

# Copyright and Access: Re-evaluating the Legality and Ethics of Paywalled Academic Journals in the Knowledge Economy

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## Abstract

In an era where knowledge drives innovation, economic growth, and democratic participation, access to academic research remains paradoxically restricted. While copyright law is designed to protect creativity and reward authorship, its operation within the contemporary academic publishing industry has produced unintended consequences. The rise of paywalled journals, concentrated ownership among a small group of global publishers, and the increasing use of digital restrictions have transformed scholarly knowledge into a highly priced commodity. For students, researchers, and institutions, particularly in developing countries, these barriers often place essential academic resources out of reach.

This paper critically examines the legality and ethical implications of paywalled academic journals within India's constitutional and regulatory framework. It explores the tension between copyright protection and the right to education, arguing that excessive enclosure of publicly funded research undermines the broader social purpose of intellectual property law. By analysing constitutional principles, competition law concerns, and the growing role of technological protection measures, the study questions whether the current publishing model aligns with the ideals of fairness, equity, and public welfare embedded in India's legal system.

The paper contends that knowledge, unlike ordinary market goods, generates collective benefits that extend beyond individual consumers. When access is governed primarily by pricing power rather than public interest, the knowledge economy risks reinforcing inequality rather than promoting progress. Ultimately, this research calls for a recalibration of legal and policy frameworks to ensure that copyright serves its original purpose: encouraging creativity while safeguarding the public's right to learn, innovate, and participate in a democratic society.

**Keywords:** Paywalled Journals, Fairness, Commodification of Knowledge, Market Failure, Right to Education

## Introduction

In contemporary academic discourse, one of the most pressing challenges lies in the growing tension between copyright protection and the constitutional right to education. The phenomenon of paywalled journals, academic publications that restrict access to content behind subscription fees, has brought this conflict to the forefront. While copyright law was originally conceived to protect and incentivize authors by granting them exclusive rights over their creative and intellectual works, its current implementation within the academic publishing industry has resulted in unintended consequences. The concept of

copyright, designed to reward creativity and promote innovation, is increasingly being used as a mechanism by which publishers, rather than authors, derive economic benefit from intellectual labour.<sup>1</sup> Paywalled journals restrict free and open access to academic literature, effectively transforming knowledge into a commodity available only to those who can afford it.<sup>2</sup> This practice not only excludes vast segments of students, researchers, and institutions from accessing vital information but also undermines the fundamental objective of copyright, that is to encourage the dissemination and advancement of knowledge.<sup>3</sup> The economic model of paywalled academic publishing benefits publishers disproportionately, while authors often receive little to no financial return for their contributions. Consequently, the publishing industry's reliance on subscription-based access has created a structural imbalance in the academic ecosystem, privileging profit over public interest.

From a constitutional standpoint, this model stands in direct conflict with Article 21 of the Constitution of India, which guarantees the right to education as an essential component of the right to life under Article 21<sup>4</sup>. By placing knowledge behind financial barriers, paywalled journals hinder equitable access to educational resources and perpetuate systemic inequality. The commodification of knowledge contradicts India's welfare objectives by limiting access to information, an indispensable resource in a knowledge-based society.

The central question, therefore, is whether the copyright protection afforded to paywalled academic journals violates the principles of equitable access to knowledge and education. This paper argues that, to uphold the constitutional mandate of education and social justice, India must prioritize access to knowledge by strengthening "fair dealing" as a user right under the Copyright Act, 1957<sup>5</sup>, as a user right, employing competition law to counter monopolistic practices in academic publishing<sup>6</sup>, regulating restrictive technologies, and implementing state-led initiatives to ensure open and equitable access to information for all citizens.<sup>7</sup>

### Commodification of knowledge VS The constitutional right to education

Article 21 of the Constitution of India guarantees the right to life and personal liberty, a right that has been expansively interpreted by the Supreme Court to include the right to education and the freedom to receive knowledge essential for one's development as a human being<sup>8</sup> However, the rise of paywalled academic journals poses a significant challenge to this constitutional ideal. Paywalls, by design, place a monetary barrier between individuals and academic content, effectively transforming knowledge into a commodity.

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<sup>1</sup> William Fisher, *Theories of Intellectual Property*, in *New Essays in the Legal and Political Theory of Property* 168 (Stephen R. Munzer ed., 2001).

<sup>2</sup> Samuel Moore, Cameron Neylon, Martin Paul Eve, Daniel Paul O'Donnell & Damian Pattinson, "*Excellence R Us*": *University Research and the Fetishisation of Excellence*, 22(5) Palgrave Communications (2017) (discussing the exclusionary nature of paywalled academic systems).

<sup>3</sup> *The Copyright Act*, No. 14 of 1957, § 52 (India) (recognizing fair dealing exceptions for purposes of private study, research, criticism, or review).

<sup>4</sup> INDIA CONST. art. 21-A; *Unni Krishnan, J.P. v. State of Andhra Pradesh*, (1993) 1 S.C.C. 645 (India) (recognizing education as an integral facet of the right to life).

<sup>5</sup> *The Copyright Act*, No. 14 of 1957, § 52 (India).

<sup>6</sup> *The Competition Act*, No. 12 of 2003, § 4 (India) (prohibiting abuse of dominant position); see also *In re: FICCI–Multiplex Association of India v. United Producers/Distributors Forum*, Case No. 01/2009, Competition Comm'n of India (May 25, 2011).

<sup>7</sup> Ministry of Education (India), *National Education Policy 2020*, ¶ 23

<sup>8</sup> *Unni Krishnan, J.P. v. State of A.P.*, (1993) 1 S.C.C. 645, ¶¶ 185, 196–97 (India).

The commodification of knowledge refers to the process of converting knowledge into a tradable good, one that can be bought, sold, and controlled, much like ordinary market commodities.

This commodification becomes problematic when publishers prioritize profit over accessibility, limiting educational resources to those who can afford them. Paywalled systems often operate by requiring users to pay subscription fees before accessing academic materials. While such fees are justified as necessary to cover publishing costs such as editing, digital infrastructure, and maintenance, they also reflect a deeper structural imbalance within academic publishing. Authors, after submitting their work to journals, are typically required to transfer or license their copyrights to the publishers. This transfer grants the publisher exclusive control over the dissemination and distribution of the work, including the decision to restrict it behind a paywall<sup>9</sup>

In essence, this system separates education from its social purpose. Knowledge, which the Constitution envisions as a public good, one that should be non-excludable and universally accessible, becomes restricted to paying consumers. The Supreme Court has consistently emphasized that education is not a form of commerce but a means to achieve human dignity, equality, and empowerment,<sup>10</sup> Therefore, the existence of paywalled journals undermines the constitutional promise of equitable access to education by converting the dissemination of knowledge into a profit-driven enterprise.

Paywalled academic journals have increasingly created an intellectual divide between individuals who need access to knowledge and those who can afford it. By placing educational materials behind financial barriers, these systems convert a noble pursuit, knowledge, into an object of ownership and trade. This commodification of knowledge transforms learning, which is meant to be a social good, into a marketable product controlled by private interests. Consequently, access to education becomes a privilege reserved for the economically advantaged, rather than a fundamental right available to all citizens.

Such practices run contrary to the constitutional principles of equality, social justice, and public welfare, which form the foundation of India's socio-economic order under the Preamble and Part IV of the Constitution<sup>11</sup>. The Right to Education, as recognized under Article 21A and expanded upon through judicial interpretation, envisions education as a means to empower citizens and promote social mobility, not as a commodity governed by market forces.<sup>12</sup> By creating financial barriers to academic materials, paywalled systems effectively differentiate between two classes of learners, those who can afford to access knowledge and those who cannot. This economic stratification contradicts the constitutional vision of an inclusive and equitable society.<sup>13</sup>

Moreover, the escalating subscription fees imposed by major publishers have made it increasingly difficult for public universities, schools, and individual scholars, particularly in developing countries like India, to access essential research. This has resulted in a widening knowledge gap between elite institutions and under-resourced ones.<sup>14</sup> Paywalls therefore represent not merely a technical or financial restriction but a systemic barrier between the seeker of knowledge and knowledge itself. Such a structure undermines the

<sup>9</sup> PETER SUBER, *OPEN ACCESS* 22–28 (MIT Press 2012).

<sup>10</sup> T.M.A. Pai Found. v. State of Karnataka, (2002) 8 S.C.C. 481, ¶¶ 25–27 (India).

<sup>11</sup> INDIA CONST. pt. IV.

<sup>12</sup> Unni Krishnan, J.P. v. State of A.P., (1993) 1 S.C.C. 645, ¶¶ 185, 196–97 (India).

<sup>13</sup> Mohini Jain v. State of Karnataka, 1992 Supp. (1) S.C.C. 666, ¶ 13 (India).

<sup>14</sup> G.G. Moghaddam, *Why Are Scholarly Journals Costly Even with Electronic Publishing?*, 37 *Interlending & Document Supply* 3 (2009), [https://eprints.rclis.org/14213/1/Why\\_are\\_scholarly\\_journals\\_costly\\_even\\_with\\_electronic\\_publishing\\_2009\\_ILDS\\_37\\_3\\_.pdf](https://eprints.rclis.org/14213/1/Why_are_scholarly_journals_costly_even_with_electronic_publishing_2009_ILDS_37_3_.pdf)

democratic ideal of education as a universal right and perpetuates intellectual inequality, contrary to India's commitments under both domestic and international human rights frameworks.<sup>15</sup>

### Market Failure in the Academic Publishing Industry

A market failure occurs when the forces of demand and supply fail to reach equilibrium, leading to inefficiencies in the allocation of resources. In the context of academic publishing, this failure has become increasingly evident with the commodification of knowledge through paywalled journals. The subscription-based model has resulted in a dramatic rise in journal prices, making it increasingly difficult for institutions and individual researchers to afford access. Consequently, vast amounts of scholarly knowledge remain locked behind paywalls, available only to those who can pay for it.<sup>16</sup>

This issue, often described as the “serials crisis,” underscores how rising subscription fees have constrained libraries and scholars, thereby consolidating monopolistic control in the hands of a few dominant publishers.<sup>17</sup> Each journal, owing to its unique content and proprietary copyrights, becomes a non-substitutable commodity, effectively granting publishers exclusive control over their specialized academic domains. Researchers, therefore, have no real alternatives but to subscribe to these costly journals to access necessary research.<sup>18</sup>

Publishers often justify such exorbitant pricing by citing the expenses associated with peer review, editorial management, formatting, and copyright acquisition.<sup>19</sup> However, evidence suggests that the actual costs of publication are far lower than the prices imposed on end users.<sup>20</sup> Even when considering factors such as editorial staff and peer review management, the production costs of an article rarely exceed US\$1,000 per article, a figure that stands in stark contrast to the thousands of dollars charged through subscription fees.<sup>21</sup> In contrast, non-profit and open-access journals operate sustainably while charging minimal fees, demonstrating that the inflated costs of paywalled journals are not driven by necessity but by profit-oriented business models.<sup>22</sup>

This disparity between production cost and subscription pricing reveals a systemic imbalance where knowledge, an inherently public good, is commercialized. The academic publishing market, dominated by a few corporations, is structured to maximize profit rather than to promote access to research. Publishers have reported profit margins exceeding 30%, which raises ethical and policy concerns, as knowledge dissemination should ideally serve public interest rather than private profit.<sup>23</sup>

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<sup>15</sup> Universal Declaration of Human Rights, G.A. Res. 217A (III), art. 26, U.N. Doc. A/810 (Dec. 10, 1948)

<sup>16</sup> S.K. Pathak, *Why Are Scholarly Journals Costly Even with Electronic Publishing?*, 37 *Interlending & Document Supply* 183, 184 (2009), [http://eprints.rclis.org/14213/1/Why\\_are\\_scholarly\\_journals\\_costly\\_even\\_with\\_electronic\\_publishing\\_2009\\_ILDS\\_37\\_3.pdf](http://eprints.rclis.org/14213/1/Why_are_scholarly_journals_costly_even_with_electronic_publishing_2009_ILDS_37_3.pdf).

<sup>17</sup> *Id.* at 185.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* 186-187

<sup>20</sup> Heather Piwowar et al., *The Future of OA: Toward a Sustainable Open Access Publishing Ecosystem*, 9 *PeerJ* e4375 (2021).

<sup>21</sup> Alexander Grossmann & Björn Brembs, *Current Market Rates for Scholarly Publishing Services*, 10 *F1000Research* 20 (2021).

<sup>22</sup> Peter Suber, *Open Access*, MIT Press (2012)

<sup>23</sup> Vincent Larivière, Stefanie Haustein & Philippe Mongeon, *The Oligopoly of Academic Publishers in the Digital Era*, 10 *PLOS ONE* e0127502 (2015).

The concentration of power has been further intensified through mergers and acquisitions among major publishing houses, effectively reducing competition and reinforcing monopolistic pricing structures.<sup>24</sup> As subscription prices continue to rise, universities and research institutions, especially in developing nations, are increasingly forced to cancel subscriptions, thereby restricting access to essential academic material.<sup>25</sup> Ultimately, the escalating costs of paywalled journals are not justified by production expenditures but by entrenched commercial practices that prioritize profit over accessibility. This has transformed academic publishing into a market characterized by restricted information flow, economic exclusion, and intellectual inequality. The resulting barriers to knowledge undermine the fundamental purpose of academia: the free and equitable dissemination of information for the advancement of society.

### **Undermining Statutory Exceptions (Fair Dealing and Fair Use)**

The restrictive model of paywalled academic journals stands in sharp contrast to the statutory exceptions articulated under Section 52 of the Copyright Act, 1957 (India). While copyright law seeks to safeguard the creations of the human intellect, Section 52 expressly carves out exceptions for fair dealing and legitimate use of protected works. The provision clarifies that the use of copyrighted material for purposes such as private study, research, criticism, or review does not amount to infringement.<sup>26</sup> These exceptions, by extension, encompass educational and scholarly uses, reflecting the legislature's recognition of the essential role that access to knowledge plays in intellectual and social advancement. The imposition of paywalls over academic works, therefore, operates in tension with this statutory intent. By restricting educational access to knowledge, paywalled publishing models undermine the broader constitutional values of social welfare, justice, and the fundamental rights to education and liberty that the Indian legal framework seeks to uphold.<sup>27</sup>

At its core, copyright law recognizes that creativity and knowledge must serve a larger public purpose. The doctrine of fair dealing exists precisely to ensure that copyright does not become a wall around information. It allows for reasonable and legitimate use of protected works, especially when the purpose is education, research, or the spread of knowledge.<sup>28</sup> Indian courts have repeatedly emphasized that these exceptions must be interpreted in light of the social good they promote. In fact, the Delhi High Court, in *The Chancellor, Masters & Scholars of the University of Oxford v. Rameshwari Photocopy Service*, affirmed that using copyrighted material for classroom teaching and academic study qualifies as fair dealing. The Court observed that the societal need for accessible education far outweighs the commercial interests of publishers.<sup>29</sup>

Yet, in practice, the academic publishing system often moves in the opposite direction. A culture of permissions and clearance has emerged, where institutions and researchers are forced to seek authorization

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<sup>24</sup> G.G. Moghaddam, *Why Are Scholarly Journals Costly Even with Electronic Publishing?*, 37 *Interlending & Document Supply* 3 (2009), [https://eprints.rclis.org/14213/1/Why\\_are\\_scholarly\\_journals\\_costly\\_even\\_with\\_electronic\\_publishing\\_2009\\_ILDS\\_37\\_3\\_.pdf](https://eprints.rclis.org/14213/1/Why_are_scholarly_journals_costly_even_with_electronic_publishing_2009_ILDS_37_3_.pdf)

<sup>25</sup> Lisa A. Macklin & Anne K. Langley, *Communicating Collections Cancellations to Campus*, 82 *Coll. & Res. Libr.* 24751 (2021), <https://crl.acrl.org/index.php/crl/article/view/24751/32574>

<sup>26</sup> *The Copyright Act, 1957*, No. 14, § 52(1)(a), INDIA CODE (1994).

<sup>27</sup> *id.*; INDIA CONST. pmb.; art. 21A.

<sup>28</sup> *The Copyright Act, 1957*, No. 14, § 52(1)(a), INDIA CODE (1994).

<sup>29</sup> *The Chancellor, Masters & Scholars of the Univ. of Oxford v. Rameshwari Photocopy Serv.*, 2016 SCC OnLine Del 5527 (India)

for even minor uses that clearly fall within fair dealing.<sup>30</sup> This trend directly contradicts the intention behind section 52<sup>31</sup> of the Copyright Act, which was designed to preserve the free flow of knowledge. Instead of supporting learning and research, such systems create layers of restriction, making the access to information dependent on payment and permission. By prioritizing profit over public benefit, these practices risk undermining the very purpose of copyright law: to promote creativity, education, and the advancement of society.<sup>32</sup>

Technological Protection Measures (TPMs)<sup>33</sup> are tools used by creators to safeguard their copyrighted works from unauthorised access or misuse. These measures, such as encryption, access codes, or other forms of digital locks, restrict use to only those who have been granted permission by the copyright holder. Essentially, they act as virtual barriers that protect creative material from being copied, shared, or accessed without consent.

Section 65A of the Copyright Act, 1957<sup>34</sup> protects and encourages the use of such TPMs, including paywalls and encryption systems, to prevent infringement. While the purpose of this section is to curb unauthorised use, it inadvertently conflicts with the principle of fair dealing, which allows limited use of copyrighted material for legitimate purposes such as education, research, and criticism.

When academic journals or research databases use strict paywalls, they often end up restricting even those uses that would qualify as fair and lawful. This creates an unnecessary barrier to knowledge, especially for students, researchers, and educators who rely on access to such materials for non-commercial learning. Section 65A, in this sense, reinforces technological restrictions that go beyond what copyright law intends, it protects against piracy, but at the cost of accessibility. Therefore, while TPMs serve a protective purpose, their overuse through paywalls risks undermining the very spirit of copyright law, which seeks to balance the rights of creators with the public's right to learn, share, and innovate.

### **Role of State intervention**

The issues that are seen in the knowledge market, raise a serious concern regarding access to knowledge and education, along with fair practice and use. This calls for intervention by the state to ensure that everyone gets equal access to knowledge irrespective of their financial condition to be able to pay the subscriptions or not.

The One Nation One Subscription (ONOS)<sup>35</sup> initiative aims at providing one subscription to access scholarly research for attaining knowledge. It is a direct governmental response to the market failure in academic publishing. The initiative has a direct aim at the nation's research and development, mainly aiming at increasing research within our nation. The initiative provides country-wide access to international high impact scholarly research articles and journal publications to students, faculty and researchers of all Higher Education Institutions managed by the central government and state governments and Research & Development Institutions of the central government. With access to 30 internationally well renowned publishers and 1300+ full text journals, the initiative aims at providing an IP based access

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<sup>30</sup> Anupriya Dhonchak, *National Digital Library of India's (NDLI) Copyright Guide (Feedback) – Part I*, SpicyIP (Sept. 29, 2020), <https://spicyip.com/2020/09/national-digital-library-of-india-ndlis-copyright-guide-feedback-part-1.html>.

<sup>31</sup> The Copyright Act, No. 14 of 1957, § 52 (India).

<sup>32</sup> Ankita Singhania, *Copyright Laws in India and Maintenance of a Welfare State*, 11 J. Intell. Prop. Rts. 43 (Jan. 2006)

<sup>33</sup> WIPO Copyright Treaty art. 11, Dec. 20, 1996, 2186 U.N.T.S. 121.

<sup>34</sup> The Copyright Act, No. 14 of 1957, § 65A (India).

<sup>35</sup> *One Nation One Subscription (ONOS)*, Government of India, <https://www.onos.gov.in/> (last visited Feb. 11, 2026).

model to subscribers, to provide wider scope of access to the subscribers. It aims at reducing reliance on illegal sources.

Indian Railways operates as one of the largest state monopolies in the world, providing transportation to millions of citizens across vast geographical and socio-economic divides. Its monopoly status is constitutionally and politically justified because its primary objectives extend beyond profit maximisation. These objectives include affordability, universal accessibility, regional integration, and national connectivity, values that a purely market-driven transport system would be unlikely to sustain.

Private market participation in rail transport, if left entirely unregulated, would predictably concentrate services in high-profit corridors, raise fares beyond the reach of economically weaker sections, and abandon remote or low-traffic regions. The State, therefore, intervenes to correct this market failure by cross-subsidising routes, maintaining unprofitable yet socially necessary services, and prioritising public interest over commercial returns. In this sense, Indian Railways exemplifies the constitutional idea of a welfare state, where economic activity is shaped to serve social goals rather than market logic alone.

The same public welfare rationale that justifies State control or regulation of railways applies with even greater force to education, which occupies a central position in constitutional philosophy and social development. Education is not merely a service or commodity; it is an enabling right a prerequisite for the meaningful exercise of other fundamental rights such as equality, freedom of expression, and participation in democratic governance.

Market-driven education systems tend to reproduce inequality by privileging those with purchasing power. When access to quality education is determined primarily by ability to pay, education ceases to function as a tool of social mobility and instead becomes a mechanism of social stratification. This market failure is particularly evident in contexts where academic knowledge is enclosed behind paywalls, elite institutions price out large segments of the population, or research outputs are commodified in ways that restrict access to students, researchers, and public institutions.

In India, the constitutional framework supports State intervention in education through multiple provisions. The Right to Education, the Directive Principles of State Policy, and judicial recognition of education as integral to Article 21<sup>36</sup> (Right to Life and Personal Liberty) collectively establish education as a matter of public obligation rather than private discretion. Where the market fails to ensure equitable access, State intervention becomes not only permissible but constitutionally necessary.<sup>37</sup>

Just as the State intervenes in rail transport to ensure that connectivity and affordability are not dictated solely by profitability, it must intervene in education to ensure that access to knowledge, academic research, and learning resources is not governed exclusively by market incentives. This includes regulation of private educational institutions, public funding of universities, and policies addressing barriers such as high tuition fees and restricted access to academic publications.

Economic theory recognises education as a public good with positive externalities, meaning its benefits extend far beyond the individual consumer to society at large. An educated population enhances democratic participation, economic productivity, scientific innovation, and social cohesion. Markets,

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<sup>36</sup> INDIA CONST. art. 21.

<sup>37</sup> Anuradha Herur & Samraat Basu, *The Copyright Act and Its Effect on the Right to Education: A Critical Analysis*, 1 *Rgnul Student L. Rev.* 29 (Vol. 1 Iss. 1).

however, tend to under-provide such goods because they cannot fully capture these diffuse societal benefits.<sup>38</sup>

State intervention, therefore, serves a corrective function, ensuring that education fulfils its role as a public good rather than degenerating into a luxury product. In this context, State regulation and control are not antithetical to efficiency but are mechanisms to align economic activity with constitutional values of equality, dignity, and social justice.

## Conclusion

This research shows that academic knowledge is increasingly being treated like a commercial product rather than a shared public resource. A small number of powerful publishers now control a large part of the scholarly publishing market, and their pricing models, paywalls, and restrictive digital technologies make access expensive and unequal. When research articles, journals, and academic materials are locked behind high subscription fees or technological barriers, knowledge stops being something meant for society at large. Instead, it becomes available only to those institutions and individuals who can afford it. This reality sits uneasily with India's constitutional commitment to education. The Constitution does not treat education as a luxury; it sees it as essential for equality, dignity, and meaningful participation in democracy. When we read the right to education alongside Articles 14, 19, and 21, it becomes clear that the State has a duty not just to allow access to knowledge, but to remove systemic obstacles that prevent fair and equal access. In this light, the dominance of large academic publishers and the use of strict copyright enforcement and technological locks do more than affect markets, they affect constitutional values. They risk widening the gap between those who can participate in knowledge production and those who cannot.<sup>39</sup>

The study also makes clear that leaving access to academic knowledge entirely to market forces does not work. Markets are good at rewarding demand and profitability, but education and research serve purposes that go far beyond profit. They generate public benefits: informed citizens, better policy, scientific innovation, and social mobility. Just as the State intervenes in sectors like transport and public infrastructure to ensure affordability and universal access, it has a similar responsibility in the realm of knowledge. When markets fail to distribute essential resources fairly, State intervention becomes not only justified, but necessary.

Ultimately, knowledge is not just another commodity. It is the foundation of progress, equality, and democracy. A legal and regulatory framework that treats it purely as private property risks undermining the very constitutional ideals India seeks to uphold.

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<sup>38</sup> *Commodification of Knowledge*, EasySociology (Apr. 20, 2023), <https://easysociology.com/sociology-of-education/commodification-of-knowledge>

<sup>39</sup> Anuradha Herur & Samraat Basu, The Copyright Act and Its Effect on the Right to Education: A Critical Analysis, 1 *Rgnul Student L. Rev.* 29 (Vol. 1 Iss. 1).

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