to Intellectual Property Law. Available at: <https://pressbooks.uiowa.edu/intropip/chapter/nichols-v-universal-pictures/> (Accessed: 21 September 2025).

the idea–expression dichotomy was firmly established through

R.G. Anand v. M/S Deluxe Films and Ors. (1978).⁹

R.G. Anand, a playwright, wrote the play Hum Hindustani, which focused on themes of provincialism and inter-community relationships. When the film New Delhi was released, Anand alleged that it copied his play. The Supreme Court, however, ruled in favor of the defendants, holding that copyright protects only the specific form or expression of an idea, not the idea, theme, or plot itself. The Court emphasized several key principles:

- No Copyright in Ideas or Themes: Only the specific expression of an idea (dialogues, scenes, character interactions) is protected, not general themes or plots.
- Substantial Copying Required: Mere similarity in ideas or minor elements is not enough; infringement requires significant reproduction of the original expression.
- Total Impression Test: Courts look at whether an ordinary audience would perceive the second work as a copy of the first.
- Differences Matter: Broad differences in narration, treatment, or character development can negate infringement.
- Burden on Plaintiff: The claimant must prove clear copying of the protected expression.¹⁰

The Court found that although both works shared the general theme of provincialism, there were significant differences in character development, narrative structure, and treatment, negating any claim of infringement. This case remains a cornerstone of Indian copyright law, clarifying that mere thematic similarity does not constitute copyright violation and firmly embedding the idea–expression dichotomy in Indian jurisprudence.

⁹ R.G. Anand v. Deluxe Films, (1978) 4 SCC 118 (India)

¹⁰ (2022) R.G. Anand V M/S Deluxe Films and ors. Available at: <https://lawbhoomi.com/r-g-anand-v-m-s-deluxe-films-and-ors/> (Accessed: 21 September 2025).

¹¹ E. Book Co. v. D.B. Modak, (2008) 1 SCC 1 (India)

¹² Simranjeet and Editor (2023) ‘photographs are identical/imitative’; Delhi High Court Issues Notice to

Other cases such as In Eastern Book Company v. D.B. Modak (2008)¹¹, the Supreme Court held that judgments themselves are public documents and not copyrightable, but editorial inputs like headnotes and formatting can be protected if they show minimal creativity. The Court emphasized that ideas, facts, and legal principles remain free, while only the specific expression of those ideas is protected, reinforcing the idea–expression dichotomy in India.

A recent 2023 judgement In Humans of Bombay Stories Pvt. Ltd. v. People of India,¹² the Delhi High Court held that copyright protects the expression of ideas, not the ideas themselves. The dispute involved alleged copying of photos, stories, and presentation styles. The Court ruled that neither party could replicate the other’s creative works, reaffirming that ideas remain free, while their original expression is protected under the Copyright Act, 1957. These decisions provide strong judicial guidance on the doctrine, yet India lacks a statutory provision that explicitly articulates the idea–expression dichotomy, highlighting a gap between judicial practice and codified law.ⁱ

In the *International Level*,

the idea–expression dichotomy is recognized through major treaties that protect expression but not ideas. While no treaty explicitly uses the term, the TRIPS Agreement (Article 9(2)) clearly states that copyright does not extend to ideas, procedures, methods of operation, or mathematical concepts, only to the original expression of ideas.ⁱⁱ Similarly, the Berne Convention and WIPO Copyright Treaty affirm that ideas, systems, and concepts remain free, while only works fixed in tangible form are protected. This demonstrates that the principle underlying the idea–expression dichotomy is globally acknowledged, providing a framework that complements national

‘People of India’ Portal in a copyright infringement suit by ‘humans of Bombay’, SCC Times. Available at: https://www.scconline.com/blog/post/2023/09/23/delhihc-issues-notice-to-peopleofindia-portal-in-copyright-infringement-suit-by-humansofbombay-legal-news/?utm_source=chatgpt.com (Accessed: 21 September 2025).

jurisprudence and encourages creative expression while keeping ideas accessible to all.

III. EXCEPTIONS TO THE IDEA–EXPRESSION DICHOTOMY

- THE DOCTRINE OF MERGER

It is an exception to the idea–expression dichotomy in copyright law. Normally, copyright protects the expression of an idea, not the idea itself. However, sometimes an idea can only be expressed in one or very few ways, making it inseparable from its expression. In such cases, granting copyright protection would effectively give a monopoly over the underlying idea, which is contrary to the core purpose of copyright law—encouraging creativity while keeping ideas free for public use. Therefore, under the doctrine of merger, the expression is not copyrightable when it merges with the idea.

*Herbert Rosenthal Jewellery Corp. v. Kalpakian*¹³ – The court held that a bee-shaped jewel pin could not be copyrighted because the idea of a bee-shaped design could only be expressed in a very limited manner, so the expression merged with the idea.

*Mattel, Inc. v. Jayant Agarwalla & Others*¹⁴ – The SCRABBLE board game case highlighted that the arrangement of colored tiles, rules, and board layout are essentially the only way to express the underlying game idea. Granting copyright here would create a monopoly over the idea itself, so the claim was denied under the Doctrine of Merger.

*Raabta v. Magadheera*¹⁵ – The storyline of reincarnation merges with its expression because there are limited ways to depict this theme in films. Courts struggled to distinguish whether the copied elements were expression or merely the unprotectable idea, reflecting the practical difficulties of the doctrine.ⁱⁱⁱ

The Doctrine of Merger benefits the idea–expression dichotomy by preventing monopolization of ideas, methods, or themes and ensuring that copyright

protects only original expression, thus encouraging innovation and keeping ideas in the public domain.

However, its application can be challenging, as it is often difficult to determine when an expression merges with an idea, leading to inconsistent judicial outcomes and uncertainty for creators, especially in complex works like films, stories, or games.

- DOCTRINE OF SCÈNES À FAIRE

The term is French, meaning “scene that must be done,” signifying that some scenarios, settings, or motifs are inevitable in a given genre. For example, a detective story might necessarily include a crime scene or a mysterious detective; a romantic comedy may include a meet-cute between protagonists. These recurring patterns are considered incidental to the genre rather than original expression, so copyright does not extend to them.^{iv}

*Cain v. Universal Pictures (1930)*¹⁶ – James M. Cain, author of the book *Current Cinderella*, sold film rights to Universal Pictures for *When Tomorrow Comes*. Upon release, Cain alleged that a scene in the film—where characters seek asylum in a small church during a storm—was copied from another of his stories, *Serenade*. The court, however, held that this scene was an inevitable narrative device arising naturally from the story’s circumstances. Judge Leon Yankwich reasoned that such situations and incidents are recurrent in storytelling, and their inclusion in a work is often unavoidable. The court emphasized that copyright protects original expression, not standard or necessary elements dictated by a genre.^v

*R.G. Anand v. M/s Deluxe Films (1978)*¹⁷ – the Indian Supreme Court addressed a similar principle within Indian copyright jurisprudence. Anand, a playwright, alleged that the film *New Delhi* infringed his play *Hum Hindustani*, which dealt with themes of provincialism and inter-community relationships. The Court held that copyright does not extend to general ideas or themes; it protects only the specific expression of an

¹³ *Herbert Rosenthal Jewellery Corp. v. Kalpakian*, 446 F.2d 738 (9th Cir. 1971)

¹⁴ Verma, V.K., Rastogi, A. and Vivek, V. (2020) *Mattel, Inc. and others v Jayant Agarwalla and others*, Indian Case Law. Available at: <https://indiancaselaw.in/mattel-inc-and-others-v->

jayant-agarwalla-and-others/ (Accessed: 21 September 2025).

¹⁵ *Raabta (2017) (India)* (settled out of court)

¹⁶ *Cain v. Universal Pictures Corp.*, No. 155 (S.D. Cal. 1930)

¹⁷ *R.G. Anand v. M/s Deluxe Films*, (1978) 1 SCC 118 (India)

idea, such as dialogue, scenes, or character interactions.

The benefits of applying the Scènes à Faire doctrine lie in preventing monopolization of standard genre elements, thereby fostering creativity and allowing other authors to explore similar ideas without fear of infringement.

However, its problem in relation to the idea-expression dichotomy is that the line between protectable expression and unprotectable genre conventions can be blurry, leading to uncertainty in infringement cases and making it difficult to determine when copyright protection should apply.

IV. COMPARATIVE ANALYSIS

- USA:

The principle that ideas belong to the public domain is historically deep-rooted. Professor Nimmer traces it to Seneca, who noted that “ideas are common property.” In common law, Yates J.’s dissent in *Millar v. Taylor*¹⁸, recognized that authors may protect expression but not underlying ideas. This became central in *Baker v. Selden* (1879)¹⁹ where Justice Bradley held that authors can protect their method’s expression but not the method itself. Since Baker numerous other courts have upheld copyright’s non-protection of ideas.²⁰

This principle is codified in Section 102(b) of the U.S. Copyright Act, which states:

“In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.”²¹

Complementing this, 17 U.S.C. §101 defines “pictorial, graphic, and sculptural works” and

introduces the concept of separability for useful articles:

“Copyright protection extends to artistic form but does not cover mechanical, functional, or utilitarian aspects. Courts apply the separability test to determine whether an artistic element can be conceptually or physically distinguished from the functional aspects of the work.”²²

In *Mazer v. Stein* (1954)²³, the Court applied the separability concept, ruling that a sculptural dancer forming the base of a lamp could be copyrighted as artistic expression, while the lamp’s functional aspect remained unprotected. Later, in *Star Athletica v. Varsity Brands* (2017)²⁴, the Court held that decorative patterns on cheerleading uniforms were copyrightable because the designs could be separated from the uniforms’ utilitarian function. These cases illustrate the practical application of statutory codification and the principle that copyright protects artistic expression, not functional utility.

Similarly, 17 U.S.C. §103 addresses compilations and derivative works:

“Copyright protection extends only to the author’s original contribution and does not grant rights over preexisting works or ideas. A new author may claim copyright in the arrangement, selection, or added material, but the underlying ideas or existing works remain available for public use.”²⁵

This ensures that while a new author can claim copyright in their arrangement, selection, or additional material, the underlying ideas or existing works remain available for public use.

The judiciary has developed several doctrines and tests to operationalize the idea-expression dichotomy. The abstraction test, introduced in *Nichols v. Universal*

¹⁸ 1769) 4 Burr. 2303, 98 ER 201

¹⁹ 101 U.S. 99 (1879)

²⁰ *Holmes v. Hurst* 174 U.S. 82 (1899); *Nichols v. Universal Pictures Corporation* 45 F.2d 119 (2d Cir. 1930); *Harper & Row v. Nation Enterprises* 471 U.S. 539 (1985); *Feist Publications v. Rural Telephone Services Company* 499 U.S. 340 (1991); *Mazer v. Stein*; *Golan v. Holder* 565 U.S. 302 (2012) and recently *Folkens v. Wylands Worldwide* (9th Cir. 2018).

²¹ 17 U.S.C. 102 - Subject matter of copyright: In general - Content Details - USCODE-2010-title17-chap1-sec102

²² 17 U.S.C. § 101 - U.S. Code Title 17. Copyrights § 101 | FindLaw

²³ MAZER et al. v. STEIN et al. | Supreme Court | US Law | LII / Legal Information Institute

²⁴ *Star Athletica, LLC v. Varsity Brands, Inc.* | Oyez

²⁵ 17 U.S.C. § 103 - U.S. Code Title 17. Copyrights § 103 | FindLaw

Pictures (1930)²⁶, distinguishes detailed expression from general ideas, which are unprotectable. The merger doctrine applies when an idea can only be expressed in limited ways, as in *Morrissey v. Procter & Gamble* (1967)²⁷ and *Herbert Rosenthal Jewelry Corp. v. Kalpakian* (1971)²⁸, where expression merged with the idea and was therefore unprotectable.

The functional test, articulated in *Lotus v. Paperback Software* (1990)²⁹, treats functional systems or methods, such as software commands, as inseparable from the idea and unprotectable, preventing copyright from covering purely functional elements. For complex works like computer programs, the Abstraction–Filtration–Comparison test (*Computer Associates International, Inc. v. Altai, Inc.* (1992)³⁰), breaks a program into abstraction levels, filters out functional or externally dictated elements, and compares the remainder to determine infringement, protecting original expression without monopolizing ideas or functions.

Modern application of the idea–expression dichotomy appears in *Jangle Vision, LLC v. Alexander Wang, Inc.*³¹. In this case, Jangle Vision alleged that Alexander Wang copied its “Jangle Vision Twins” characters for a fashion advertisement. The Court held that similarities such as bodysuits, masks, and slender body types constituted unprotectable ideas. Only the specific, original expression of the characters—their visible faces, postures, and unique suit designs—was protected. These ruling underscores the principle that copyright does not extend to general visual concepts or tropes. Similarly, in *Tangle Inc. v. Aritzia, Inc.*³², the style of interlocking curved-piece sculptures was considered an unprotectable idea, with copyright covering only the fixed, specific works, reinforcing that copyright protects expression, not abstract styles or concepts.³³

The U.S. copyright framework applies these doctrines to computer programs, granting authors exclusive rights for life plus fifty years, while recognizing fair use for research, teaching, and personal purposes. The Abstraction–Filtration–Comparison test protects

original expression while excluding merged, functional, or public elements, balancing creative rights and public access.

While U.S. law provides codified clarity and judicial tools for the idea–expression dichotomy, Indian copyright law lacks statutory codification and relies on case-by-case interpretation under the Copyright Act, 1957. The U.S. system exemplifies a sophisticated blend of statutory and judicial approaches to uphold the dichotomy.

- UK:

The United Kingdom recognizes the idea–expression dichotomy as firmly as the United States, but the doctrine is not written into statute. Instead, it rests on centuries of judicial development, making UK law a strong common-law counterpart to the U.S. system while differing in form and clarity.

Unlike the United States, the UK’s Copyright, Designs and Patents Act 1988 (CDPA) contains no explicit clause stating, “there is no copyright in ideas.” The principle emerged from eighteenth-century common law, reinforced by TRIPS, the WIPO Copyright Treaty, and the EU Software Directive. Early cases include *Millar v Taylor* (1769) and *Donaldson v Beckett* (1774), where Justice Yates memorably described ideas as “birds in a cage...once released they are free.” Lobbying behind the Engravers’ Act 1735 emphasized that protection arises from the creator’s skill and labour, not the subject matter. Today, the House of Lords calls the doctrine “trite law” and the Court of Appeal a “cliché of copyright law,” though Parliament has never codified it.

The core principle is straightforward: copyright protects original expression, not abstract ideas. Courts emphasize that a “work” must be a concrete, perceivable form—“an abstract concept is not a work at all.” In *Designers Guild v Russell Williams* (2000)³⁴, Lord Hoffmann noted that “copyright protects foxes better than hedgehogs,” meaning more specific expression receives stronger protection. Historically, before the 1911 Act, only expression was protected; after 1911, the rule clarified that thoughts, plans, or

²⁶ 45 F.2d 119 (2d Cir. 1930)

²⁷ 379 F.2d 675 (1967)

²⁸ 446 F.2d 738 (1971)

²⁹ 740 F. Supp. 37 (D. Mass. 1990)

³⁰ 982 F.2d 693 (2nd Cir. 1992)

³¹ (2:21-cv-06627)

³² No. 23-3707 (9th Cir. 2025)

³³ <https://aeonlaw.com/understanding-the-idea-expression-dichotomy-in-copyright-law/>

³⁴ UKHL 58

general facts are unprotected unless arranged with originality.

Case law illustrates the doctrine's reach. In *Kenrick v Lawrence* (1890)³⁵ a hand marking a ballot was unprotectable. *Donoghue v Allied Newspapers* (1938)³⁶ held jockeys' factual racing stories were ideas, not expression. In *Designers Guild*, Lord Hoffmann identified two limits: (1) functional or inventive concepts described in a work remain free for all unless separately patented, and (2) even literary or artistic ideas may be so commonplace that copying them does not amount to taking a "substantial part." Other notable decisions include *Baigent v Random House* (2007) on historical research and theories, *Norowzian v Arks* (2000)³⁷ on film-editing style, *IPC Media v Highbury-Leisure*, *Sawkins v Hyperion*, *Ravenscroft v Herbert*, and *Springfield v Thame*³⁸, all confirming that facts, news, emotions, and stylistic elements lie outside copyright.

Although the CDPA has no schedule of exclusions, courts consistently treat the following as unprotectable "ideas": schemes, systems, methods, information, historical facts, theories, arguments, general themes, styles or techniques, news of the day, and thoughts or emotions. These categories lie outside the CDPA, as section 1(1)(a)–(c) limits protection to original literary, dramatic, musical, or artistic works, sound recordings, films, broadcasts, and typographical arrangements of published editions.

Applying the doctrine is challenging, as there is "no clear principle" to distinguish idea from expression, so courts decide case-by-case using three tools: (i) originality, requiring the author's skill, labour, and judgment; (ii) the substantial-part test, measuring qualitative infringement; and (iii) merger reasoning, where limited expression would otherwise grant a monopoly. The rationale is rooted in public policy: keeping ideas free promotes speech, learning,

competition, and creativity—tracing back to the Statute of Anne (1710). Knowledge remains public, while only the author's unique expression receives copyright protection.

Scholars have nevertheless criticized the lack of codification. The University of Nottingham's paper *The Futility of the Idea/Expression Dichotomy in UK Copyright Law* observes that "the absence of statutory provisions entrenching the idea/expression dichotomy in successive UK copyright statutes casts serious doubts on its legitimacy,"³⁹ and that "it becomes extremely difficult to distinguish between ideas and expression...application is largely based on the discretion of the particular courts giving rise to numerous ambiguities." The 2011 Hargreaves Review⁴⁰ likewise warned that the UK's "archaic" and unclear copyright rules obstruct innovation and economic growth, especially in the digital environment.

India follows the UK model, protecting only expression, lacking a statutory clause excluding ideas, and relying on judicial precedent to distinguish idea from expression. Comparatively, India aligns more with the UK's common-law approach than the U.S. codified system.

- FRANCE:

France provides a well-defined, codified framework for the idea–expression dichotomy through its *Code de la propriété intellectuelle* (CPI), making it clear that copyright safeguards only the concrete expression of a work and never the underlying idea. This statutory clarity is the cornerstone of the French system and sharply distinguishes it from jurisdictions like India, where the principle is primarily judge-made.

Article L111-1⁴¹ establishes that an author acquires an "exclusive intangible property right" in a work "by the sole fact of its creation," but only in respect of the work itself. Read alongside Article L112-1⁴², which

³⁵ L.R. 25, Q.B.D. 99

³⁶ 1 Ch 106

³⁷ EMLR 67

³⁸ [2005] EWHC 283; [2005] EWCA Civ 565

³⁹ The Futility of the Idea/Expression Dichotomy in UK Copyright Law - The University of Aberdeen Research Portal

⁴⁰

<https://researchbriefings.files.parliament.uk/documents/SN06430/SN06430.pdf>

⁴¹

https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000006875225

⁴²

https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000032227331

protects “works of the mind, whatever their genre, form of expression, merit or purpose,” the law expressly limits protection to a work’s *form of expression*. This means abstract concepts, methods, or principles remain unprotected. Article L112-2⁴³ reinforces the point by providing a detailed, though non-exhaustive, catalogue of protected categories—books, music, choreography, films, photographs, software, fashion creations and more—illustrating that what receives protection is the specific expressive medium.

The CPI also balances exclusive rights with public freedoms through Article L122-5⁴⁴, which sets out carefully drafted exceptions. These include private copying, brief quotations for criticism or research, press reporting of public speeches, parody, certain educational and archival uses, text-and-data mining, and accessibility measures for persons with disabilities. Each of these limitations presupposes that a protected expression exists in the first place; they do not restrict the free use of ideas themselves. This legislative structure underscores that French copyright law regulates only the author’s particular expression while leaving the underlying idea in the public domain.

European Union directives, notably the Information Society (InfoSoc) Directive, complement the French code by explicitly stating that copyright does not cover “ideas, procedures, methods of operation or mathematical concepts as such.” The Court of Justice of the EU has consistently required that a protected work be the author’s “own intellectual creation,” reinforcing the French emphasis on originality and personal imprint (*empreinte de la personnalité*). French courts apply this standard consistently, ensuring that trivial or purely functional expressions do not monopolize the underlying ideas.

France codifies the idea–expression boundary, giving creators predictable rights while keeping ideas free for public use. In contrast, Indian copyright law lacks such statutory clarity and relies on scattered judicial

precedents, creating greater uncertainty about where ideas end and protectable expression begins.

- INDIA:

In India, the idea–expression dichotomy in copyright law was firmly established by the Supreme Court in the landmark case *R.G. Anand v. Deluxe Films* (1978). The Court clarified that copyright extends only to the specific expression of an idea and not to the idea itself. General themes, plots, concepts, and storylines remain part of the public domain. It further warned that granting copyright protection to mere ideas would hinder creative freedom and limit artistic innovation. However, despite this settled principle, later judicial decisions have taken a broader view of what constitutes “expression.” In doing so, some courts have blurred the distinction between idea and expression, gradually extending protection to elements that *R.G. Anand* had deliberately left within the public domain.

1. Shamoil Ahmad Khan v. Falguni Shah (Singardaan Case, 2020)⁴⁵

Facts:

- Author Shamoil Ahmad Khan wrote a short story titled *Singardaan* (1993).
- The story revolves around:
 - A prostitute’s vanity box (*singardaan*) being stolen during communal riots.
 - The man’s wife and daughters gradually adopting the traits of the prostitute—symbolising moral contamination.
- Defendants produced a web series with the same title and core storyline but added new scenes and characters.
- The author sued for copyright infringement.

Court’s Decision:

- The Bombay High Court held that the central theme, moral essence, plot structure, and storyline were protectable elements.
- It found substantial similarity and considered the web series an unauthorized adaptation.

⁴³

https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000006278875

⁴⁴

https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000048603495

⁴⁵ Shamoil Ahmad Khan v. Falguni Shah & Ors., MANU/MH/0590/2020 (Bom. H.C. May 26, 2020).

- However, no injunction was granted since the series had already been released; compensation was suggested instead.
 - This case departs from *R.G. Anand* by treating the plot, theme, and core storyline as protectable expression. This directly contradicts *R.G. Anand*, which held that only the specific expression (dialogues, scenes, treatment) is protected, while ideas and storylines remain in the public domain. By protecting the narrative essence rather than its expression, the Court blurred the idea-expression distinction, creating a risk of overprotection and limiting creative freedom.
2. *Zee Telefilms v. Sundial Communications (2003)*⁴⁶

Facts:

- Sundial developed a TV show concept "*Karishma – The Miracles of Destiny*" with character sketches, plotlines, and scripts.
- They shared it with Zee Telefilms for collaboration. Zee initially agreed but later backed out.
- Soon after, Zee aired a show with the same title, concept, and similar characters and storyline.
- Sundial sued for copyright infringement and breach of confidentiality

Court's Decision

- The Bombay High Court held that the detailed concept, plot structure, and characterisation shared by Sundial were not just ideas but copyrightable expressions.
- It found that Zee had access to the material and used it, indicating copying.
- An interim injunction was granted restricting Zee from telecasting the show.
- This decision has been criticised for expanding the scope of 'expression' to include story formats and detailed concepts that *R.G. Anand* had clearly kept outside the ambit of copyright protection. By extending protection to structured ideas and narrative formats, the Court blurred the idea-expression divide and risked granting monopolies over creative themes that should remain open for reinterpretation and innovation.

⁴⁶ *Zee Telefilms Ltd. v. Sundial Communications Pvt. Ltd.*, 2003 (5) Bom. C.R. 404 (Bom. H.C. Mar. 27, 2003).

3. *Anil Gupta & Anr. v. Kunal Dasgupta & Ors (Swayamvar Case, 2002)*⁴⁷

Facts:

- Anil Gupta developed a reality TV show concept called "*Swayamvar*", inspired by the traditional practice where a woman selects her groom from multiple suitors.
- He created a detailed format—rules, sequence, participant structure—and shared it confidentially with Sony TV during production discussions.
- Sony later announced a similar show without his consent, using the same format and structure.
- Gupta sued for copyright infringement and breach of confidentiality.

Court's Decision:

- The Delhi High Court held that the concept alone is not protectable, but when an idea is expressed through a specific format, structure, flow, rules, and presentation, it becomes a copyrightable expression.
- It further observed that the plaintiff had shared the format in commercial confidence, and using it without permission amounted to misappropriation and breach of trust.
- The Court granted an interim injunction against the defendants, restraining them from using or broadcasting any show based on the plaintiff's concept.
- This case contradicts *R.G. Anand* because it granted protection not just to the expression of an idea but to the format and structured concept itself. While *R.G. Anand* held that ideas, themes, and formats are free for all, the Court in *Swayamvar* treated a detailed concept as copyrightable expression, blurring the idea-expression divide.

Because of such judicial contradictions, the clear principles laid down in *R.G. Anand* are not being applied uniformly by the courts. This inconsistency highlights the need to codify the idea-expression dichotomy in the Copyright Act to ensure clarity, consistency, and protection of creative freedom.

⁴⁷ *Anil Gupta & Anr. v. Kunal Dasgupta & Ors.*, 2002 (25) PTC 1 (Del. H.C.).

V. WHAT NEEDS TO BE INCLUDED IN THIS CODIFICATION

1. Explicit Statutory Recognition of the Idea–Expression Dichotomy: Include a clear provision in the Copyright Act, 1957 stating that copyright protection extends only to the expression of ideas, not the ideas, procedures, methods, systems, concepts, or principles themselves. This mirrors U.S. Section 102(b), which explicitly excludes ideas, methods, and principles from copyright, and France’s Article L112-1, providing legal clarity and preventing judicial ambiguity.

2. Define “Expression” and “Idea”:

Introduce statutory definitions distinguishing between:

Ideas: general concepts, themes, methods, or styles not eligible for copyright.

Expression: the tangible form of creative work, e.g., text, visual design, choreography, musical notation.

This reduces inconsistencies like those seen in *R.G. Anand v. Deluxe Films* or *Eastern Book Company v. D.B. Modak*, where judges differed on what constitutes a “substantial part,” similar to the way U.S. courts apply the abstraction–filtration–comparison test to distinguish idea from expression in software and literary works.

3. Codify Doctrines Operationalizing the Dichotomy: Incorporate merger, scènes-à-faire, and functional/separability tests into statutory language to guide courts in complex cases:

- a. Merger Doctrine: Applied when an idea can only be expressed in limited ways (*Morrissey v. Procter & Gamble*, 1967, U.S.).
- b. Separability/Functional Test: Distinguishing artistic elements from utilitarian features (e.g., *Mazer v. Stein*, 1954, U.S.).
- c. Abstraction–Filtration–Comparison Test: For software or layered works, separating unprotectable ideas, functional elements, and pre-existing material. This framework would give judges a clear, consistent guide, reduce uncertainty, and align India with codified international practices.

4. Allocation of Burden of Proof:

Specify that in copyright infringement cases, the plaintiff must prove copying of protected expression, not mere ideas or themes.

5. Clear Exceptions for Public Interest Uses:

Codify exceptions for: criticism, research, education, parody, news reporting, archival use. This ensures the law balances creator rights with public access, similar to France’s Article L122-5 and U.S. fair use provisions under 17 U.S.C. §107

6. Alignment with International Obligations:

Explicitly reflect TRIPS Article 9(2) in Indian law to ensure compliance with WTO obligations and give foreign investors' confidence that ideas are free while expression is protected, aligning with the clear statutory framework seen in the U.S. and France.

VI. NEED FOR CODIFICATION IN INDIAN LAW

- Remove Judicial Uncertainty- Indian courts recognize that copyright protects expression, not ideas, as in *R.G. Anand v. Deluxe Films*⁴⁸. Later High Court rulings differ on what constitutes a “substantial part” or when a theme or character is merely an idea. In *Eastern Book Company v. D.B. Modak*⁴⁹ court noted that “the line between idea and expression is thin and often blurred.” Scholars note that such fact-specific judgments leave creators and investors unable to predict outcomes, increasing litigation costs and discouraging settlement (Sharma, “Analytical Study of Idea–Expression Dichotomy,” *JLSR* 2023⁵⁰). Codification could supply a uniform standard, sparing parties the uncertainty of judge-made boundaries.
- Align with International Obligations- Article 9(2) of TRIPS, binding on India, provides that copyright protects expressions, not ideas, procedures, or methods. While Indian courts (e.g., *R.G. Anand v. Deluxe Films*, 1978) apply this principle, the Copyright Act, 1957 lacks a corresponding clause. Explicit statutory wording would make it clear to businesses, courts and foreign investors that India’s domestic law fully

⁴⁸ AIR1978SC1613, (1978)4SCC118, [1979]1SCR218

⁴⁹ (2008) 1 SCC 1; 2008 (36) PTC 1 (SC)

⁵⁰ An Analytical Study of Relevancy of Idea Expression Dichotomy under Copyright Law By Vaishali Sharma

reflects its treaty obligations, avoiding arguments about whether the principle is merely “judge-made.”

- Protect Creators and Industries- India’s film, music, and software sectors generate billions, yet creators face risk when the idea-expression boundary is unclear. In *Humans of Bombay v. People of India* dispute (Delhi High Court 2023)⁵¹, storytellers feared monopolization of visual styles, while defendants feared harassment suits. The court affirmed that narrative concepts are unprotectable, but only after costly litigation. Clear rules on protectable expression would reduce business risk and promote industry growth.
- Prevent Over- or Under-Protection- Codifying the idea-expression dichotomy in India would prevent over- or under-protection. Reliance on doctrines like merger or scènes-à-faire can produce inconsistent outcomes, as in *Eastern Book Company v. D.B. Modak*⁵² (excessive protection of legal headnotes) and *Micolube India v. Maggon Auto Centre* (2010)⁵³ (denial of relief for near-identical advertising visuals). Clear statutory guidance would safeguard original expression without monopolizing ideas, promoting fairness, predictability, and innovation while protecting both creators and public interest.
- Clear Statutory Language for Uniform Standards- India’s federal system allows copyright disputes across multiple High Courts, leading to inconsistent interpretations of what constitutes protectable expression versus unprotectable ideas. Codifying the idea-expression dichotomy with clear statutory language would provide uniform standards, reduce uncertainty, define boundaries of expression, allocate burdens of proof, and preserve public-use interests, giving creators and industries confidence to innovate and compete fairly.

VII. CONCLUSION

As Justice Yates once mused in the U.K., ideas are like “birds in a cage... once released they are free.” India’s copyright law, however, often leaves these birds fluttering in a maze of courtrooms, unsure of where idea ends and expression begin. Codifying the idea-expression dichotomy would open the cage of uncertainty, giving creators the wings to innovate while ensuring ideas remain free for all. With clear statutory guidance, India can transform its copyright framework into a sky where creativity soars, ideas remain unchained, and innovation finds safe landing.

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⁵¹ 2023 SCC OnLine Del 6390

⁵² 2008 (36) PTC 1 (SC)

⁵³ MIPR2008(1)294, 2008(36)PTC231(DEL)