
BALANCING COPYRIGHT AND FREEDOM OF EXPRESSION: CONSTITUTIONAL CHALLENGES IN THE DIGITAL ERA

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ABSTRACT

The rapid expansion of the digital environment has significantly transformed the dynamics between copyright protection and freedom of expression. In the era of digital media, the boundaries of creative ownership and communicative liberty have become increasingly blurred. Copyright law, which safeguards the rights of creators and incentivizes innovation, often collides with the constitutional guarantee of free speech under Article 19(1)(a) of the Indian Constitution. This paper examines the tension between these two fundamental interests, emphasizing the challenges that emerge in the digital age such as online content sharing, intermediary liability, censorship through takedown mechanisms, and digital surveillance. The study explores the evolution of copyright jurisprudence in India, juxtaposed with international developments under TRIPS, WIPO treaties, and the Berne Convention. By analysing key judicial pronouncements such as *R.G. Anand v. Deluxe Films* and *Super Cassettes Industries Ltd. v. Myspace Inc.*, it seeks to understand how Indian courts interpret the conflict between private rights and public interests. Furthermore, the paper discusses how digital platforms, social media, and artificial intelligence have reshaped copyright enforcement, leading to both overprotection and restriction of expression. The research concludes by proposing a balanced legal framework that harmonizes creative rights with constitutional freedoms through a nuanced approach that integrates fair use, transparency in content regulation, and the development of a digital rights charter. The ultimate goal is to safeguard intellectual creativity while ensuring that democratic communication and cultural participation remain unimpeded in the information society.

Keywords: Copyright, Freedom of Expression, Digital Era, Article 19(1)(a), Fair Use, Intermediary Liability, Indian Constitution, Digital Rights.

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INTRODUCTION

The twenty-first century has ushered in an era defined by technological innovation and unprecedented digital communication. The convergence of law, technology, and expression has transformed how ideas are created, shared, and consumed. Within this transformation lies a critical constitutional dilemma the reconciliation between copyright protection and freedom of expression.

Copyright laws exist to reward creativity and promote innovation, granting authors control over the reproduction and distribution of their works. Conversely, freedom of expression forms the bedrock of democracy, empowering individuals to share ideas, opinions, and knowledge without undue interference. In the digital ecosystem, however, these principles often clash. The proliferation of online platforms, social media, and user-generated content challenges traditional notions of ownership and control. The tension between intellectual property enforcement and the public's right to information becomes particularly acute when copyright protection is leveraged to suppress speech or limit access to knowledge.

The digital era has revolutionized content creation, distribution, and consumption, enabled global creativity while introduced new challenges in safeguarding intellectual property. As digital platforms democratize content generation, they concurrently amplify concerns about unauthorized replication and distribution. Copyright issues in the digital era have become increasingly complex over the years due to the ease of copying and distributing digital content.

The rapid dissemination of content through social media, streaming services, and sharing platforms has outpaced traditional copyright enforcement, prompting the need for innovative solutions that balance creative expression, fair use, and creators' rights within the dynamic landscape of digital copyright.

The challenge for modern legal systems, therefore, lies in balancing these competing interests in a manner that protects creators while ensuring that copyright law does not become an instrument of censorship. This paper seeks to explore this intersection through the lens of Indian constitutional jurisprudence, focusing on the evolving legal landscape shaped by technological advancement.

BACKGROUND OF THE STUDY

The origin of copyright law can be traced to the Statute of Anne (1710) in England⁴, which recognized authors as the primary beneficiaries of their works. In India, the legal framework was initially modelled on British law, culminating in the Copyright Act of 1957⁵, which remains the principal legislation governing the field.

Simultaneously, the Indian Constitution enshrines freedom of speech and expression under Article 19(1)(a)⁶, a right subject to reasonable restrictions under Article 19(2)⁷. The intersection of these two legal domains intellectual property and fundamental rights creates a complex jurisprudential puzzle.

The digital revolution has amplified this complexity. The emergence of platforms such as YouTube, Instagram, and X (formerly Twitter) has democratized creativity while also facilitating rampant copyright infringement. The introduction of the Information Technology Act, 2000, and its intermediary guidelines further extended copyright enforcement to the digital sphere, bringing new actors technology intermediaries into the legal framework.

However, with stricter copyright enforcement mechanisms came concerns over freedom of expression. Automated takedowns, copyright strikes, and the chilling effect of overbroad enforcement have raised constitutional concerns. Thus, the need for a balanced approach that preserves both the creator's rights and the individual's right to communicate freely has become more pressing than ever.

OBJECTIVES OF THE STUDY

1. To examine the constitutional and statutory dimensions of copyright and freedom of expression in India.
2. To analyze the conflict between these two principles in the context of digital media and online communication.

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⁵ British law, culminating in the Copyright Act of 1957

⁶ The Indian Constitution enshrines freedom of speech and expression under Article 19(1)(a)

⁷ The Indian Constitution the right subject to reasonable restrictions under Article 19(2)

3. To evaluate judicial interpretations and case law addressing the balance between intellectual property and free speech.
4. To identify the challenges emerging in the digital era — including intermediary liability, AI-generated content, and online censorship.
5. To propose policy recommendations and legal reforms that can harmonize copyright enforcement with constitutional guarantees.

LEGAL FRAMEWORKS IN INDIA

1. CONSTITUTIONAL PROVISIONS

The Indian Constitution, under Article 19(1)(a)⁸, guarantees every citizen the right to freedom of speech and expression. However, this right is not absolute and is subject to the restrictions laid down under Article 19(2), which allows limitations in the interest of public order, decency, morality, defamation, and other specified grounds.

Though intellectual property rights are not explicitly recognized as fundamental rights, they derive statutory legitimacy from Entry 49⁹, List I (Union List) of the Seventh Schedule¹⁰, empowering Parliament to legislate on copyright. THE COPYRIGHT ACT, 1957, thus operates under this constitutional mandate.

2. THE COPYRIGHT ACT, 1957

The Act provides exclusive rights to authors and creators over their original works, including literary, dramatic, musical, and artistic creations. It also recognizes exceptions such as “fair dealing” under Section 52¹¹, which allows limited use of copyrighted works for purposes like criticism, review, reporting, or research a crucial safeguard for free expression.

3. THE INFORMATION TECHNOLOGY ACT, 2000

The IT Act introduced the concept of intermediary liability under Section 79¹², providing

⁸ Statutory legitimacy from Entry 49

⁹ List I (Union List) of the Seventh Schedule

¹⁰ List I (Union List) of the Seventh Schedule

¹¹ The Copyright Act, 1957 It also recognizes exceptions such as “fair dealing” under Section 52

¹² The Information Technology Act, 2000 The IT Act introduced the concept of intermediary liability under Section 79

conditional immunity to platforms hosting user-generated content. However, the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, have reignited debates over censorship and over-compliance, as intermediaries often err on the side of caution by removing legitimate expression.

4. INTERNATIONAL COMMITMENTS

India is a signatory to several international conventions, including the Berne Convention, TRIPS Agreement, and WIPO Copyright ¹³Treaty, which shape its domestic copyright policy. These agreements mandate protection of creators' rights while balancing access and dissemination of knowledge principles that resonate with constitutional free speech values.

CONTEMPORARY CHALLENGES AND ISSUES

OVER-PROTECTION AND CENSORSHIP

In the digital era, copyright enforcement mechanisms such as automated content removal often led to the suppression of lawful expression. The use of algorithms to detect infringement frequently results in the wrongful takedown of transformative, parodic, or critical content.

INTERMEDIARY LIABILITY AND SELF-CENSORSHIP

Intermediaries, fearful of losing statutory immunity, over-regulate content. This creates a “chilling effect” where platforms suppress user expression pre-emptively to avoid legal risks.

FAIR USE IN THE DIGITAL CONTEXT

The traditional notion of “fair dealing” under Section 52 is ill-suited for new technologies like AI, remix culture, and digital archiving. The absence of flexible fair use provisions hampers creativity and innovation.

ARTIFICIAL INTELLIGENCE AND AUTHORSHIP

AI-generated content poses profound questions about authorship and ownership. When algorithms create artistic or literary works, determining the copyright holder becomes legally

¹³ International Commitments the Berne Convention, TRIPS Agreement, and WIPO Copyright

complex.

ACCESS TO KNOWLEDGE VS. MARKET INTERESTS

Educational and research institutions face restrictions due to paywalls and licensing regimes. The balance between public access and economic rights remains contested.

Judicial Ambiguity, Courts in India have adopted inconsistent approaches, sometimes prioritizing economic rights over expressive freedoms, leading to legal uncertainty.

CASE IN THE JUDICIAL PERSPECTIVES

R.G. ANAND V. DELUXE FILMS (1978)¹⁴ – The Supreme Court clarified that copyright does not protect ideas but only their expression. This case reinforced the importance of creative freedom and discouraged monopolization of thought.

SUPER CASSETTES INDUSTRIES LTD. V. MYSPACE INC. (2011)¹⁵ – The Delhi High Court addressed intermediary liability for copyright infringement on digital platforms, highlighting the tension between innovation and enforcement.

INDIAN PERFORMING RIGHT SOCIETY V. ADITYA PANDEY (2011)¹⁶ – The Delhi High Court held that rebroadcasting songs by FM channels without a license amounted to infringement, stressing the commercial rights of copyright owners but indirectly impacting access to music.

ACADEMY OF GENERAL EDUCATION V. B. MALINI MALLYA (2009)¹⁷ – The Court underscored that educational use could constitute fair dealing, supporting the dissemination of knowledge.

SHREYA SINGHAL V. UNION OF INDIA (2015)¹⁸ – Though not a copyright case, the Supreme Court struck down Section 66A of the IT Act, reinforcing freedom of expression in the digital domain. This judgment indirectly shapes the discourse on online copyright

¹⁴ R.G. ANAND V. DELUXE FILMS, AIR 1978 SC 1613

¹⁵ SUPER CASSETTES INDUSTRIES LTD. V. MYSPACE INC., 2011 (48) PTC 49 (DEL).

¹⁶ INDIAN PERFORMING RIGHT SOCIETY V. ADITYA PANDEY (2011)

¹⁷ ACADEMY OF GENERAL EDUCATION V. B. MALINI MALLYA (2009)

¹⁸ SHREYA SINGHAL V. UNION OF INDIA, (2015) 5 SCC 1.

enforcement.

These decisions collectively illustrate the judiciary's struggle to maintain equilibrium between intellectual property and fundamental freedoms in a rapidly evolving digital ecosystem.

SUGGESTIONS AND RECOMMENDATIONS

ADOPT A BROADER FAIR USE DOCTRINE:

India should move from a restrictive "fair dealing" approach toward a more flexible fair use model similar to the U.S., allowing creative re-interpretations, parodies, and digital remixes.

TRANSPARENCY IN CONTENT TAKEDOWNS:

Intermediaries should publish periodic transparency reports detailing takedown requests and the rationale for removal, ensuring accountability.

STRENGTHEN JUDICIAL OVERSIGHT:

Content removal or blocking should require judicial scrutiny rather than unilateral administrative or algorithmic decisions.

DEVELOP A DIGITAL RIGHTS CHARTER:

India should codify principles governing the balance between intellectual property and digital free speech, ensuring due process and proportionality.

PROMOTE ACCESS TO KNOWLEDGE:

Encourage open educational resources (OERs), flexible licensing (Creative Commons), and public interest exceptions in copyright law.

ADDRESS AI AND AUTHORSHIP ISSUES:

The law should define AI-assisted creativity and attribute rights accordingly, preventing ambiguity in ownership.

REFORM THE INTERMEDIARY GUIDELINES:

Rules should clearly differentiate between infringing and lawful content, preventing over-blocking and fostering innovation.

CONCLUSION

The balance between copyright and freedom of expression represents one of the most pressing constitutional challenges of the digital era. While copyright incentivizes creativity, excessive enforcement risks stifling the very expression it seeks to encourage. Conversely, unregulated expression can undermine the moral and economic rights of creators. The ideal equilibrium lies in a rights-based approach that prioritizes both innovation and public participation in cultural creation. India's constitutional and statutory framework must evolve to meet digital realities. Judicial sensitivity, legislative clarity, and policy innovation are essential to ensure that the law remains responsive to both creative enterprise and democratic discourse. As technology continues to redefine communication, the future of copyright law will depend on its ability to coexist harmoniously with the fundamental right to speak, create, and share in a free society.

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