

## **“The Rise of Copyleft in the 21st Century: Legal Developments and Philosophical Underpinnings”**

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### **ABSTRACT**

In the digital era, the concept of copyleft has emerged as a transformative response to traditional copyright systems. Rather than restricting use, copyleft licenses ensure that creative works—such as software, educational materials, and research—remain free to use, modify, and redistribute under the same conditions. This paper explores the evolution, legal structure, and philosophical foundations of copyleft, highlighting how it leverages copyright law to promote openness and collaboration. Drawing on global legal developments and focusing on the Indian context, the paper examines how public policy, education, and digital governance are increasingly embracing copyleft principles. While challenges remain—such as legal ambiguity, commercial resistance, and enforcement difficulties—copyleft represents a powerful tool for equitable knowledge sharing and sustainable innovation. By understanding its legal mechanics and ethical significance, policymakers and legal scholars can better harness its potential in shaping a more inclusive information society.

**Keywords:** Copyleft, Copyright Law, Open Source, Free Software, Creative Commons, Knowledge Commons, Digital Licensing, Share-Alike, Legal Philosophy, Intellectual Property, India, Public Policy, Innovation, Access to Knowledge, GPL.

### **I. INTRODUCTION**

In today's digital world, the way we create, share, and access knowledge is undergoing a major transformation. Whether it's software, educational content, or digital art, people are increasingly collaborating across borders and time zones. In this setting, traditional copyright law—which gives exclusive control to creators—sometimes acts more like a barrier than a protection. It can lock up knowledge behind paywalls and prevent others from building on existing work. This is where copyleft enters the picture: not as an enemy of copyright, but as its clever, philosophical cousin. Copyleft is a licensing approach that allows anyone to freely use, modify, and distribute a work—as long as they offer the same freedoms to others. In simple terms, if you benefit from someone's work under a copyleft license, you must allow others to benefit from your version too. This idea gained momentum in the 1980s when American programmer Richard Stallman launched the Free Software Movement and introduced the GNU General Public License (GPL) as a legal tool to keep software "free"<sup>1</sup>. Since then, copyleft has grown beyond software, finding use in open-access education, scientific research, journalism, and even creative arts. India, like many other countries, has started to engage with copyleft practices, especially in sectors such as e-governance, education, and research. However, Indian copyright law does not explicitly mention "copyleft." Instead, it provides enough flexibility

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<sup>1</sup> Richard Stallman, The GNU Manifesto, Free Software Foundation (1985), available at: <https://www.gnu.org/gnu/manifesto.html> (last visited May 27, 2025).

through provisions that allow creators to license their work in ways they choose<sup>2</sup>. This means Indian creators can legally adopt copyleft licenses, though challenges remain in awareness, legal recognition, and enforcement. Understanding copyleft is not just a technical or legal matter—it's also a question of philosophy. It touches on how we view creativity, ownership, fairness, and access in a digital society. This paper explores the rise of copyleft in the 21st century, focusing on its legal developments and deeper philosophical meaning, especially in the Indian context.

## **II. THE LEGAL GENESIS OF COPYLEFT**

The term —copyleftl may sound like a play on words—and it is—but its legal underpinnings are anything but trivial. Copyleft uses the very tools of copyright law to invert its usual function. Instead of restricting access and usage, copyleft ensures openness, sharing, and freedom—legally enforced. To understand how this came about, one must trace the origins of copyleft within the larger framework of copyright law and the Free Software Movement, and how this legal mechanism matured into a global licensing paradigm, including its application and potential in India.

### **A. Copyright: A System of Exclusive Rights**

Copyright law has traditionally operated on the principle of exclusivity. Under India's Copyright Act, 1957, a creator obtains a —bundle of rights, including the right to reproduce, publish, adapt, translate, and publicly perform the work<sup>3</sup>. These rights are automatic upon creation, requiring no formal registration. While this framework is crucial in incentivizing creators, it has also been criticized for allowing knowledge and culture to be locked away. In particular, the digitization of information—software, articles, music, educational content—revealed how overly restrictive copyright could obstruct collaboration and innovation. The digital age called for a shift from control to cooperation. Copyleft arose in response to this challenge, seeking to repurpose copyright law to protect openness itself.

### **B. The Birth of Copyleft: GNU and the Free Software Foundation**

The modern concept of copyleft was born in the 1980s, with the efforts of Richard Stallman, an MIT programmer who grew frustrated with the growing proprietary nature of software. In response, he initiated the GNU Project in 1983 and founded the Free Software Foundation (FSF) in 1985. His mission was to guarantee the freedom to run, study, modify, and share software for all users<sup>4</sup>. Stallman's innovation was not merely philosophical but legal. He drafted the GNU General Public License (GPL)—a radical legal instrument that did not abolish copyright but used it in reverse. By retaining copyright and appending a license that mandated openness in derivative works, he ensured that any modifications or redistributions of GPL-licensed software would carry the same license. This created a —viral license—each generation

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<sup>2</sup> Copyright Act, 1957, § 30 (India) – allows the owner of copyright to grant a license in writing.

<sup>3</sup> Copyright Act, 1957, §§ 14–16 (India).

<sup>4</sup> Richard Stallman, *Free Software, Free Society: Selected Essays of Richard M. Stallman*, Free Software Foundation, 2nd Ed. (2010).

of the work had to remain open, passing on freedoms to future users<sup>5</sup>. In legal terms, this approach operates under Section 30 of the Indian Copyright Act, 1957, which allows copyright holders to license any of their rights by way of contract. A copyleft license is precisely such a contract: the original creator sets conditions for use and redistribution through a legally binding license document<sup>6</sup>.

### C. Legal Structure and Enforcement of Copyleft

The copyleft mechanism functions through two essential legal levers:

1. **Contractual Terms:** A copyleft license is a binding agreement. If someone uses, modifies, or redistributes the work, they must comply with its terms. If not, they breach the contract, which can lead to legal consequences.
2. **Copyright Leverage:** Even though the content is freely available, the copyright remains with the original author (or a foundation like the FSF). This gives the author the standing to sue if the license is violated.

This dual structure was put to the test in cases such as *Jacobsen v. Katzer* (United States), where the Federal Circuit held that violating an open-source license (like the Artistic License) was both a breach of contract and a copyright infringement<sup>7</sup>. This decision affirmed the enforceability of copyleft licenses in common law jurisdictions. Although India does not yet have a landmark judicial decision affirming the enforceability of copyleft licenses, the principles of contract law under the Indian Contract Act, 1872, and the flexibility provided under the Copyright Act, 1957, lay a sufficient foundation for legal recognition<sup>8</sup>.

### D. Emergence of Global Copyleft Licenses

Following the GPL, other copyleft and copyleft-inspired licenses emerged, including:

- **Lesser General Public License (LGPL):** Allows linking with non-GPL software, making it more flexible.
- **Affero GPL (AGPL):** Addresses software used over networks (like web apps).
- **Creative Commons (CC) Licenses:** Developed by Lawrence Lessig and others, these extend copyleft-like principles to non-software works such as academic articles, music, and videos<sup>9</sup>.

Among CC licenses, the CC-BY-SA (Attribution-ShareAlike) license mirrors the copyleft model by requiring derivative works to be licensed under identical terms. This —share alike condition ensures that openness flows down the chain of derivations. The wide adoption of

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<sup>5</sup> Eben Moglen, “Enforcing the GPL: The Contract Is the Key”, Columbia Law School Public Lecture, 2001

<sup>6</sup> Copyright Act, 1957, § 30 (India).

<sup>7</sup> *Jacobsen v. Katzer*, 535 F.3d 1373 (Fed. Cir. 2008).

<sup>8</sup> Indian Contract Act, 1872, § 10.

<sup>9</sup> Lawrence Lessig, *Free Culture*, Penguin Books (2004).

these licenses by major institutions—including Wikipedia (CC-BY-SA) and the Indian government's open education platforms—has solidified their legal and social legitimacy.

### **E. Copyleft in the Indian Context**

India has yet to formally legislate or adjudicate on copyleft, but its legal framework is not hostile to the idea. In fact, there are several provisions that implicitly support the use of copyleft:

- Section 30 of the Copyright Act enables any author to license their work under any terms, including copyleft<sup>10</sup>.
- Section 19(1) requires that licenses be in writing, which aligns well with the structured formats of copyleft licenses like GPL or CC<sup>11</sup>.

Several Indian institutions have embraced copyleft-inspired licensing:

- The National Repository of Open Educational Resources (NROER) and SWAYAM use Creative Commons licenses to make educational materials freely available<sup>12</sup>.
- Indian software developers regularly use GPL, MIT, and other open-source licenses when releasing software on platforms like GitHub.

Despite this, challenges remain. Many creators are unaware of the differences between copyleft and permissive licensing. Moreover, in the absence of legal precedent, uncertainty lingers around the enforceability of such licenses in Indian courts. There is also a cultural dimension. India has a strong tradition of commons-based knowledge sharing—from ancient oral traditions to the open dissemination of Ayurvedic texts. In this light, copyleft does not appear as a foreign concept but a legal formalization of indigenous practices of knowledge as a shared resource<sup>13</sup>.

### **F. Copyleft's Legal and Ethical Distinction from Public Domain**

It's important to note that copyleft is not the same as placing work in the public domain. In the public domain, anyone can use, modify, and sell the work without conditions. Copyleft, on the other hand, requires that freedom be preserved in any reuse. This legal nuance is critical to the philosophy of copyleft—it is about freedom, not the absence of structure. In the Indian legal system, while Section 21 of the Copyright Act allows authors to relinquish rights and move works into the public domain, copyleft offers a middle path: legal freedom, but with ethical constraints<sup>14</sup>.

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<sup>10</sup> Copyright Act, 1957, § 30 (India).

<sup>11</sup> Ibid, § 19(1).

<sup>12</sup> National Repository of Open Educational Resources, available at: <https://nroer.gov.in/> (last visited May 27, 2025).

<sup>13</sup> Pranesh Prakash, "Copyright and the Indian Tradition of Knowledge Sharing", Centre for Internet and Society, 2009.

<sup>14</sup> Copyright Act, 1957, § 21 (India).

### III. PHILOSOPHICAL FOUNDATIONS OF COPYLEFT

Copyleft is not merely a legal workaround—it is a deeply rooted philosophical movement that challenges how society understands property, knowledge, and creativity in the digital age. Its strength lies not only in its legal enforceability but in the compelling ethical and philosophical frameworks that support it. At the core of copyleft lie four foundational ideas: autonomy and collaborative freedom, commons theory, distributive justice, and ethical production. Together, these philosophical perspectives elevate copyleft from a mere licensing strategy to a transformative socio-legal ideology.

#### A. Autonomy and Collaborative Freedom

Traditional copyright systems focus on protecting the author's exclusive rights and individuality. Copyleft shifts this focus from individual autonomy to relational autonomy, where creators exercise freedom in collaboration with others. This aligns with Stallman's vision of software freedom—not only to run and use software but also to understand, modify, and share it<sup>15</sup>. The Free Software Foundation's definition of —freedom‖ involves four pillars: the freedom to use, study, share, and improve software<sup>16</sup>. These freedoms empower individuals and communities to participate in collective innovation. It places trust in the user as a co-creator, not just a passive consumer. In a copyleft framework, freedom is structured: it is not about doing anything, but about doing something together, with the responsibility to share alike.

This cooperative notion of autonomy is echoed in moral rights frameworks that emphasize the integrity and attribution of works. In India, Section 57 of the Copyright Act, 1957 protects the author's moral rights, which could, in theory, coexist with a copyleft license by maintaining attribution while promoting sharing<sup>17</sup>.

#### B. The Knowledge Commons: Elinor Ostrom and Digital Sharing

Another cornerstone of copyleft is its alignment with commons theory—most notably developed by Elinor Ostrom, who demonstrated that shared resources can be successfully governed without privatization or state control<sup>18</sup>. The digital domain, particularly software and cultural works, functions similarly to natural commons. Digital goods are non-rivalrous and replicable, making them ideal for a commons-based governance model. Copyleft licenses institutionalize a —knowledge commons‖ by making openness the default. Each redistribution or derivative work must follow the same licensing rules, ensuring that the commons is self-sustaining. As Hess and Ostrom note, —the information commons thrives on openness, not

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<sup>15</sup> Richard Stallman, *Free Software, Free Society: Selected Essays of Richard M. Stallman*, Free Software Foundation (2nd ed., 2010).

<sup>16</sup> Free Software Foundation, “What is Free Software?”, available at: <https://www.gnu.org/philosophy/free-sw.html> (last visited May 29, 2025).

<sup>17</sup> Copyright Act, 1957, § 57 (India).

<sup>18</sup> Elinor Ostrom, *Governing the Commons: The Evolution of Institutions for Collective Action* (Cambridge University Press, 1990).

scarcity<sup>19</sup>. In India, the idea of knowledge as a commons is not foreign. Traditional knowledge systems—such as Ayurveda or community storytelling—were not controlled by individuals but shared across generations. Copyleft thus resonates with India’s indigenous values of collective custodianship over knowledge<sup>20</sup>.

### **C. Distributive Justice and Social Equity**

Copyleft is deeply informed by the principles of distributive justice, especially in contexts where access to knowledge and technology is unequal. In nations like India, with vast socio economic disparities, copyleft provides a framework to level the playing field. By enabling free access to software, educational content, and research, it ensures that innovation is not monopolized by those with wealth or institutional privilege. This aligns with Amartya Sen’s capabilities approach, which emphasizes the importance of expanding people’s real freedoms and opportunities to do what they value<sup>21</sup>. By enabling communities to adapt and repurpose technologies or texts, copyleft expands capabilities—an ethical imperative in a developing society. Public initiatives like India’s SWAYAM and the National Digital Library leverage Creative Commons licensing—especially the ShareAlike (SA) variant—to ensure that educational materials remain open to all, reaffirming the nation’s commitment to inclusive knowledge dissemination<sup>22</sup>.

### **D. Ethical Production and Peer Collaboration**

Copyleft also draws from ethical theories of production and participation, particularly those associated with peer-to-peer networks and commons-based peer production. Yochai Benkler, in his work *The Wealth of Networks*, argues that information can be produced outside markets and hierarchies through decentralized collaboration<sup>23</sup>. Here, participants are not driven by profit but by intrinsic motivation, ethical responsibility, and shared purpose. Copyleft licenses formalize this ethic: they require participants to respect the cycle of giving back. The —share alike clause is not just legal—it’s moral. It affirms a duty to ensure that others receive the same freedoms one enjoys. In this sense, copyleft transforms the act of creation into a moral relationship between the creator, the community, and the future users.

### **E. Contrast with Proprietary and Public Domain Models**

Philosophically, copyleft sits between two extremes: proprietary restriction and public domain openness. Unlike proprietary licenses, which treat knowledge as scarce private property, and unlike public domain models, which allow appropriation without accountability, copyleft insists on freedom with responsibility. This is a deeply ethical position. It protects against what

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<sup>19</sup> Charlotte Hess & Elinor Ostrom, *Understanding Knowledge as a Commons* (MIT Press, 2007).

<sup>20</sup> Pranesh Prakash, “Copyright and the Indian Tradition of Knowledge Sharing”, Centre for Internet and Society, 2009.

<sup>21</sup> Amartya Sen, *Development as Freedom* (Oxford University Press, 1999).

<sup>22</sup> Ministry of Education, Government of India, “SWAYAM Platform”, available at: <https://swayam.gov.in/> (last visited May 29, 2025).

<sup>23</sup> Yochai Benkler, *The Wealth of Networks: How Social Production Transforms Markets and Freedom* (Yale University Press, 2006).

scholars like Boyle call the —enclosure of the information common by ensuring that the freedoms enshrined in the license cannot be hijacked by closed systems<sup>24</sup>. In India, such an ethical framework offers an antidote to growing privatization in education, healthcare technology, and digital governance. By mandating perpetual openness, copyleft ensures that public investments—like taxpayer-funded educational resources—remain publicly usable.

#### IV. GLOBAL LEGAL DEVELOPMENTS

The global legal landscape for copyleft has evolved significantly over the past three decades. Although rooted in the countercultural ethos of free software advocacy, copyleft has gradually gained legitimacy within mainstream legal systems—albeit in different ways across jurisdictions. Its journey from the margins to the mainstream has been shaped by national copyright laws, judicial interpretations, and policy frameworks. This section explores how countries like the United States, members of the European Union, and India have responded to the rise of copyleft, each illustrating both the opportunities and challenges of legalizing openness.

In the United States, copyleft licensing found its first legal foundation through the interplay of contract and copyright law. A landmark case in this regard was *Jacobsen v. Katzer* (2008), where the U.S. Court of Appeals for the Federal Circuit upheld the enforceability of an open source license as both a contractual obligation and a copyright condition<sup>25</sup>. The case involved the Artistic License—a permissive copyleft-style license—and confirmed that failing to comply with the license’s terms constituted a violation of copyright, not merely a breach of contract. This ruling set a crucial precedent: it acknowledged that open-source and copyleft licenses are not legally trivial or informal but are enforceable tools grounded in statutory rights. Furthermore, U.S. copyright law’s broad protection of derivative works under §106 gives strong backing to copyleft’s core feature—the —share-alike clause that governs downstream use<sup>26</sup>.

In Europe, the development of copyleft legality has followed a more nuanced, civil law trajectory. The European Union, through its directives and guidelines on software interoperability and open-source procurement, has created a supportive environment for copyleft, particularly under the Public Sector Information (PSI) Directive and the Open Source Software Strategy (2020–2023)<sup>27</sup>. Moreover, member states like Germany and France have issued judicial decisions affirming that violating a copyleft license (such as the GNU General Public License or GPL) can lead to copyright infringement claims. In *Landgericht München I*, a German regional court in 2006 enforced the GPL, confirming that non compliance with

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<sup>24</sup> James Boyle, *The Public Domain: Enclosing the Commons of the Mind* (Yale University Press, 2008).

<sup>25</sup> *Jacobsen v. Katzer*, 535 F.3d 1373 (Fed. Cir. 2008).

<sup>26</sup> Copyright Act of 1976, 17 U.S.C. § 106 (United States).

<sup>27</sup> European Commission, “Open Source Software Strategy 2020–2023: Think Open,” European Commission Digital Strategy Unit (2020), available at: [https://ec.europa.eu/info/publications/open-source-software-strategy-2020-2023\\_en](https://ec.europa.eu/info/publications/open-source-software-strategy-2020-2023_en) (last visited May 29, 2025).

license terms invalidated the right to use the software<sup>28</sup>. EU law also recognizes moral rights more robustly than the U.S., which has led to more attention on authorship and attribution within open licensing frameworks, though sometimes complicating the implementation of anonymous or collective copyleft contributions.

Meanwhile, India, while lacking specific case law on copyleft, presents a legally accommodating and philosophically compatible environment for its growth. The Indian Copyright Act, 1957, especially Sections 30 and 19, allows authors to license their work in virtually any manner, including under copyleft conditions<sup>29</sup>. These sections provide the legal machinery to support open licensing: Section 30 permits copyright owners to grant licenses, while Section 19 outlines how such licenses must be in writing and clearly defined. India's public sector, through initiatives like the Policy on Adoption of Open Source Software for e Governance (2015), has formally endorsed open-source principles, aligning with the ethos of copyleft<sup>30</sup>. Major Indian platforms such as SWAYAM, NROER, and the National Digital Library routinely use Creative Commons (CC-BY or CC-BY-SA) licenses, which fall within the copyleft family, especially when the "ShareAlike" condition is applied.

Despite the legal permissibility of copyleft in India, the absence of judicial clarity remains a concern. Courts have yet to hear cases that directly address violations of open-source licenses. This silence creates ambiguity for creators and users alike. However, Indian courts have demonstrated a readiness to engage with complex licensing regimes. In *MySpace Inc. v. Super Cassettes Industries Ltd.* (2011), the Delhi High Court analyzed digital license compliance in detail, showing an openness to interpret novel licensing frameworks<sup>31</sup>. Such precedents suggest that, when faced with a copyleft case, Indian courts may well extend existing principles of contract and copyright law to uphold these licenses.

Globally, Creative Commons (CC) licenses have played a significant role in popularizing copyleft outside the realm of software. Founded in 2001 by Lawrence Lessig and others, the CC license suite provides flexible, modular licenses that cover a wide range of creative works—from academic papers to photographs to educational content. Of particular interest is the CC-BY-SA license (Attribution-ShareAlike), which embodies the core copyleft philosophy by mandating that derivative works be distributed under the same license. Countries around the world—Brazil, Canada, Australia, and South Africa among them—have integrated CC licenses into national educational, archival, and research dissemination policies<sup>32</sup>.

However, copyleft's rise has not been without resistance. Critics, especially in commercial sectors, argue that —strong copyleft licenses like the GPL are overly restrictive and

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<sup>28</sup> Landgericht München I, Case No. 21 O 6123/07 (Germany, 2006).

<sup>29</sup> Copyright Act, 1957, §§ 30, 19 (India).

<sup>30</sup> Ministry of Electronics and IT, Government of India, "Policy on Adoption of Open Source Software for Government of India," 13 March 2015.

<sup>31</sup> *MySpace Inc. v. Super Cassettes Industries Ltd.*, 2011 (48) PTC 49 (Del).

<sup>32</sup> Creative Commons, "Global Case Studies," available at: <https://creativecommons.org/about/global-affiliate-network/> (last visited May 29, 2025).

incompatible with proprietary business models. In response, —permissive licenses like MIT and BSD have gained popularity. These licenses still encourage openness but do not mandate share-alike conditions, which can lead to re-appropriation of open work into closed ecosystems. This trend has sparked an ongoing debate within the open-source community about whether legal freedom or ethical obligation should take priority.

## **V. COPYLEFT AND PUBLIC POLICY IN INDIA**

India stands at a crucial juncture where digital transformation, inclusive development, and open innovation converge. In this context, copyleft licensing has emerged as a strategic policy tool—not just a legal mechanism or ideological position. Its alignment with India's broader public policy goals—such as digital inclusion, open education, e-governance, and local innovation—has made copyleft increasingly relevant, even though the term itself may not always appear explicitly in legislation or government directives. The spirit of copyleft, grounded in freedom, access, and sharing, aligns powerfully with India's democratic and developmental aspirations. One of the most prominent policy endorsements of open source—and by extension, copyleft—came with the —Policy on Adoption of Open Source Software for Government of India, issued by the Ministry of Electronics and Information Technology (MeitY) in 2015. This policy mandates the preference of Free and Open Source Software (FOSS) in all e-Governance projects. While it does not specifically require copyleft licenses like the GPL or CC-BY-SA, it encourages the use of software that can be freely used, modified, and shared<sup>33</sup>. In practice, many government-developed tools, including e-Hospital, e-Procurement, and Bharat Operating System Solutions (BOSS), are released under GPL or similar copyleft-compliant licenses. This positions India as a forward-thinking state actor in promoting commons-based digital infrastructure. Education is another area where copyleft has found fertile ground in Indian public policy. Initiatives such as the National Repository of Open Educational Resources (NROER) and SWAYAM—India's massive open online course (MOOC) platform—have embraced Creative Commons (CC) licenses, particularly CC-BY and CC-BY-SA. These licenses allow educators, institutions, and learners to use, remix, and redistribute content, provided they attribute the original source and, in the case of ShareAlike, use the same license in derivative works<sup>34</sup>. This is a classic example of copyleft logic embedded within educational policy—a legal commitment to keep knowledge perpetually open. For a country grappling with educational inequality, this approach helps democratize learning by ensuring that publicly funded content remains a public good. Public sector research is also increasingly engaging with open licensing. The Indian Council of Agricultural Research (ICAR) and Council of Scientific and Industrial Research (CSIR) have begun adopting open-access mandates for research publications, many of which are now published under Creative Commons licenses. Although these policies often emphasize permissive rather than strong copyleft licenses, they mark a shift toward the institutionalization of the knowledge commons within public research

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<sup>33</sup> Ministry of Electronics and IT, Government of India, “Policy on Adoption of Open Source Software for Government of India,” 13 March 2015.

<sup>34</sup> Ministry of Education, Government of India, “SWAYAM Platform,” available at: <https://swayam.gov.in> (last visited May 29, 2025); National Repository of Open Educational Resources (NROER), <https://nroer.gov.in>.

infrastructure<sup>35</sup>. Beyond education and governance, the ethos of copyleft has found resonance in India's grassroots innovation movement. The National Innovation Foundation (NIF), which supports traditional knowledge and local inventors, advocates for open documentation and community rights over individual patents, particularly in cases where the innovation draws from collective practices. This approach is conceptually aligned with copyleft, as it seeks to prevent enclosure of communal knowledge and emphasizes sustainable, shared benefits<sup>36</sup>.

However, despite these positive trends, certain gaps persist. First, the lack of legal literacy and awareness among policymakers, creators, and bureaucrats often results in inconsistent or incorrect application of copyleft licenses. Instances of government departments uploading Creative Commons materials without proper attribution or license compatibility are not uncommon. Second, the absence of a clear judicial precedent on copyleft licensing in India leaves some ambiguity regarding enforcement and compliance, particularly in commercial contexts. While courts have upheld complex digital licensing terms, as seen in *MySpace Inc. v. Super Cassettes Industries Ltd.* (2011), there remains a need for explicit legal recognition and case law surrounding open licensing<sup>37</sup>. Moreover, India's National IPR Policy (2016) focuses heavily on commercialization and IP monetization, with limited attention to open knowledge regimes like copyleft<sup>38</sup>. This market-centric orientation could potentially undermine grassroots and public sector efforts to promote commons-based licensing unless balanced by targeted reforms. There is a compelling need to integrate copyleft principles into India's intellectual property strategies—not to displace proprietary models, but to provide legal space for cooperative innovation alongside individual inventiveness. Encouragingly, India's Digital India initiative, which envisions delivering government services digitally and enhancing digital literacy, creates an ideal policy platform for further integration of copyleft based tools. By embedding open standards and copyleft licenses into state-built platforms and public datasets, India can significantly enhance transparency, accessibility, and civic participation.

## VI. CRITIQUES AND CHALLENGES OF COPYLEFT LICENSING

While copyleft licensing offers a compelling vision of openness, collaboration, and equitable access to knowledge, it is not without its share of criticisms and challenges—both in theory and in practice. These concerns span legal ambiguities, economic apprehensions, and practical complexities, especially in jurisdictions like India where formal recognition and enforcement of such licenses remain underdeveloped.

One of the most frequently raised critiques is that strong copyleft licenses, such as the GNU General Public License (GPL), are —too restrictivel for commercial environments. Unlike

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<sup>35</sup> Indian Council of Agricultural Research (ICAR), "Open Access Policy," available at: <https://icar.org.in> (last visited May 29, 2025); CSIR Research Publications, available at: <https://csir.res.in>.

<sup>36</sup> National Innovation Foundation, "About Us," available at: <https://nif.org.in> (last visited May 29, 2025).

<sup>37</sup> *MySpace Inc. v. Super Cassettes Industries Ltd.*, 2011 (48) PTC 49 (Del).

<sup>38</sup> Department for Promotion of Industry and Internal Trade (DPIIT), "National IPR Policy," 2016, available at: <https://dpiit.gov.in> (last visited May 29, 2025).

permissive open-source licenses (e.g., MIT or BSD), which allow re-use with minimal conditions, strong copyleft licenses require derivative works to adopt the same license terms. This —virall nature of copyleft is seen by some businesses as a deterrent to innovation because it obligates them to release modifications, potentially impacting proprietary interests<sup>39</sup>. For instance, integrating copyleft-licensed code into a larger proprietary software project may require the entire project to be released under the same copyleft license, which is commercially unattractive to many developers.

From a legal standpoint, critics also argue that copyleft licenses can be difficult to enforce, particularly across jurisdictions. While countries like the U.S. and Germany have established precedents affirming the enforceability of copyleft clauses, many legal systems—including India—have not yet tested these licenses in court. This creates uncertainty about legal remedies in cases of non-compliance or infringement<sup>40</sup>. Moreover, the Indian legal community, including judiciary and practitioners, remains largely unfamiliar with the nuances of open licensing, which can further delay or complicate enforcement processes.

Another significant challenge is the complexity of license compatibility. When developers or institutions combine multiple open-source components, they must ensure that the licenses are compatible with each other. For example, code licensed under the Apache License 2.0 cannot be easily combined with GPL-licensed code due to conflicting terms, unless specific provisions are followed<sup>41</sup>. Such technicalities can deter users from engaging with copyleft tools, especially in resource-constrained environments like public sector institutions or small development teams that lack legal counsel.

In the Indian context, a key barrier is the lack of widespread awareness and understanding of copyleft. While public initiatives such as SWAYAM and NROER have adopted Creative Commons licenses, the rationale for choosing specific licensing models is often unclear, and inconsistent application of licenses is common. Many government and educational websites use the term "open" without providing proper licensing metadata, creating ambiguity about reuse rights and potentially exposing users to unintended legal risks<sup>42</sup>. In a knowledge economy driven by both formal and informal innovation, such uncertainty weakens the transformative potential of copyleft.

There are also ethical critiques from within the open-access and commons movements. Some argue that while copyleft enforces legal openness, it does not always guarantee inclusive or culturally sensitive access. For example, a legally —freel resource may still be inaccessible due to language barriers, digital divides, or lack of contextual adaptation. In India, where

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<sup>39</sup> Mark Radcliffe, "Open Source Licensing: The Risks and the Benefits," *Journal of Internet Law*, Vol. 10, No. 6, 2006.

<sup>40</sup> *Jacobsen v. Katzer*, 535 F.3d 1373 (Fed. Cir. 2008); *Landgericht München I*, Case No. 21 O 6123/07 (Germany, 2006)

<sup>41</sup> Free Software Foundation, "License Compatibility and GPL," available at: <https://www.gnu.org/licenses/gpl-faq.html#WhatDoesCompatMean> (last visited May 29, 2025).

<sup>42</sup> Centre for Internet and Society (CIS), "License Literacy in Indian OER Portals," Policy Brief, 2021.

linguistic diversity and digital inequality are critical issues, copyleft alone cannot solve the broader challenge of equitable access to knowledge<sup>43</sup>.

Lastly, in the broader philosophical debate, critics question whether legal mandates of sharing, as imposed by copyleft, dilute the spirit of voluntary collaboration. Some argue that freedom should include the freedom not to share or the freedom to choose different terms.

Permissive licenses are often preferred in such scenarios as they respect individual choice while still promoting openness<sup>44</sup>. In this view, copyleft is seen not as a tool of empowerment but as a form of coercive openness.

Despite these challenges, it would be reductive to dismiss copyleft. Rather, these critiques should be understood as opportunities for reform, adaptation, and education. Strengthening legal clarity, improving institutional literacy on open licensing, and encouraging hybrid licensing models may help address the practical issues while preserving the foundational ideals of copyleft. For India, where the need for inclusive innovation is profound, overcoming these challenges could unlock enormous potential in education, research, digital governance, and grassroots creativity.

## VII. CONCLUSION

Copyleft represents one of the most creative legal innovations of the digital era—a model that transforms copyright from a tool of restriction into a mechanism for ensuring openness, collaboration, and shared growth. Rooted in philosophical values such as freedom, distributive justice, and the preservation of the commons, copyleft licensing challenges traditional assumptions about ownership and control in intellectual property law. It offers a vision of knowledge as a living, evolving public good rather than a product to be hoarded and commodified.

As seen across global legal systems, from U.S. courts to European policy frameworks, copyleft has matured from a fringe idea into a recognized, enforceable legal strategy. Its impact is especially profound in areas like open-source software, education, scientific research, and digital governance. In India, while copyleft is not explicitly embedded in statutory language or judicial precedent, its principles have found fertile ground in public policy—from national e-learning platforms like SWAYAM to the government's open-source software mandates. These developments suggest that India is quietly embracing a new, commons-based intellectual property paradigm, even if the term "copyleft" remains unfamiliar to many.

That said, copyleft is not a panacea. It faces real challenges: legal ambiguity in jurisdictions like India, resistance from commercial stakeholders, complexity in implementation, and occasional ethical critiques regarding its rigidity. But these challenges are not reasons to

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<sup>43</sup> Anita Gurumurthy and Nandini Chami, "Digital Rights and Open Knowledge in India: A Policy Review," IT for Change, 2020.

<sup>44</sup> Lawrence Rosen, *Open Source Licensing: Software Freedom and Intellectual Property Law* (Prentice Hall, 2004).

abandon the model—they are invitations to refine it. What’s needed is greater awareness, legal literacy, and policy innovation that builds upon copyleft’s core promise: freedom not as exclusion, but as access with responsibility.

In an age where knowledge is power, and digital divides continue to shape who gets to learn, build, and innovate, copyleft offers more than a license—it offers a philosophy of fairness. For countries like India, with their vast pools of creativity, diversity, and inequality, embracing copyleft more fully could help democratize innovation and ensure that the future of knowledge is open to all, and owned by none.