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ARTICLE 19 AND MISUSE OF DIGITAL ARRESTS: IMPACT ON FREEDOM OF SPEECH AND EXPRESSION

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Abstract

The rapid digitalization of governance, policing, and communication has fundamentally transformed the bond between the government and its inhabitants in India. Digital technologies have enhanced administrative efficiency, improved access to public services, and strengthened law enforcement capabilities by enabling faster information flow, surveillance, and online investigation mechanisms. However, alongside these benefits, the expanding use of digital tools has also generated new forms of rights violations, particularly in the sphere of personal liberty and freedom of expression. One such emerging and deeply concerning phenomenon is the misuse of what is colloquially referred to as “digital arrests.” Although not formally recognized under Indian criminal law, digital arrests describe coercive practices whereby individuals are restrained, intimidated, or silenced through digital means such as threatening online communications, coercive video calls, digital surveillance, account restrictions, or fear of imminent arrest without compliance with established legal procedures and safeguards. This article critically examines the constitutional implications of such practices, with a specific focus on their impact on Article 19(1)(a) of India's Constitution guarantees the basic right to freedom of speech and expression. In the digital era, the scope of free speech has expanded to encompass online expression, social media discourse, digital journalism, and virtual dissent. Consequently, any form of informal or extra-legal digital coercion has a disproportionate impact on democratic participation and public discourse. The misuse of digital arrests often operates outside statutory authority and judicial oversight, thereby undermining the constitutional requirements of reasonableness, legality, and proportionality embedded in Article 19(2) and the due process guarantees under Articles 21 and 22. Through an analysis of constitutional provisions, relevant judicial precedents, and contemporary digital policing practices, this article highlights how digital arrests create a chilling effect on free speech by fostering fear, self-censorship, and suppression of dissent. Journalists, activists, whistle blowers, and ordinary social media users are particularly vulnerable to such practices, which

can erode institutional accountability and weaken democratic checks and balances. The article argues that the absence of clear legal recognition and regulation of digital enforcement practices enables abuse authority and endangers legal order. At the end of the piece, the author stresses how critical it is to have institutional and legal protections in place to prevent the abuse of digital arrests. It calls for clearer statutory frameworks governing digital policing, strict adherence to due process, judicial vigilance, and enhanced awareness among citizens to ensure that technological advancement does not come at the cost of constitutional freedoms and democratic values.

Keywords: Freedom of Speech, Article 19, Digital Arrests, Due Process, Constitutional Rights.

I. Introduction

Article 19 of India's Constitution is an essential and pivotal part of the democratic and constitutional structure of the nation. To foster personal agency and ensure the smooth operation of a democratic society, it ensures a number of basic liberties. Article 19(1)(a) guarantees citizens the right to freely express themselves, which is essential for democratic government since it allows people to have their voices heard, question policies, share ideas, and take part in public life. Free speech, according to India's highest court, is more than just a personal right; it's a democratic ideal that ensures openness, responsibility, and well-informed decision-making in a constitutional democracy.¹

Digital technology has greatly broadened the reach and extent of freedom of speech and expression. In the contemporary digital age, speech is no longer confined to traditional media such as print, public assemblies, or broadcast platforms. Online speech, social media engagement, digital journalism, blogging, video-sharing platforms, and virtual forums have become central spaces for political discourse and civic participation. Digital platforms have democratized expression by allowing individuals to reach wide audiences with minimal barriers, thereby strengthening pluralism and amplifying marginalized voices. Consequently, the protection of digital expression has become inseparable from the protection of entitled to freedom of expression as stated in Article 19(1)(a).²

¹ Abbott, Ryan. *The Reasonable Robot: Artificial Intelligence and the Law*. Cambridge University Press, 2020.

² Bhardwaj, Saurabh. Preventive Detention, Habeas Corpus and Delay at the Apex Court: An Empirical Study. *NUJS Law Review* (2020).

Nevertheless, the same technology developments that have given people more agency also have simultaneously enhanced the State's capacity for surveillance, monitoring, and control. Digital tools enable authorities to track online behavior, collect vast amounts of personal data, and respond swiftly to perceived threats in cyberspace. While such capabilities can serve legitimate objectives such as nationwide security and communal order, they similarly create the potential for overreach and abuse. In the absence of robust safeguards, digital governance mechanisms may be deployed in ways that disproportionately restrict fundamental freedoms, particularly when they operate without transparency or accountability.³

It is within this evolving digital landscape that the concept of "digital arrest" has emerged as a troubling phenomenon. Although the term has no formal recognition under Indian criminal law, it is increasingly used to describe situations where individuals are effectively restrained, intimidated, or silenced through digital means rather than through lawful physical custody. Such practices may involve coercive video calls sometimes by impersonating law enforcement officials threats of immediate arrest or prosecution, continuous digital surveillance, disabling access to communication platforms, freezing bank or digital accounts, or compelling individuals to remain virtually confined under fear of legal consequences. These methods create a state of psychological confinement that mirrors the effects of arrest without complying with procedural safeguards.⁴

The constitutional implications of such practices are profound, particularly when digital arrests are used to suppress speech, dissent, or critical expression. By bypassing established legal procedures and judicial oversight, digital arrests undermine the guarantees of due process and reasonable restrictions envisioned under Articles 19, 21, and 22 of the Constitution. When fear of digital coercion leads individuals to self-censor or withdraw from public discourse, the initial values of democratic freedom and legal principles are placed at serious risk. This growing disconnect between constitutional protections and digital enforcement practices necessitates urgent legal scrutiny and re-evaluation within India's constitutional framework.⁵

³ Devadasan, M. Vasudev. Conceptualising India's Safe Harbour in the Era of Platform Governance. *Indian Journal of Law and Technology* (2024).

⁴ Grover, Gurshabad. The Ministry and the Trace: Subverting End-to-End Encryption. *NUJS Law Review* (2021).

⁵ Advani, Pritika Rai. Intermediary Liability in India. *Economic & Political Weekly* (Vol. 48, Issue 50) (Dec. 14, 2013).

II. Understanding Article 19 and Freedom of Speech

A cornerstone of democratic rule and personal freedom is the right to free speech, which is guaranteed to all people of India under Article 19(1)(a) of the country's constitution. Without fear of excessive state intrusion, this clause guarantees that people may freely express their views, opinions, beliefs, and critiques. Since its inception, India's highest court has upheld free speech on the grounds that it is fundamental to both personal happiness and the well-being of democratic societies. Freedom of speech encompasses the ability to acquire information, express one's thoughts, and engage in meaningful public conversation, according to the Court's jurisprudence.⁶

Judicial interpretation has further clarified that the scope of Article 19(1)(a) is not confined to verbal or written expression alone. The right extends to symbolic speech, artistic and creative expression, press freedom, cinematic expression, and, significantly, digital communication. With the evolution of technology, courts have acknowledged that online speech, social media engagement, blogging, digital journalism, and other forms of internet-based expression are integral to contemporary democratic participation. In this context, the digital sphere has been recognized as a vital public forum where citizens carry out their First Amendment right to freedom of speech.⁷

The right to freedom of expression guaranteed by Article 19(1)(a) is broad but not absolute, notwithstanding its breadth. Article 19(2) grants the authority to the state to place reasonable limitations on this right where doing so is necessary to protect the integrity and sovereignty of India, national security, goodwill toward other nations, public morality, public order, public decency, incitement to crime, defamation, contempt of court, or public decency. A balance between individual liberty and common society interests is reflected in these constraints, as set forth in the Constitution. Nevertheless, the authority to limit speech is not absolute and must adhere rigidly to the parameters set out by the Constitution.

The constitutional scheme mandates that any restriction on free speech must satisfy three essential requirements. To begin, the limitation cannot be enforced by informal means of coercion or presidential fiat but rather by a legislation that has been duly passed. Second, it

⁶ Gupta, Apar. Balancing Online Privacy in India. *Indian Journal of Law and Technology* (2010).

⁷ Gupta, Ishan. Evolving Scope of Intermediary Liability in India. *International Review of Law, Computers & Technology* (2023).

must fall squarely within one or more of the grounds enumerated under Article 19(2). Third, the restriction must be reasonable, meaning that it must adhere to the doctrine of proportionality by being necessary, non-arbitrary, and the most flexible way to do the intended objective. Judicial scrutiny ensures that these safeguards are not diluted in practice.⁸

III. Concept of Digital Arrest: Meaning and Evolution

The expression “digital arrest” does not have any statutory recognition under Indian criminal law, nor does it find mention in the Code of Criminal Procedure, 1973 or related procedural acts. Instead, it has emerged as a colloquial and descriptive term used to capture a growing set of practices in which individuals are subjected to coercive control through digital or virtual means. Unlike traditional arrest, which involves physical custody and clearly defined legal safeguards, digital arrest operates in a grey zone where liberty is curtailed without formal detention, written orders, or judicial oversight.⁹

Digital arrest refers to situations in which an individual’s freedom of movement, communication, or decision-making is effectively restricted through technological mechanisms. These may include continuous monitoring through video calls or online platforms, repeated digital summons or threats of arrest communicated via phone calls, emails, or messaging applications, and instructions compelling individuals to remain available or “confined” online under the fear of immediate legal action. In some cases, access to digital resources such as bank accounts, mobile services, or online platforms may be restricted or threatened, creating a state of psychological confinement that mirrors the impact of physical arrest.

The evolution of this concept is closely linked to the increasing reliance on digital technologies in policing and governance. Law enforcement agencies now routinely use digital tools for investigation, surveillance, and communication, particularly in cybercrime cases. While such tools can enhance efficiency and reach, their informal or unregulated use can easily cross constitutional boundaries. Digital arrest represents a manifestation of this risk, where

⁸ Chandrachud, Abhinav. Due Process. In *The Oxford Handbook of the Indian Constitution* (Sujit Choudhry, Madhav Khosla & Pratap Bhanu Mehta eds., Oxford University Press, 2016).

⁹ Nojeim, Greg. Encryption in India: Preserving the Online Engine of Economic Growth and Human Rights. *Indian Journal of Law and Technology* (2021).

technological convenience substitutes for legally mandated procedures such as issuance of summons, recording of reasons for arrest, or production before a magistrate.

In many instances, the term “digital arrest” has gained prominence in the context of cyber frauds, where criminals impersonate police officers, investigative agencies, or judicial authorities to extort money. Victims are often coerced into remaining on continuous video calls, threatened with arrest or prosecution, and instructed not to contact anyone. Although these cases involve criminal impersonation rather than State action, they highlight how fear of legal authority can be exploited through digital means to deprive individuals of liberty and autonomy.¹⁰

More serious constitutional concerns arise when similar digital intimidation tactics are employed by State authorities or quasi-State actors without adherence to established legal procedures. When digital threats, surveillance, or coercive communications are used in the name of investigation or enforcement particularly against journalists, activists, or social media users for their online speech the line between lawful investigation and unconstitutional coercion becomes blurred. Such practices undermine due process, erode trust in law enforcement, and pose a significant threat to fundamental rights, necessitating careful legal scrutiny and clear regulatory safeguards.¹¹

IV. Digital Arrests and Due Process of Law

Articles 21 and 22 of the Indian Constitution provide that no one may be deprived of personal liberty unless the law establishes a method to do so. Arrest, whether physical or constructive, must comply with statutory safeguards, including lawful authority, grounds of arrest, and judicial oversight. Digital arrests, by bypassing formal procedures, undermine these constitutional guarantees.

When individuals are compelled to comply with directives under threat of arrest without being formally taken into custody or produced before a magistrate, the essence of due process is violated. Such practices create a parallel system of coercion that operates outside the safeguards envisaged by criminal law, thereby eroding the rule of law.

¹⁰ Bhandari, Vrinda. *The Supreme Court of India on Bail. NUJS Law Review* (1997).

¹¹ European Parliament. *Resolution on Intellectual Property Rights for the Development of Artificial Intelligence Technologies, 2020/2015(INI)* (Oct. 2020).

V. Chilling Effect on Freedom of Speech and Expression

Malicious use of digital arrests has far-reaching and severe effects, one of which is a chilling impact on free speech. The constant fear of being digitally targeted, monitored, summoned, or coerced discourages individuals from expressing dissenting views, questioning authority, or participating in meaningful public debate. When citizens perceive that online speech may invite digital intimidation or informal punitive action, they are more likely to remain silent or moderate their views, thereby undermining the very essence of free expression guaranteed under Article 19(1)(a).

This chilling effect is particularly pronounced in the digital sphere, where expression is instantaneous, wide-reaching, and easily traceable. Unlike traditional forms of speech, digital communication leaves permanent data trails that can be monitored and analyzed. As a result, individuals may feel constantly exposed to scrutiny, leading to heightened self-censorship. Journalists, activists, academics, and ordinary social media users may refrain from posting critical content, sharing opinions, or engaging in online discussions due to apprehension about digital retaliation, surveillance, or coercive contact from authorities.¹²

The highest court in India has issued repeated warnings against State actions that have the effect of chilling free speech, even if such actions are not explicit bans or formal restrictions. The Court has emphasized that indirect methods of suppression such as intimidation, excessive surveillance, or vague threats of legal consequences can be just as damaging to constitutional freedoms as direct censorship. When individuals begin to self-censor out of fear rather than legal obligation, the constitutional promise of free speech becomes illusory.

To have a democratic society, people must be able to freely share their thoughts, feelings, beliefs criticism to function effectively. When the misuse of digital arrests distorts the marketplace of ideas by silencing critical or unpopular voices, public discourse suffers and accountability mechanisms weaken. In this sense, digital arrests do not merely affect individual liberty but strike at the structural foundations of democracy itself. Their misuse therefore poses a direct and serious threat to Article 19(1)(a) and demands urgent constitutional scrutiny and remedial safeguards.¹³

¹² Agarwal, Mitali. *Contemplating Community Sentencing in India*. *NUJS Law Review* (2019).

¹³ Hilty, Reto M., Jyh-An Lee & Kung-Chung Liu eds. *Artificial Intelligence and Intellectual Property*. Oxford University Press, 2021.

VI. Impact on Journalists, Activists, and Whistleblowers

Journalists, activists, and whistleblowers are among the groups most acutely affected by the misuse of digital arrests, owing to the nature of their work, which often involves criticizing those in power, exposing corruption, highlighting human rights violations, or mobilizing public opinion. In the digital era, much of this work is conducted online through investigative reporting, social media engagement, digital publications, and encrypted communications. As a result, these individuals are particularly susceptible to digital intimidation tactics such as threatening phone calls, informal online summons, persistent monitoring of digital activity, or warnings of legal consequences communicated through electronic means.¹⁴

Such tactics can severely impair the ability of journalists and activists to function independently and fearlessly. The threat of digital arrest, even when informal or extra-legal, creates an atmosphere of insecurity that may discourage investigative reporting, critical commentary, or advocacy. Whistleblowers, in particular, may be deterred from disclosing information in the public interest due to fear of digital surveillance or retaliation, thereby allowing misconduct and abuse of power to go unchecked. This erosion of protective space for dissenting voices weakens the watchdog role that these actors play in a democratic society.

The impact of digital arrests on these groups extends beyond individual rights violations and has broader systemic consequences. A free and independent press, along with an active and engaged civil society, forms the backbone of constitutional democracy by ensuring transparency, accountability, and informed public debate. When indirect methods such as digital intimidation or coercion are used to silence critical voices, they undermine not only the right to free speech as outlined in Article 19(1)(a), in addition to the idea of participatory government as envisioned in the Constitution. Such practices, if left unchecked, risk normalizing a culture of fear and compliance that is fundamentally incompatible with democratic ideals and the rule of law.¹⁵

VII. Reasonable Restrictions and Proportionality

The constitutional framework governing fundamental rights in India is anchored in the doctrine of proportionality, which requires that any restriction on such rights must satisfy the tests of

¹⁴ Kaushik, Dev. Deciphering Encryption Rights in India: The Road Ahead. *Global Privacy Law Review* (2021).

¹⁵ Liang, Lawrence. Free Speech and Expression. In *The Oxford Handbook of the Indian Constitution* (Sujit Choudhry, Madhav Khosla & Pratap Bhanu Mehta eds., Oxford University Press, 2016).

necessity, suitability, and minimal impairment. In the context of Article 19, this implies that any limitations on free speech must have a valid purpose, as acknowledged in Article 19(2), be reasonably related to that purpose, and use the least restrictive method possible to achieve that purpose. The need of proportionality in preventing the overreach or arbitrary intrusion of the state into individual liberty has been repeatedly emphasized by the Supreme Court.

Digital arrests, particularly when informal, extra-legal, and unregulated, fail to meet the standards set by the doctrine of proportionality. These practices often operate without statutory backing, clear procedural safeguards, or judicial oversight, making them neither necessary nor suitable responses to perceived online misconduct. In many cases, digital intimidation is used as a disproportionate reaction to online expression, criticism, or dissent, even when such speech does not pose a genuine threat to public order or national security. The absence of formal legal processes means that individuals are denied the opportunity to challenge restrictions or seek timely remedies.

Moreover, restrictions imposed through fear, intimidation, or psychological coercion rather than through law lack transparency and accountability. Such methods obscure the basis of State action, making it difficult to assess whether the restriction falls within the permissible grounds under Article 19(2). This erosion of transparency undermines public trust in law enforcement institutions and weakens the legitimacy of regulatory authority. When power is exercised informally and without accountability, it creates significant scope for abuse, arbitrariness, and selective targeting, which are fundamentally incompatible with the rule of law and constitutional governance.

VIII. Role of Judiciary in Addressing Digital Coercion

The judiciary plays a pivotal role in safeguarding constitutional rights and addressing emerging forms of rights violations arising from digital governance and policing. In the context of the misuse of digital arrests, courts are entrusted with the responsibility of reaffirming constitutional safeguards and evolving jurisprudence that is responsive to technological realities. As digital coercion increasingly affects personal liberty and freedom of expression, it is imperative for the judiciary to recognize such practices as a substantive form of liberty

deprivation rather than treating them as mere administrative or informal actions beyond constitutional scrutiny.¹⁶

Courts must subject instances of digital coercion to the same rigorous constitutional standards that apply to physical arrest and detention. This includes examining whether such actions have statutory backing, comply with due process requirements, and meet the tests of reasonableness and proportionality. Judicial recognition of digital arrest as a rights-impairing practice would prevent the State from using technology as a means to circumvent constitutional protections under Articles 19, 21, and 22. By expanding the understanding of “deprivation of liberty” to include psychological and virtual restraints, the judiciary can ensure that constitutional guarantees remain effective in the digital age.¹⁷

Judicial guidelines and precedents can serve as powerful safeguards against the misuse of digital enforcement mechanisms. By laying down clear principles governing digital surveillance, online summons, and virtual monitoring, courts can provide much-needed clarity to law enforcement agencies and protect citizens from arbitrary action. Strict adherence to procedural law, including requirements of transparency, notice, and judicial oversight, must be emphasized to prevent informal coercion from becoming normalized.

Additionally, the judiciary must underscore accountability and provide effective remedies for victims of digital rights violations. This includes recognizing violations of fundamental rights, awarding appropriate relief, and directing institutional reforms where necessary. By actively engaging with issues of digital coercion, the judiciary can play a transformative role in upholding constitutional values and ensuring that technological advancement strengthens, rather than erodes, democratic freedoms.

IX. Need for Legal and Policy Reforms

The absence of clear legal recognition and regulation of digital enforcement practices has created significant ambiguity, enabling misuse and arbitrary exercise of power. Existing criminal and procedural laws in India were largely designed for physical modes of policing and

¹⁶ Ramachandran, Chaitanya. *PUCL v. Union of India Revisited: Why India’s Surveillance Law Must Be Redesigned for the Digital Age*. *NUJS Law Review* (2014).

¹⁷ Press Information Bureau, Govt. of India. *DPIIT Publishes First Part of Working Paper on Artificial Intelligence and Copyright Framework* (Dec. 9, 2025).

do not adequately address coercive practices carried out through digital means. This legal vacuum allows informal digital measures such as threatening communications, virtual monitoring, or implied restraints to operate without clear accountability. There is, therefore, a pressing need for comprehensive legal frameworks that explicitly govern digital policing and enforcement, clearly defining the permissible scope and limits of State action in the digital sphere.¹⁸

Such legal reforms should include precise statutory definitions of digital enforcement practices, including what constitutes unlawful digital coercion or digital arrest. Procedural safeguards must be incorporated to ensure that any restriction on liberty or expression through digital means is backed by act, subject to legal misunderstanding, and compliant with the ethics of requirement and balance. Independent oversight mechanisms, such as internal review bodies or judicial authorization requirements, are essential to prevent abuse and ensure transparency in digital policing operations.¹⁹

Equally important is the training and sensitization of law enforcement personnel regarding constitutional rights in the digital context. Officers need technological expertise, but they also need to know the limits of technology and the needs of due process as technology becomes more embedded in police. Institutional training programs should emphasize respect for fundamental rights, lawful procedures for investigation, and the consequences of extra-legal digital coercion.

X. Conclusion

The misuse of digital arrests presents a serious and evolving constitutional challenge in the digital age, especially as it pertains to the right to free speech and expression as outlined in Article 19(1)(a) of the Indian Constitution. While technological advancements have undoubtedly enhanced the efficiency of governance and law enforcement, their deployment without adequate legal safeguards risks undermining fundamental rights. Digital coercion, when exercised outside the framework of established law and due process, creates a parallel

¹⁸ Bhandari, Vrinda & Karan Lahiri. *The Surveillance State: Privacy and Criminal Investigation in India*. *Oxford Human Rights Hub Journal* (2021).

¹⁹ OECD. *Intellectual Property Issues in Artificial Intelligence Trained on Scraped Data*. OECD Artificial Intelligence Papers No. 332 (Feb. 2025).

mechanism of control that erodes personal liberty, suppresses dissent, and weakens democratic participation.²⁰

As this analysis demonstrates, practices resembling digital arrests bypass the procedural protections embedded in constitutional and criminal law, including transparency, accountability, and judicial oversight. In addition to creating an atmosphere of fear and self-censorship, especially in the online public domain, such activities skew the balance between governmental power and personal freedom. Fundamental principles of democracy and the rule of law are endangered when individuals refrain from voicing their thoughts, questioning authority, or participating in public discourse out of fear of cyber persecution.

To preserve the spirit and substance of Article 19, it is imperative that digital enforcement practices are subjected to strict legal scrutiny and constitutional discipline. Clear statutory frameworks, adherence to due process, and effective oversight mechanisms are essential to ensure that technology is used as an instrument of lawful governance rather than arbitrary control. Equally important is the cultivation of a constitutional culture that respects civil liberties, promotes accountability, and recognizes freedom of speech as a democratic necessity rather than a regulatory inconvenience. Safeguarding freedom of expression in the digital era ultimately requires a firm commitment to constitutional values that prioritize liberty over convenience and rights over unchecked power.²¹

REFERENCE

- 1) Abbott, Ryan. *The Reasonable Robot: Artificial Intelligence and the Law*. Cambridge University Press, 2020.
- 2) Advani, Pritika Rai. Intermediary Liability in India. *Economic & Political Weekly* (Vol. 48, Issue 50) (Dec. 14, 2013).
- 3) Agarwal, Mitali. Contemplating Community Sentencing in India. *NUJS Law Review* (2019).
- 4) Bhandari, Vrinda. The Supreme Court of India on Bail. *NUJS Law Review* (1997).

²⁰ Bhatia, Gautam. *Offend, Shock, or Disturb: Free Speech Under the Indian Constitution*. Oxford University Press, 2016.

²¹ Seervai, H.M. *Constitutional Law of India: A Critical Commentary*. 4th ed., Universal Law Publishing (multi-vol.).

- 5) Bhandari, Vrinda & Karan Lahiri. The Surveillance State: Privacy and Criminal Investigation in India. *Oxford Human Rights Hub Journal* (2021).
- 6) Bhardwaj, Saurabh. Preventive Detention, Habeas Corpus and Delay at the Apex Court: An Empirical Study. *NUJS Law Review* (2020).
- 7) Bhardwaj, Shashank. Rising Internet Shutdowns in India: A Legal Analysis. *Indian Journal of Law and Technology* (2020).
- 8) Bhatia, Gautam. *Offend, Shock, or Disturb: Free Speech Under the Indian Constitution*. Oxford University Press, 2016.
- 9) Chandrachud, Abhinav. Due Process. In *The Oxford Handbook of the Indian Constitution* (Sujit Choudhry, Madhav Khosla & Pratap Bhanu Mehta eds., Oxford University Press, 2016).
- 10) Devadasan, M. Vasudev. Conceptualising India's Safe Harbour in the Era of Platform Governance. *Indian Journal of Law and Technology* (2024).
- 11) European Parliament. Resolution on Intellectual Property Rights for the Development of Artificial Intelligence Technologies, 2020/2015(INI) (Oct. 2020).
- 12) Grover, Gurshabad. The Ministry and the Trace: Subverting End-to-End Encryption. *NUJS Law Review* (2021).
- 13) Gupta, Apar. Balancing Online Privacy in India. *Indian Journal of Law and Technology* (2010).
- 14) Gupta, Apar. The Constitutional Basis for Internet Freedom. In *Acts of Media: Law and Media in Contemporary India* (Siddharth Narrain ed., Sage, 2022).
- 15) Gupta, Ishan. Evolving Scope of Intermediary Liability in India. *International Review of Law, Computers & Technology* (2023).
- 16) Hilty, Reto M., Jyh-An Lee & Kung-Chung Liu eds. *Artificial Intelligence and Intellectual Property*. Oxford University Press, 2021.
- 17) Human Rights Watch. *Stifling Dissent: The Criminalization of Peaceful Expression in India* (2016).
- 18) Jain, M.P. *Indian Constitutional Law*. 9th ed., LexisNexis, 2025.
- 19) Kaushik, Dev. Deciphering Encryption Rights in India: The Road Ahead. *Global Privacy Law Review* (2021).
- 20) Liang, Lawrence. Free Speech and Expression. In *The Oxford Handbook of the Indian Constitution* (Sujit Choudhry, Madhav Khosla & Pratap Bhanu Mehta eds., Oxford University Press, 2016).

- 21) Nojeim, Greg. Encryption in India: Preserving the Online Engine of Economic Growth and Human Rights. *Indian Journal of Law and Technology* (2021).
- 22) OECD. *Intellectual Property Issues in Artificial Intelligence Trained on Scraped Data*. OECD Artificial Intelligence Papers No. 332 (Feb. 2025).
- 23) Press Information Bureau, Govt. of India. DPIIT Publishes First Part of Working Paper on Artificial Intelligence and Copyright Framework (Dec. 9, 2025).
- 24) Ramachandran, Chaitanya. PUCL v. Union of India Revisited: Why India's Surveillance Law Must Be Redesigned for the Digital Age. *NUJS Law Review* (2014).
- 25) Seervai, H.M. *Constitutional Law of India: A Critical Commentary*. 4th ed., Universal Law Publishing (multi-vol.).
- 26) Singh, Justice Yatindra. *Cyber Laws*. 6th ed., Universal, 2016.
- 27) U.S. Copyright Office. *Copyright and Artificial Intelligence, Part 1: Digital Replicas* (July 2024).
- 28) U.S. Copyright Office. *Copyright and Artificial Intelligence, Part 2: Copyrightability* (Jan. 2025).
- 29) United States Patent and Trademark Office. *Public Views on Artificial Intelligence and Intellectual Property Policy* (Oct. 2020).
- 30) UK Intellectual Property Office. *Artificial Intelligence and Intellectual Property: Copyright and Patents Consultation* (Oct. 29, 2021).
- 31) UK Intellectual Property Office. *Artificial Intelligence and Intellectual Property: Copyright and Patents- Government Response to Consultation* (June 28, 2022).
- 32) World Intellectual Property Organization. *Revised Issues Paper on Intellectual Property Policy and Artificial Intelligence*, WIPO/IP/AI/2/GE/20/1 Rev. (May 29, 2020).
- 33) World Intellectual Property Organization. *WIPO Technology Trends 2019: Artificial Intelligence* (2019).