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Blanket Injunctions in the Digital Age: The Jurisprudence and Proportionality of ‘Ashok Kumar’ Orders in India

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ABSTRACT

*The emergence of blanket and dynamic injunctions in India must be understood against the enforcement crisis created by digital infringement. Traditional injunction law rests on specificity, on notice and on the capacity to bind an identified party, and those requirements are difficult to satisfy where infringers cannot be found when a suit is filed. Indian courts responded with injunctions against unknown defendants, known here as Ashok Kumar orders, and later extended them into website blocking and dynamic injunctions reaching mirror and redirect sites not yet in existence when the order was made. This article traces that development from *Taj Television Ltd. v. Rajan Mandal* to *UTV Software Communication Ltd. v. 1337X.to*, and examines its constitutional implications. It argues that the difficulty lies not in the idea of an injunction against an unknown defendant but in the unstructured manner in which blanket and dynamic injunctions are granted. Measured against the four-part proportionality standard, such orders satisfy the requirements of legitimate aim and suitability but frequently fail those of necessity and balancing, because whole sites are blocked where individual addresses would serve, because affected parties are not heard, and because continuing blocking operates without periodic judicial review. Drawing on the practice of the United Kingdom, the European Union, the United States and Singapore, the article proposes a structured framework: a mandatory proportionality inquiry, a distinction between rogue and mixed-content sites, procedural safeguards for intermediaries and third parties, periodic review, transparency, and a remedy for wrongful blocking.*

Keywords: *Ashok Kumar orders, John Doe orders, Dynamic injunctions, Website blocking, Proportionality, Freedom of speech, Copyright enforcement*

I. THE ENFORCEMENT CRISIS IN THE DIGITAL ENVIRONMENT

Lord Mansfield observed in *Sayre v. Moore* that care must be taken to guard against two extremes equally prejudicial: that men of ability who have employed their time for the service

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of the public should not be deprived of their just merits and the reward of their labour, and that the world should not be deprived of improvements nor the progress of the arts retarded.

The emergence of blanket and dynamic injunctions in India is to be understood within the enforcement crisis created by digital infringement. Conventional systems of intellectual property protection were modelled on a legal order in which infringers could be named, located and brought before a court by ordinary civil process. Injunctions were equitable remedies directed at particular defendants whose conduct the court could restrain. The internet and digital distribution unsettled that model, permitting anonymous infringement, rapid reproduction and violation dispersed across jurisdictions, and rendering the traditional mechanism largely ineffective.

Digital piracy operates through decentralised arrangements: peer-to-peer networks, streaming sites, cyberlockers and mirror domains that change their names and hosting locations regularly. Infringers use anonymous or temporary digital identities, so that a rights holder frequently cannot identify a defendant before seeking relief. Where a site has been blocked or closed, the same content often reappears within days through a mirror or a redirect. The result is a structural problem in which the pace of proceedings is slower than the pace at which infringement replicates itself. It has accordingly been argued that digital infringement converts copyright enforcement from a dispute between identifiable parties into a continuing enforcement problem directed at unidentified and shifting participants.¹

Injunction law in practice rests on specificity, on the giving of notice and on the capacity to bind a particular party. Those principles are hard to apply where the wrongdoers cannot be identified when the suit is filed, and courts faced a position in which strict adherence to the ordinary procedural requirements would have made the enforcement of copyright online practically impossible. The choice was between procedural orthodoxy and effective enforcement. It was out of that crisis that courts began to grant injunctions against unknown defendants, known in common law jurisdictions as John Doe orders, most often in cases of copyright and broadcasting piracy.

The mechanism was applied by Indian courts from the early 2000s, particularly in cases of unauthorised cable transmission and film piracy. In *Taj Television Ltd. v. Rajan Mandal* the High Court of Delhi accepted that waiting until infringers were identified would defeat the protection of copyright, and granted an injunction against unknown persons engaged in unauthorised

¹ Mark A. Lemley & Eugene Volokh, *Freedom of Speech and Injunctions in Intellectual Property Cases*, 48 DUKE L.J. 147 (1998).

broadcasting.² The court recognised that piracy networks contain many unknown participants and that effective enforcement required preventive relief against them. That decision is the origin of what are now known in India as Ashok Kumar orders.

The significance of the development is that Ashok Kumar orders were not created by statutory amendment but by judicial innovation in response to technological change and the difficulty of enforcement. They were an attempt to apply established principles of injunction to the reality of digital infringement. What began as a procedural device for dealing with unknown infringers has since grown to encompass blanket and dynamic injunctions involving the blocking of websites and the imposition of obligations upon intermediaries. The enforcement crisis therefore produced not only the Ashok Kumar order but a change in the character and the reach of injunction jurisprudence in India.

II. THE JURISPRUDENTIAL FOUNDATION OF ASHOK KUMAR ORDERS

Ashok Kumar orders rest on the attempt of the judiciary to reconcile the traditional law of injunctions with the reality of digital infringement and anonymous wrongdoing. No statutory provision conferred the power to grant such injunctions. The doctrine emerged from the interaction of equitable jurisdiction, the inherent jurisdiction of the courts, the procedural flexibility of the Code of Civil Procedure and the need to protect intellectual property online. The jurisprudence is therefore a judicial development and extension of injunction law rather than a change in the law itself.

The injunction against an unknown defendant derives from the common law practice of granting John Doe orders, which allowed a court to restrain unidentified persons engaged in wrongful activity where identification at the time of suit was impossible. Such orders were made historically in property litigation, in nuisance and later in intellectual property, particularly in cases of piracy and unauthorised broadcasting. The animating idea was that equity should not permit a wrong to continue merely because its author could not be apprehended at a particular moment, and courts accordingly justified such injunctions by reference to the wrong rather than to the person who committed it.³

Indian courts applied and adapted the doctrine in intellectual property cases involving many unknown participants in piracy networks. The Indian practice came to be called the Ashok Kumar order, describing suits brought against unidentified defendants under a fictitious name. The authority for such injunctions was ordinarily located in Order XXXIX, Rules 1 and 2 of the

² *Taj Television Ltd. v. Rajan Mandal*, C.S. (O.S.) No. 1072/2002 (Del. H.C. July 18, 2003) (India).

³ *See Anton Piller KG v. Manufacturing Processes Ltd.*, [1976] Ch. 55 (C.A.) (U.K.).

Code of Civil Procedure, 1908, which empowers a court to grant a temporary injunction to prevent irreparable harm and to preserve the subject matter of the suit. Courts applied those provisions broadly to permit relief against unknown persons engaged in infringement, particularly where delay would cause serious consequences for the rights holder.⁴

The jurisprudence developed further with the growth of online piracy, as courts began to grant wider relief in the form of website blocking and dynamic injunctions. In *UTV Software Communication Ltd. v. 1337X.to* the High Court of Delhi formally recognised the dynamic injunction, under which a rights holder may seek the blocking of mirror or redirect websites without instituting a fresh suit each time a new one is detected.⁵ The reasoning was that digital piracy operates through domain names that shift continually, so that requiring a new suit for every site would render enforcement ineffective. The decision marked a doctrinal change, because the injunction thereafter operated not only against existing defendants but against prospective ones.

In *Disney Enterprises Inc. v. Kimcartoon* the court directed internet service providers to block access to sites hosting infringing material, holding that where a site operates predominantly as an infringer and carries no substantial legitimate content, denial of access is a necessary and reasonable measure for the protection of copyright.⁶ In *Star India Pvt. Ltd. v. Haneeth Ujwal* the court granted ex parte injunctions against unknown persons streaming sports broadcasts without authority, observing that piracy of that kind occurs in real time and that relief granted late would be worthless.⁷ Urgency, irreparable loss and the difficulty of identifying infringers in advance were thus the grounds on which ex parte and blanket injunctions were justified.

Taken together, these decisions show that the foundation of the Ashok Kumar order lies in equity, in procedural flexibility and in the necessity of enforcement. That same reasoning, however, discloses a movement away from the party-based injunction towards a preventive and regulatory one, and it raises the questions of procedural fairness and of the limits of judicial power that are considered below.

III. FROM SPECIFIC INJUNCTIONS TO BLANKET AND DYNAMIC INJUNCTIONS

The history of the Ashok Kumar order in India is one of gradual but considerable expansion, in which injunctive relief has ceased to be a measure directed at particular wrongdoers and has become an instrument for regulating digital infrastructure and access to the internet. Courts

⁴ The Code of Civil Procedure, 1908, Order XXXIX, Rules 1-2, No. 5, Acts of Parliament, 1908 (India).

⁵ *UTV Software Communication Ltd. v. 1337X.to*, 2019 S.C.C. OnLine Del. 8002 (India).

⁶ *Disney Enterprises, Inc. v. Kimcartoon*, 2020 S.C.C. OnLine Del. 1236 (India).

⁷ *Star India Pvt. Ltd. v. Haneeth Ujwal*, 2019 S.C.C. OnLine Del. 8272 (India).

began by restraining unidentified persons engaged in piracy, particularly unlicensed broadcasting and film piracy, and those early orders remained consistent with traditional principle in that they were directed at particular acts of infringement even though the defendants were anonymous. As online piracy grew, courts extended relief beyond unknown persons to the websites hosting infringing material, which was the first significant enlargement of judicial intervention.

Website blocking marked a change of approach, from restraining those who had infringed to restricting access to the places where infringement occurred. Courts began directing internet service providers to block sites found to host predominantly infringing content, on the footing that most piracy sites are operated anonymously and outside Indian jurisdiction, so that proceeding against their owners is impracticable. The focus of enforcement thus shifted from the wrongdoer to the point of access, and in particular to the intermediary. Injunctions ceased to be a remedy against parties and became a means of controlling intermediaries and access to the internet, which extended judicial power well beyond conventional party-based litigation.⁸

The second stage of the expansion was the extension of injunctions to mirror, redirect and alphanumeric variants. Blocked sites commonly reappear under slightly altered domain names, which posed an enforcement problem because fresh litigation was required whenever a mirror appeared. Courts responded by granting wider relief that reached not only the individual website but its mirror and redirect versions. That greatly enlarged the scope of the injunction, because courts began to enjoin not only existing infringing sites but sites that had not yet come into existence when the order was made, a departure from the traditional requirement that an injunction be specific and directed at identifiable conduct.

The development was formally accepted in *UTV Software Communication Ltd. v. 1337X.to*, in which the High Court of Delhi introduced the dynamic injunction, permitting a plaintiff to apply to the Joint Registrar to extend a blocking order to mirror sites without a fresh suit, and so establishing a mechanism of continuing enforcement. The court justified this on the ground that digital piracy is not static and that requiring a suit against every mirror would be futile.⁹ The decision nonetheless worked a significant change in the character of the injunction, since the court in effect sanctioned continuing blocking capable of extension without a full hearing in respect of each new site.

⁸ See generally Graeme B. Dinwoodie, *A New Copyright Order: Why National Courts Should Create Global Norms*, 149 U. PA. L. REV. 469 (2000).

⁹ *UTV Software Communication Ltd.*, *supra* note 5.

There was also coordination with intermediaries and with government, in particular internet service providers and the Department of Telecommunications, which were directed to close access to infringing sites. That produced a hybrid judicial and administrative system of enforcement in which the line between a judicial injunction and an administrative block became indistinct, raising questions of accountability, of supervision and of procedural protection. It has accordingly been argued that the dynamic injunction is less a procedural innovation than a movement towards judicial regulation of digital space.¹⁰

The progression from specific injunctions against particular infringers to blanket site blocking and dynamic injunctions therefore represents a substantial expansion of judicial power. Although the courts have justified that expansion by the necessity of enforcement, it raises significant questions of overbreadth, of proportionality and of the limits of injunctive jurisdiction in the digital age.

IV. CONSTITUTIONAL CONCERNS OF FREE SPEECH, DUE PROCESS AND OVERBLOCKING

Blanket site blocking and dynamic injunctions raise serious constitutional questions, particularly of freedom of speech, of procedural fairness and of proportionality. Although justified as necessary for the protection of intellectual property online, their scope and the manner of their grant invite the question whether they restrict constitutional rights unreasonably. The constitutional issue is not the validity of copyright protection as such, but whether the procedures employed respect the constitutional limits upon restrictions of speech, upon procedural fairness and upon arbitrariness.

The principal difficulty arises under the guarantee of freedom of speech and expression in Article 19(1)(a) of the Constitution, which includes the right to receive and to access information through digital platforms.¹¹ Blocking under an Ashok Kumar injunction is frequently directed at an entire website rather than at an infringing address, which produces overblocking, so that legitimate material hosted on the same site becomes inaccessible along with the infringing material. Lawful speech and access to knowledge are restricted in consequence. Copyright protection is capable of being a reasonable restriction within Article 19(2), but a restriction must be limited and proportionate to the object it serves.¹² Blocking an entire site that carries both lawful and unlawful material may therefore be more restrictive than

¹⁰ LAWRENCE LESSIG, CODE AND OTHER LAWS OF CYBERSPACE 89-95 (1999).

¹¹ INDIA CONST. art. 19, cl. (1)(a).

¹² INDIA CONST. art. 19, cl. (2).

the Constitution permits where a less restrictive means, such as blocking individual addresses, is available.

In *Shreya Singhal v. Union of India* the Supreme Court clarified the constitutional framework governing speech on the internet and the liability of intermediaries, emphasising that restrictions upon online content must be attended by procedural protection in the form of notice, of hearing and of a reasoned order.¹³ The Court also held that an intermediary cannot be required to determine the legality of content for itself, without an order of a court or the direction of the appropriate government. That principle bears directly upon dynamic injunctions, under which intermediaries are frequently called upon to block mirror or redirect sites on lists supplied by plaintiffs or by administrative authorities, without each decision being adjudicated. Such mechanisms raise the prospect of private censorship and of procedural insecurity.

Beyond freedom of speech, Ashok Kumar orders engage Article 14, which forbids arbitrariness in state action and requires fairness and reasonableness.¹⁴ Injunctions against unknown defendants, and blanket orders binding intermediaries and third parties, may impose restrictions ex parte and without any right to be heard. An order made without prior notice or hearing may affect the owner of a website, the creators of lawful content hosted upon it and the users of that content alike, which raises serious questions of procedural fairness.

Dynamic injunctions complicate the constitutional analysis further, because they permit the blocking of future mirror and redirect sites without a fresh hearing. That establishes a continuing mechanism of blocking operated through intermediaries and government departments. In the absence of consistent judicial control and periodic review, overblocking or mistaken blocking becomes likely, which raises questions of arbitrariness and disproportion. The constitutional question is therefore whether such injunctions satisfy the doctrine of proportionality, which requires that a restriction serve a legitimate purpose, be suitable to that purpose, be the least restrictive option available, and strike a proper balance between the right restricted and the interest served.

Ashok Kumar orders are accordingly of real importance to the protection of copyright online, but they must be examined for the precision with which they are targeted, for the procedural justice they afford, for the judicial supervision to which they are subject and for their proportion to the object of preventing infringement. Blanket and dynamic injunctions that produce

¹³ *Shreya Singhal v. Union of India*, (2015) 5 S.C.C. 1 (India).

¹⁴ INDIA CONST. art. 14.

overblocking, that provide no procedural protection and that confer a discretion to block without adequate check raise serious questions under Articles 19 and 14.

V. THE DOCTRINE OF PROPORTIONALITY AND BLANKET INJUNCTIONS

The constitutionality of Ashok Kumar orders in their blanket and dynamic forms falls to be assessed by the doctrine of proportionality, which is now firmly established as the standard by which restrictions upon fundamental rights are measured in Indian constitutional jurisprudence. The Supreme Court has held that a limitation upon a fundamental right must satisfy a four-part test comprising legitimate aim, suitability, necessity and balancing, or proportionality *stricto sensu*.¹⁵ Applied to blanket website blocking and to dynamic injunctions, that framework shows that such measures may satisfy the earlier stages of the test while frequently failing the later ones.

At the first stage the requirement of a legitimate aim is plainly met. Ashok Kumar orders are directed at the protection of intellectual property and at preventing digital piracy on a large scale, which the courts have consistently recognised as a serious injury to rights holders and a disincentive to creative production. In *UTV Software Communication Ltd. v. 1337X*,¹⁶ the High Court of Delhi noted the scale and persistence of online piracy in justifying dynamic injunctions as necessary to effective enforcement.¹⁶ The prevention of infringement and the protection of intellectual property are therefore legitimate and constitutionally permissible aims.

The second stage requires that the measure adopted be suitable, that is, rationally connected to the aim. Website blocking and dynamic injunctions restrict access to pirated material directly and disrupt piracy networks. The courts have repeatedly found that infringing sites reappear under different domain names, so that an injunction requires dynamic extension if it is to retain any force.¹⁷ Blocking measures therefore bear a rational nexus to the reduction of infringement and satisfy the requirement of suitability.

The third stage, necessity, presents serious difficulty. The measure adopted must be the least restrictive means capable of achieving the aim. Blanket injunctions fare poorly by that standard, because they ordinarily block entire sites rather than the particular infringing addresses. Where lawful and unlawful material are hosted together, blanket blocking restricts expression and access to information protected by Article 19(1)(a).¹⁸ Less restrictive measures, such as the blocking of individual addresses, notice and takedown, or the selective removal of content, may

¹⁵ *Modern Dental College & Research Centre v. State of Madhya Pradesh*, (2016) 7 S.C.C. 353 (India).

¹⁶ *UTV Software Communication Ltd.*, *supra* note 5.

¹⁷ *Id.*

¹⁸ INDIA CONST. art. 19, cl. (1)(a).

achieve the object without affecting legitimate material. A failure to consider those alternatives means that blanket blocking cannot be said to be necessary in the constitutional sense.

The last stage, proportionality *stricto sensu*, requires the competing interests to be weighed: the benefit to copyright protection against the injury to fundamental rights. It is here that blanket and dynamic injunctions face their greatest difficulty. Blocking an entire site affects the rights of third parties, of lawful content owners, of site operators and of users. *Ex parte* relief, and the continuation of a dynamic injunction without a fresh hearing, raise questions of procedural fairness and of arbitrariness under Article 14.¹⁹ *Shreya Singhal v. Union of India* is authority that restrictions upon online content must be matched by proper procedural protection, including judicial scrutiny and reasoned decision.²⁰ The absence of such protection in the operation of dynamic injunctions permits restrictions on speech that are both excessive and unexamined.

Ashok Kumar orders may therefore satisfy the requirements of legitimate aim and suitability while failing those of necessity and balancing, because they are drawn too widely, afford no procedural protection and attract insufficient judicial supervision. The proportionality analysis shows that the constitutional difficulty lies not in the existence of such injunctions but in their unstructured and expansive application. Blanket and dynamic injunctions require constitutional limits, procedural protection and continuing judicial review if they are to be valid.

VI. COMPARATIVE JURISPRUDENCE ON WEBSITE BLOCKING AND DYNAMIC INJUNCTIONS

A comparative survey of jurisdictions that have adopted website blocking and dynamic injunctions shows that, although such measures are widely regarded as necessary against online piracy, the procedural and proportionality safeguards attached to them are generally stronger than those presently found in India. The comparison matters because it demonstrates that the tension between copyright enforcement and freedom of expression is not peculiar to India, while the manner of its resolution differs considerably.

In the United Kingdom blocking orders are made under section 97A of the Copyright, Designs and Patents Act 1988 and have been developed judicially, notably in *Cartier International AG v. British Sky Broadcasting Ltd.*, in which a proportionality analysis is expressly incorporated into the grant of relief.²¹ The courts there require blocking measures to be necessary, effective and dissuasive, and require also that they not unduly affect lawful content. They provide

¹⁹ INDIA CONST. art. 14.

²⁰ *Shreya Singhal*, *supra* note 13.

²¹ *Cartier International AG v. British Sky Broadcasting Ltd.*, [2016] EWCA (Civ) 658 (U.K.).

protection through the allocation of costs, through periodic review, and through the requirement that orders be directed at rogue sites principally engaged in infringement.²² The result is a systematic approach to enforcement that is moderated and guarded against excess.

The European Union applies a stricter framework of proportionality derived from the fundamental rights jurisprudence of the Charter of Fundamental Rights. In *UPC Telekabel Wien GmbH v. Constantin Film Verleih GmbH* the Court of Justice held that a blocking injunction is permissible only where it strikes a fair balance between intellectual property and freedom of expression.²³ The Court held that blocking measures must be narrowly targeted, must not unnecessarily deny users legitimate access to information, and must leave the affected party able to assert its rights before a court. Proportionality is there not merely implicit but the explicit direction under which courts act.

The United States has taken a narrower view of injunctions against unknown defendants. Although John Doe orders are accepted, particularly in the enforcement of copyright, American courts have been reluctant to grant large-scale blocking injunctions because of the strength of First Amendment protection. Relief is ordinarily specific, and courts are averse to prior restraints capable of restricting lawful speech.²⁴ Enforcement accordingly rests more upon the notice and takedown mechanism of the Digital Millennium Copyright Act than upon judicial blocking orders.

Singapore offers the closest analogue to the dynamic injunction, under the site-blocking provisions of its copyright legislation. Singaporean courts have nonetheless attached safeguards: a plaintiff must establish that the targeted sites are flagrantly infringing, and dynamic extension is permitted only under judicial supervision.²⁵ Blocking orders remain open to review and must correspond to the harm they address. Even where the dynamic injunction is available, therefore, it is subject to systematic protection against overbreadth.

By comparison, Indian courts have granted blanket and dynamic injunctions more readily and in many cases without express safeguards as to duration, periodic review or precision of targeting. Indian jurisprudence has emphasised the necessity of enforcement without developing a systematic model of proportionality. The comparative material therefore suggests that other

²² *Id.*

²³ Case C-314/12, *UPC Telekabel Wien GmbH v. Constantin Film Verleih GmbH*, ECLI:EU:C:2014:192 (Mar. 27, 2014).

²⁴ Lemley & Volokh, *supra* note 1.

²⁵ The Copyright Act (Cap. 63, 2006 Rev. Ed.) § 193DDA (Sing.) (blocking of flagrantly infringing online locations), re-enacted by The Copyright Act 2021 (Sing.).

jurisdictions have balanced enforcement against procedural and constitutional protection more systematically, and that a structured framework is needed in India.

VII. TOWARDS A STRUCTURED FRAMEWORK FOR GRANTING ASHOK KUMAR ORDERS

The foregoing discussion shows that the constitutional and procedural difficulties surrounding Ashok Kumar orders arise not from the idea of an injunction against an unknown defendant but from the absence of a systematic framework governing how such injunctions are sought, granted and discharged. Indian courts should be guided by a structured, proportionality-based approach that secures the enforcement of copyright together with the constitutional protection of speech, of due process and of non-arbitrariness. Such a framework is particularly necessary for blanket and dynamic injunctions, which have so greatly enlarged the reach of the courts in the enforcement of digital copyright.

First, the proportionality inquiry should be mandatory whenever a blanket or dynamic injunction is sought. Before directing that a site be blocked, a court should address in terms the legitimate aim, the suitability, the necessity and the balance of the measure. Proportionality is already the governing standard for limitations upon fundamental rights,²⁶ and it should apply directly to injunction jurisprudence. An order should therefore state the reasons why blocking by individual address is inadequate and why wider blocking is required.

Second, courts should adopt a classification distinguishing rogue websites from mixed-content websites. A rogue site is one whose principal purpose is the infringement of copyright; a mixed-content site carries both lawful and infringing material. Blanket blocking should be confined to rogue sites, while mixed-content sites should be addressed by blocking individual addresses. That practice has been adopted in a number of jurisdictions and is implicitly recognised in Indian law in *UTV Software Communication Ltd. v. 1337X.to*, in which the High Court of Delhi used the concept of the rogue website.²⁷

Third, procedural safeguards should be introduced for intermediaries and third parties. An intermediary should be given notice before an order takes effect, save in cases of genuine urgency. A dynamic injunction should not be permitted to run indefinitely without supervision; periodic judicial review should ensure that blocking remains apt and fair over time. Requirements of transparency should also be imposed, so that plaintiffs publish the lists of sites blocked and the reasons for blocking them, enabling an affected party to challenge the order.

²⁶ *Modern Dental College & Research Centre*, *supra* note 15.

²⁷ *UTV Software Communication Ltd.*, *supra* note 5.

Fourth, there should be a mechanism of appeal and of compensation for wrongful blocking. An expedited procedure should be available to the owner of a website, or to any party whose lawful content has been blocked. Courts should be able to award compensation where a lawful site has been blocked wrongly under an order drawn too widely. Injunction practice would then accord with the constitutional requirements of fairness and non-arbitrariness under Article 14 and with the standards of procedural due process recognised in Indian constitutional jurisprudence.²⁸

A structured framework comprising proportionality analysis, classification of websites, procedural safeguards, judicial review, transparency and compensation would allow Ashok Kumar orders to remain an effective mechanism for the enforcement of copyright while operating within constitutional and procedural limits.

VIII. CONCLUSION

Ashok Kumar orders were developed by the Indian courts as a justified response to the structural enforcement crisis created by digital piracy and anonymous infringement. The classical model of the injunction, resting on identifiable defendants, cannot function in an environment in which infringers are mutable, anonymous and transnational, and judicial innovation was not merely appropriate but necessary if copyright law was to retain its effectiveness. The validity of such orders cannot, however, be assessed by reference to the necessity of enforcement alone. Their constitutionality depends upon whether they are consistent with fundamental rights and with the principles of judicial restraint.

Ashok Kumar orders are not invalid in principle, but their present application in the form of blanket and dynamic injunctions gives cause for serious concern. Although they satisfy the requirements of legitimate aim and suitability, the proportionality analysis shows that they frequently fail those of necessity and balancing, being drawn too widely, affording no procedural protection and attracting only cursory judicial review. The blocking of entire websites, the absence of any hearing for affected parties and the delegation of enforcement to intermediaries together risk contravening the guarantees of Articles 19(1)(a) and 14.²⁹ The procedural protection and the requirement of reasoned restriction laid down in *Shreya Singhal v. Union of India* confirm that mechanisms of digital enforcement must operate within constitutional limits.³⁰

²⁸ INDIA CONST. art. 14.

²⁹ INDIA CONST. art. 19, cl. (1)(a); INDIA CONST. art. 14.

³⁰ *Shreya Singhal*, *supra* note 13.

The courts should not abandon the Ashok Kumar order, but they should substantially reform its structure and its application. Blanket injunctions should be confined to sites identified as rogue, while mixed-content sites should receive tailored remedies. Dynamic injunctions should be attended by procedural protection in the form of notice, periodic judicial review and an opportunity for affected parties to challenge a blocking order. The doctrine of proportionality, embedded as a mandatory standard, is essential if enforcement is not to exceed constitutional limits.

The future of injunction law in a digital constitutional order depends upon the capacity of the courts to hold the balance between enforcement and liberty. Ashok Kumar orders must move beyond improvised judicial practice and develop into a rights-conscious system that preserves the strength of copyright law together with the commitment to constitutional freedom.
