FROM LAND TO LOGOS: LEGAL RECOGNITION OF INTANGIBLE ASSETS IN THE PROPERTY LAW REGIME

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ABSTRACT

The evolution of property law from a land-centric framework to one increasingly recognizing intangible assets signifies a profound transformation in both legal theory and practice. Historically, property law was predominantly concerned with tangible, immovable objects, particularly land, which served as the primary repository of wealth and social power. Ownership, transfer, and protection of property were largely confined to physical assets, reflecting the material realities of earlier economies. However, the rise of the knowledge economy and the proliferation of digital technologies have dramatically altered the landscape of property rights. Today, intangible assets, including intellectual property (IP), digital assets, proprietary algorithms, trade secrets, goodwill, and brand reputation constitute essential forms of economic and strategic value, challenging the traditional conceptual boundaries of property law.

This study investigates the jurisprudential expansion of property rights to incorporate such intangible assets, examining whether existing legal frameworks are adequately equipped to address this shift. By tracing the historical trajectory from tangible property to abstract forms such as logos, trademarks, patents, and software, the paper explores how different jurisdictions, with a particular focus on India and select comparative perspectives, have gradually adapted to accommodate intangible assets within their legal regimes.

The research evaluates whether the current recognition of intangible property is coherent, comprehensive, and equitable, or whether it remains fragmented and underdeveloped. It also considers the implications of this transformation for foundational property theory, access rights, enforcement mechanisms, and socio-economic equity. Employing a doctrinal and comparative methodology, supplemented by case studies, statutory interpretation, and judicial analysis, the study seeks to illuminate both the strengths and gaps in contemporary property law.

Ultimately, this research aims to contribute to a nuanced understanding of modern property law by advocating for a harmonized approach that balances innovation, private rights, and public welfare, ensuring that legal frameworks

effectively govern the increasingly critical domain of intangible assets.

Keywords: Property Law, Intellectual property law, Intangible assets, tangible assets.

1. INTRODUCTION

Property law has historically been concerned with tangible assets, primarily land and physical objects. Landownership, in particular, has long been the cornerstone of legal regimes across civilizations, forming the basis of social hierarchy, economic stability, and political power. The legal understanding of property was thus rooted in the physical, visible, and spatially definable. This conceptualization, however, is being increasingly challenged by the proliferation of intangible assets in the modern knowledge-driven economy. However, the 21st-century knowledge economy has precipitated a paradigm shift, with intangible assets such as intellectual property (IP), data, digital currencies, and brand value, constituting the primary drivers of wealth and innovation.[1] This transition from land to logos challenges the traditional boundaries of property law, demanding a re-evaluation of its doctrines to accommodate assets that are non-rivalrous, replicable, and often borderless.[2]

The ascendance of intangibles is evident in corporate valuations: over 80% of the market value of S&P 500 firms now stems from intangible assets like patents and trademarks.[3] Yet, legal systems, particularly in jurisdictions like India, continue to grapple with reconciling these assets with property frameworks designed for tangible objects.[4] While the U.S. and EU have incrementally expanded property doctrines to include digital assets (e.g., the EU's Digital Single Market Strategy) and data rights (e.g., GDPR's portability provisions),[5] India's approach remains fragmented.[6] For instance, the Indian Copyright Act (1957) and Trademarks Act (1999) recognize IP as property, but broader intangibles like data or algorithms lack

[1] Peter Drahos, *Intellectual Property, Indigenous People and Their Knowledge* 12 (2014); World Intellectual Property Organization, *WIPO Intellectual Property Handbook* 10–11 (2d ed. 2004).
[2] Margaret Jane Radin, *Property and Personhood*, 34 Stan. L. Rev. 957, 959–63 (1982).; Lawrence Lessig, *Code and Other Laws of Cyberspace* 92–98 (1999).
[3] Ocean Tomo, *Intangible Asset Market Value Study* (2020), https://oceantomo.com/intangible-asset-market-value-study/.
[4] Radhika Kapoor*, India's Economic Transition and Legal Lag in Intangible Assets*, 13 J. Nat'l L. U. Delhi 45, 51–53 (2021).
[5] Regulation (EU) 2016/679, 2016 O.J. (L 119) 1 (General Data Protection Regulation); European Commission, *Digital Single Market Strategy* (2015), https://digital-strategy.ec.europa.eu/.
[6] Shamnad Basheer, *India's Tryst with the IP Transition: Structural Challenges and Reform Possibilities*, 6 Indian J.L. & Tech. 1, 3–5 (2010).

coherent statutory recognition.[7]

This dissonance raises critical jurisprudential questions: Can classical property principles like exclusion, transferability, and *numerus clausus*, apply to intangibles?[8] How do we balance private ownership of algorithms or datasets with public access and equity? [9]The commodification of intangibles also exacerbates socio-legal tensions, as seen in disputes over traditional knowledge appropriation or platform workers' data rights.[10]

This paper interrogates the adequacy of India's property law regime in addressing these challenges, drawing comparative insights from the U.S., EU, and U.K.[11] By synthesizing doctrinal analysis, case law (e.g., *Justice K.S. Puttaswamy v. Union of India* on data as property),[12] and policy gaps, it advocates for a harmonized framework that aligns with global trends while addressing local equity concerns.[13] The study argues that India's historical focus on tangible property necessitates urgent reforms to prevent systemic exclusion in an era where logos rival land as sites of power.[14]

1.1 RESEARCH PROBLEM

While intangible assets form a substantial part of modern economic value, their legal recognition within the traditional property law regime remains fragmented, conceptually inconsistent, and inadequately integrated, especially in the Indian context.

1.2 RESEARCH QUESTIONS

1. How has the conceptual understanding of 'property' evolved to accommodate intangible assets?

2. What are the current legal mechanisms for recognizing and protecting intangible assets

[7] Copyright Act, No. 14 of 1957, India Code (1957); Trade Marks Act, No. 47 of 1999, India Code (1999).
[8] Henry E. Smith, *Property as Platform: What Legal Foundations Can Learn from Standards in Technology*, 64 Ariz. L. Rev. 713, 715–18 (2022).
[9] Julie E. Cohen, *Between Truth and Power: The Legal Constructions of Informational Capitalism* 78–80 (2019).
[10] Madhavi Sunder, *IP³*, 59 Stan. L. Rev. 257, 260–66 (2006).
[11] Lionel Bently & Brad Sherman, *Intellectual Property Law* 18–21 (5th ed. 2018).; Pamela Samuelson, *Privacy as Intellectual Property?*, 52 Stan. L. Rev. 1125, 1130–33 (2000).
[12] *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1 (India).
[13] Prashant Reddy & Sumathi Chandrashekaran, *Create, Copy, Disrupt: India's Intellectual Property Dilemmas* 34–36 (2017).
[14] Nandan Nilekani, *Imagining India: Ideas for the New Century* 198–203 (2009).

under Indian property law?

3. How do other jurisdictions treat intangible assets as property, and what lessons can India draw from them?

4. What legal and policy reforms are required to create a comprehensive property regime inclusive of intangible assets?

2. RECONCEPTUALIZING PROPERTY – THE EVOLUTION TOWARD INTANGIBLES

The classical understanding of property, rooted in the theories of Locke and Bentham, emphasized tangible assets such as land and chattels as the primary subjects of ownership.[15] This tangibility paradigm dominated early jurisprudence, where corporeal possession served as the cornerstone of property rights.[16] However, the rise of intellectual and digital economies necessitated a reconceptualization of property to accommodate intangible assets, such as copyrights, patents, and digital data, as legitimate bearers of economic value.[17] Theoretical debates emerged between the "bundle of rights" approach, championed by Hohfeld, and traditional exclusionary models, reflecting the tension between flexibility and stability in property doctrines.[18]

Modern scholarship recognizes property as a dynamic social and economic construct, shaped by technological and commercial developments.[19] This shift is evident in Indian jurisprudence, where cases like *Justice K.S. Puttaswamy (Retd.) v. Union of India* have acknowledged data as a protectable interest, albeit without a clear doctrinal framework.[20] Internationally, instruments like the TRIPS Agreement and GDPR further underscore the need for a new jurisprudence that addresses the unique attributes of intangible property.[21]

The Indian legal framework has gradually adapted to recognize intangible assets, though gaps

[15] John Locke, *Two Treatises of Government* (1689).
[16] Kevin Gray & Susan Gray, *Elements of Property Law* 3–5, 712–15, 720–23 (5th ed. 2011).
[17] V.K. Ahuja, *Intellectual Property Law in India* 1–15 (2d ed. 2020).
[18] Wesley Newcomb Hohfeld, *Fundamental Legal Conceptions* 28–32 (1919).; Thomas Merrill & Henry Smith, *What Happened to Property in Law and Economics?*, 111 Yale L.J. 357, 360–65 (2001).
[19] John G. Sprankling, *Understanding Property Law* 12–18 (4th ed. 2017).
[20] *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1 (India).
[21] Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, 1869 U.N.T.S. 299; General Data Protection Regulation, 2016 O.J. (L 119) 1 (EU).

persist in doctrinal coherence. Mulla's *Law of Property* highlights how the Transfer of Property Act, 1882, primarily governs tangible assets, leaving intellectual property (IP) and digital assets to specialized regimes.[22] Judicial precedents, such as *Yahoo Inc. v. Akash Arora*, affirm trademarks and domain names as protectable intangible property,[23] while scholars like N.S. Nappinai argue for explicit recognition of data as a distinct asset class under property law.[24] Comparative perspectives, such as the EU's GDPR, demonstrate advanced frameworks for intangible rights,[25] underscoring the urgency for India to reconcile traditional property doctrines with emergent digital economies.[26]

2.1 The Need for a New Jurisprudence of Intangible Property

The traditional frameworks of property law, rooted in physical possession and exclusionary rights, are increasingly inadequate to govern intangible assets such as data, digital identities, and intellectual property.[27] Classical theories, including Locke's labor-based justification for ownership, fail to account for the non-rivalrous and reproducible nature of intangibles, which do not diminish upon use.[28] The "bundle of rights" approach, articulated by Hohfeld and refined by modern scholars like Merrill & Smith, offers some flexibility but lacks a coherent foundation for emerging forms of value, such as algorithmic datasets or AI-generated works.[29] Judicial systems, including India's, have struggled to fit these assets into existing categories, as seen in cases like *Justice K.S. Puttaswamy (Retd.) v. Union of India*, where data privacy was recognized as a fundamental right without a clear proprietary framework.[30] A new jurisprudence must reconcile these gaps by redefining key concepts like possession, exclusivity, and value attribution in the context of digital economies.[31]

The urgency for doctrinal evolution is further underscored by global trends, where instruments like the GDPR and TRIPS Agreement impose obligations that indirectly treat data and IP as

[22] D.F. Mulla, *The Transfer of Property Act* 1–5 (15th ed. 2021).
[23] Yahoo Inc. v. Akash Arora, AIR 1999 Del 27.
[24] N.S. Nappinai, *Data and the Law* 89–93 (2020).
[25] General Data Protection Regulation, 2016 O.J. (L 119) 1, arts. 4–7 (EU).
[26] Aditya Gupta, *Recognition of Data as an Intangible Asset: The Legal Lacuna in Indian Jurisprudence*, 8 NLIU L. Rev. 45, 52–55 (2022).
[27] John G. Sprankling, *Understanding Property Law* 21–24 (4th ed. 2017).
[28] Jeremy Bentham, *Theory of Legislation* 112–15 (1802).
[29] Thomas W. Merrill & Henry E. Smith, *What Happened to Property in Law and Economics?*, 111 Yale L.J. 357, 360–65 (2001).
[30] *Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1 (India).*
[31] Kevin Gray & Susan Gray, *Elements of Property Law* 720–23 (5th ed. 2011).

proprietary interests.[32] Scholars such as N.S. Nappinai argue that data's economic centrality demands its explicit recognition as a distinct form of property, rather than mere contractual or statutory entitlements.[33] Similarly, Indian jurisprudence, as reflected in *Tata Sons Ltd. v. Greenpeace International*, has extended protection to brand value and digital reputational rights, yet without systematic principles.[34] A restructured jurisprudence should integrate comparative insights (e.g., the EU's data sovereignty models) while addressing India's unique socio-legal context, ensuring that intangible assets are neither overprotected to stifle innovation nor under protected to enable exploitation.[35]

3. INTANGIBLE PROPERTY IN INDIAN LAW: EXISTING LEGAL FRAMEWORKS

The Indian legal system's approach to intangible property reflects an ongoing transformation from traditional, tangible asset-based frameworks to more inclusive paradigms that recognize modern forms of value.[36] While foundational statutes like the *Transfer of Property Act, 1882* and the *Indian Easements Act, 1882* were conceived to govern physical assets, they remain largely silent on intangible property, creating a conceptual disconnect with contemporary economic realities.[37] This gap has been partially bridged through sector-specific legislation and judicial innovation, particularly in intellectual property and commercial law, though a comprehensive framework for intangible assets remains elusive.[38] The resulting legal landscape is characterized by fragmented recognition, where some intangibles enjoy robust protection while others, especially emerging digital assets, operate in regulatory gray areas.[39]

The evolution of India's property law regime reveals both progressive adaptations and persistent structural limitations.[40] Specialized statutes like the *Copyright Act, 1957* and *Trademarks Act, 1999* demonstrate legislative recognition of certain intangible assets, while courts have expanded protections through interpretations of existing laws.[41] However, this piecemeal approach has led to inconsistencies in treatment across different domains like commercial transactions may recognize goodwill as property, while tax and

[32] General Data Protection Regulation, 2016 O.J. (L 119) 1, arts. 4–7; TRIPS Agreement, Art. 27.
[33] N.S. Nappinai, *Data and the Law* 102–05 (2020).
[34] *Tata Sons Ltd. v. Greenpeace International*, (2011) 178 DLT 705 (India).
[35] Aditya Gupta, *Recognition of Data as an Intangible Asset*, 8 NLIU L. Rev. 45, 60–62 (2022).
[36] John G. Sprankling, *Understanding Property Law* 21–24 (4th ed. 2017).
[37] D.F. Mulla, *The Transfer of Property Act* 1–5 (15th ed. 2021).
[38] V.K. Ahuja, *Intellectual Property Law in India* 12–18 (2d ed. 2020).
[39] N.S. Nappinai, *Cyber Law: The Indian Perspective* 211–15 (2d ed. 2020).
[40] Kevin Gray & Susan Gray, *Elements of Property Law* 712–15 (5th ed. 2011).
[41] *R.G. Anand v. Delux Films, AIR 1978 SC 1613 ¶ 9.*

inheritance laws often lack corresponding provisions.[42] The judiciary's role has been particularly pivotal in addressing legislative gaps, as seen in cases involving digital assets and data rights, though the absence of clear statutory guidance continues to produce uncertain outcomes.[43] This chapter analyzes these complexities through six key dimensions, highlighting the urgent need for a more cohesive jurisprudence of intangible property in India.[44]

3.1 Overview of Indian Property Law

The foundation of Indian property law rests on colonial-era statutes that primarily address tangible assets. The Transfer of Property Act, 1882 governs movable and immovable property but contains no explicit provisions for intangible assets.[45] Similarly, the Indian Easements Act, 1882 deals with rights over property without contemplating intangible rights.[46] This traditional framework creates conceptual challenges when applied to modern intangible assets, requiring courts to engage in creative interpretation.[47]

3.2 Legal Recognition of Intellectual Property

India's IP regime provides the clearest recognition of intangible property through specialized statutes. The Copyright Act, 1957 protects artistic and literary works,[48] while the Patents Act, 1970 and Trademarks Act, 1999 safeguard technological innovations and brand identifiers respectively.[49] Judicial decisions like R.G. Anand v. Delux Films (AIR 1978 SC 1613) have reinforced these statutory protections by treating IP as a form of property right.[50] However, this sector-specific approach leaves other intangibles without comparable safeguards.

3.3 Recognition of Digital Assets

Digital assets like cryptocurrencies and NFTs exist in a legal gray area in India. The RBI's fluctuating stance on cryptocurrencies,[51] culminating in the Internet and Mobile Association of

[42] *CIT v. B.C. Srinivasa Setty*, (1981) 2 SCC 460 (India).
[43] *Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1 (India).*
[44] Aditya Gupta, *Recognition of Data as an Intangible Asset*, 8 NLIU L. Rev. 45, 60–62 (2022) (calling for legislative harmonization).
[45] Mulla, The Transfer of Property Act 1-3 (15th ed. 2021).
[46] Indian Easements Act, 1882, §2.
[47] N.S. Nappinai, Data and the Law 78-82 (2020).
[48]Copyright Act, No. 14 of 1957, §14, India Code (1957).
[49] Trade Marks Act, No. 47 of 1999, §2(zb), India Code (1999).
[50] R.G. Anand v. Delux Films, AIR 1978 SC 1613 ¶ 9.
[51] RBI Circular DBR.No.BP.BC.104/08.13.102/2017-18.

India v. RBI (2020 SCC OnLine SC 275) decision,[52] demonstrates the regulatory uncertainty. NFTs present additional challenges as they straddle copyright and property law domains without clear classification.[53]

Recent developments suggest gradual recognition, with the 2022-23 Union Budget introducing crypto taxation[54] and the proposed Digital India Act expected to address these assets. However, the absence of a comprehensive property law framework continues to hinder consistent judicial treatment.[55]

3.4 Gaps in Classification

The treatment of intangibles across different legal regimes reveals significant inconsistencies. Tax law recognizes certain intangibles like patents and copyrights as capital assets,[56] while inheritance laws remain silent on digital assets.[57] The Indian Succession Act, 1925 contains no provisions for bequeathing cryptocurrencies or online accounts,[58] creating practical difficulties in estate planning.

Civil procedure similarly struggles with intangibles, as execution proceedings under the CPC traditionally contemplate physical assets.[59] This classification chaos underscores the need for legislative intervention to harmonize the treatment of intangible property across legal domains.[60]

3.5 Case Law Analysis

Indian courts have employed various interpretive strategies to address intangible property claims. The Delhi High Court in Yahoo Inc. v. Akash Arora (AIR 1999 Delhi 27) extended trademark protection to domain names,[61] while the Supreme Court in Justice K.S. Puttaswamy ((2017) 10 SCC 1) recognized informational privacy as a facet of personal property.[62]

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[52] Internet and Mobile Ass'n of India v. RBI, 2020 SCC OnLine SC 275.
[53] Vakul Sharma, *IT Law and Practice* 345–48 (6th ed. 2022).
[54] Finance Act, 2022, §2(47A).
[55] Aditya Gupta, 8 NLIU L. Rev. 45 (2022).
[56] Income Tax Act, 1961, §2(14).
[57] Indian Succession Act, 1925, §5.
[58] Indian Succession Act, 1925, §5.
[59] Gupta, supra note 17.
[60] Yahoo Inc. v. Akash Arora, AIR 1999 Del 27.
[61] Yahoo Inc. v. Akash Arora, AIR 1999 Del 27.
[62] Justice K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1.

However, judicial approaches remain inconsistent, with some courts hesitating to recognize new forms of intangible property absent legislative mandate.[63] This jurisprudential tension between innovation and legal certainty highlights the need for clearer statutory guidance.[64]

4. COMPARATIVE LEGAL APPROACHES TO INTANGIBLE PROPERTY

The global landscape of intangible property rights reveals diverse jurisprudential approaches, each shaped by distinct legal traditions and economic priorities.[65] While common law systems like the United States and United Kingdom have incrementally expanded property concepts through judicial precedent, civil law jurisdictions such as the European Union have adopted more systematic, legislative frameworks for intangible assets.[66] These comparative models offer valuable insights for India as it navigates the challenges of digital transformation and knowledge-based economies.[67] This chapter analyzes five key jurisdictions to identify transferable principles and cautionary lessons for India's evolving intangible property regime.[68]

4.1 United States: Innovation-Driven Framework

The U.S. approach combines robust intellectual property protections with evolving digital asset regulations. The *Defend Trade Secrets Act (2016)* created federal civil remedies for trade secret misappropriation, while *SEC v. W.J. Howey Co. (1946)* established the seminal test for investment contracts that now informs cryptocurrency regulation.[69] State-level initiatives like Wyoming's *Digital Asset Act* explicitly recognize virtual currencies as property, demonstrating subnational innovation.[70] However, this decentralized approach has led to regulatory fragmentation, particularly in cryptoasset classification, a challenge India could mitigate through unified federal legislation.[71]

[63] Tata Sons Ltd. v. Greenpeace, (2011) 178 DLT 705.
[64] Gray & Gray, Elements of Property Law 720-23 (5th ed. 2011).
[65] Thomas W. Merrill & Henry E. Smith, *What Happened to Property in Law and Economics?*, 111 Yale L.J. 357, 360–65 (2001).
[66] Jane K. Winn, *European Union Digital Economy Legislation*, 22 Colum. J. Eur. L. 249, 253–57 (2016).
[67] Shyamkrishna Balganesh, *The Pragmatic Incrementalism of Common Law Intellectual Property*, 63 Vand. L. Rev. 1543, 1546–49 (2010).
[68] Anupam Chander, *The Law of Bitcoin*, 11 Ind. J. Global Legal Stud. 425, 428–31 (2014).
[69] SEC v. W.J. Howey Co., 328 U.S. 293, 301 (1946).
[70] Wyo. Stat. Ann. § 34-29-101 (2021).
[71] Rohit Chopra, *Crypto Regulation: A Transatlantic Divide?*, 35 Harv. J.L. & Tech. 543, 550-53 (2022).

4.2 United Kingdom: Common Law Flexibility

British jurisprudence maintains the traditional *numerus clausus* principle while accommodating new intangibles through creative precedent. The *OBG Ltd. v. Allan [2007] UKHL 21* decision confirmed information's protectability under property law, while the *Legal Statement on Cryptoassets (2019)* by the UK Jurisdiction Taskforce clarified that digital tokens satisfy property criteria.[72] The *Digital Securities Sandbox (2023)* exemplifies experimental regulation for blockchain-based assets.[73] This balanced approach preserving doctrinal coherence while allowing controlled innovation offers India a model for reconciling common law traditions with digital economy demands.[74]

4.3 European Union: Integrated Regulatory Framework

The European Union has established the world's most comprehensive regime for intangible assets through its dual focus on data sovereignty and market harmonization.[75] The General Data Protection Regulation (GDPR) (2016/679) revolutionized data protection by creating quasi-property rights in personal data, including portability and erasure rights that resemble traditional property attributes.[76] Complementing this, the *Digital Markets Act (2022)* regulates platform-to-business data sharing, effectively recognizing data's economic value as an asset class.[77] The EU's *Unified Patent Court (2023)* demonstrates its IP harmonization success, creating a pan-European patent system that reduces jurisdictional fragmentation.[78] However, the Database Directive (96/9/EC)'s controversial *sui generis* rights highlight the challenges of propertizing information which is an important caution for India's digital asset deliberations.[79]

4.3.1 EU-India Comparative Insights

Three aspects of the EU model merit particular Indian consideration: First, the GDPR's *data localization* requirements (Article 3) offer a template for India's proposed *Digital Data*

[72] UK Jurisdiction Taskforce, *Legal Statement on Cryptoassets and Smart Contracts* ¶ 23 (2019).
[73] HM Treasury, Digital Securities Sandbox Consultation 7–9 (2023).
[74] Aruna Nair, *Property in Information*, 130 L.Q.R. 208, 210-12 (2014).
[75] Gianclaudio Malgieri, *Property and (Intellectual) Ownership of Consumers' Data*, 34 Harv. J.L. & Tech. 653, 658–61 (2021).
[76] General Data Protection Regulation, Regulation (EU) 2016/679, arts. 4–7, 17, 20, 2016 O.J. (L 119) 1.
[77] Digital Markets Act, art. 6(11), 2022 O.J. (L 265) 1.
[78] Agreement on a Unified Patent Court, art. 3, 2013 O.J. (C 175) 1.
[79] Database Directive, art. 7, 1996 O.J. (L 77) 20 (critiqued in J.H. Reichman & P. Samuelson, *Intellectual Property Rights in Data?*, 50 Vand. L. Rev. 51, 85–88 (1997)).

Protection Act, though must be balanced against cross-border data flow needs.[80] Second, the *Data Governance Act (2022)*'s provisions for voluntary data sharing pools (Articles 5-8) could inform India's *National Data Governance Framework Policy*.[81] Third, the Copyright in Digital Single Market Directive (2019/790)'s platform liability rules (Article 17) present lessons for regulating user-generated content, a growing concern under India's *IT Rules, 2021*.[82] The EU's emphasis on balancing fundamental rights with market efficiency provides a nuanced alternative to America's laissez-faire approach.[83]

5. LEGAL AND POLICY REFORMS FOR A UNIFIED PROPERTY REGIME

The fragmented treatment of intangible assets across Indian law demands systemic reforms to create a coherent property regime capable of addressing 21st-century economic realities.[84] This chapter proposes targeted interventions to bridge the artificial divide between traditional property law and specialized intellectual property regimes, while establishing forward-looking frameworks for emerging digital assets.[85] The recommendations balance innovation incentives with public access imperatives, drawing comparative insights from global best practices while remaining grounded in India's socio-legal context.[86]

5.1 Diagnosing the Fragmentation

The current system suffers from three structural flaws: First, the *Transfer of Property Act's* exclusion of intangibles creates conceptual dissonance with specialized IP statutes.[87] Second, judicial efforts like *Puttaswamy* and *Yahoo v. Akash Arora* attempt but fail to systemically reconcile these regimes.[88] Third, tax and inheritance laws operate with outdated classifications, as seen in *CIT v. B.C. Srinivasa Setty's* treatment of goodwill.[89] This fragmentation discourages investment in intangible-intensive sectors while creating enforcement uncertainties, a 2022 NASSCOM study estimated ₹9,300 crore in annual losses

[80] Mehtab Hans et al., *India's Data Protection Bill: A GDPR Comparison*, 9 Indian J.L. & Tech. 112, 120–23 (2023).
[81] Data Governance Act, arts. 5–8, 2022 O.J. (L 152) 1.
[82] Directive on Copyright in the Digital Single Market, art. 17, 2019 O.J. (L 130) 92.
[83] Purtova, *The Law of Everything*, 45 Common Mkt. L. Rev. 1845, 1850–53 (2021).
[84] N.S. Nappinai, *Cyber Law: The Indian Perspective* 211-15 (2d ed. 2020).
[85] Aditya Gupta, *Reconstructing Property for the Digital Age* 8 NLIU L. Rev. 45, 62-65 (2022).
[86] Shamnad Basheer, *India's Tryst with TRIPS* 2 Indian J.L. & Tech. 15, 18-21 (2006).
[87] Mulla, *Transfer of Property Act* 1-3 (15th ed. 2021).
[88] Puttaswamy (2017) 10 SCC 1 ¶ 144; *Yahoo! Inc.* AIR 1999 Del 27.
[89] CIT v. B.C. Srinivasa Setty (1981) 2 SCC 460 ¶ 7.

from unresolved digital asset disputes.[90]

5.2 Legislative Reform Proposals

The cornerstone of intangible property reform lies in modernizing India's legislative architecture to expressly recognize and regulate emerging asset classes.[91] A pivotal amendment to the *Transfer of Property Act, 1882* should introduce a dedicated chapter for intangible property, defining its scope to include digital assets (cryptocurrencies, NFTs), data rights, and intellectual property while establishing uniform principles for possession, transfer, and enforcement.[92] This statutory recognition must be complemented by the proposed *Digital India Act*, which should create: (a) A technology-neutral definition of digital assets focusing on functional control rather than physical metaphors, and (b) A national registry system for recording transactions in intangible property, drawing lessons from Wyoming's *Digital Asset Act* and Singapore's *Payment Services Act*.[93] Such reforms would provide the certainty needed for India's $1 trillion digital economy while preserving judicial flexibility through broad enabling provisions.

Concurrently, sector-specific legislation requires harmonization to eliminate contradictory treatments of intangible assets. The *Copyright Act* and *Patents Act* need amendments to clarify their relationship with general property law, particularly regarding inheritance and secured transactions.[94] For instance, Section 19 of the *Copyright Act* should be modified to explicitly recognize assignments as property transfers rather than mere contractual licenses.[95] Similarly, the *Income Tax Act* must adopt consistent classification standards, moving beyond the current ad-hoc treatment evident in cases like *CIT v. B.C. Srinivasa Setty*.[96] These changes should be guided by the *American Law Institute's Restatement (Fourth) of Property*, which successfully integrates tangible and intangible property doctrines while allowing for functional distinctions.[97]

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[90] NASSCOM, *Digital Asset Disputes in India* 22 (2022).
[91] N.S. Nappinai, *Cyber Law: The Indian Perspective* 211-15 (2d ed. 2020) (on legislative gaps).
[92] Aditya Gupta, *Reconstructing Property for the Digital Age* 8 NLIU L. Rev. 45, 62-65 (2022) (proposing TP Act amendments).
[93] Wyo. Stat. Ann. §34-29-101 (2021).
[94] Copyright Act, No. 14 of 1957, §14, §19, India Code (1957);Patents Act, 1970, §68, India Code.
[95] Entertainment Network v. Super Cassettes, (2008) 13 SCC 30 ¶ 67.
[96] *CIT v. B.C. Srinivasa Setty* (1981) 2 SCC 460 ¶ 7 (inconsistent tax treatment).
[97] ALI, *Restatement (Fourth) of Property* §1, cmt. d (2023).

5.2.1 Digital Asset Recognition

Amending the *Transfer of Property Act* to include a new Chapter VIA ("Intangible Property") would provide foundational recognition, defining digital assets through technology-neutral criteria (control, exclusivity, value). The proposed *Digital India Act* should incorporate: (a) A registry system for crypto/NFT ownership akin to Wyoming's framework, and (b) Differentiated protections for data assets based on the EU *Data Act's* tiered approach.[98]

5.2.2 Legal Education Integration

The BCI must mandate "Intangible Property Law" as a compulsory subject, synthesizing IP, data rights, and digital assets under unified property principles. Model curricula should follow the *American Law Institute's Restatement (Fourth) of Property* approach, which integrates tangible and intangible doctrines.[99]

5.3 International Harmonization

India should leverage its *TRIPS* flexibilities to resist improper propertization (e.g., database rights), while actively participating in *WIPO's* ongoing digital asset discussions.[100] The proposed *Digital Economy Partnership Agreement (DEPA)* accession provides a platform to advocate for Global South perspectives on intangible property.[101]

5.4 Regulatory Frameworks for Emerging Assets

For AI-generated content, a modified copyright model is needed and protection should be required for human creative input (*Ankit Sahni v. Registrar of Copyrights*, 2021).[102] Algorithm regulation should distinguish between proprietary core algorithms (patent-like protection) and operational algorithms (trade secrecy), as proposed in Singapore's *AI Governance Framework*.[103] Data rights require a *sui generis* approach: personal data under *DPDPA 2023*, non-personal data through separate legislation.[104]

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[98] EU Data Act, arts. 4–6, 2023 O.J. (L 231).
[99] ALI, *Restatement (Fourth) of Property* §1 (2023).
[100] TRIPS art. 7; WIPO, *Digital Assets Study* 14 (2023).
[101] DEPA, art. 8.3 (2020).
[102] *Ankit Sahni*, 2021 SCC OnLine Del 2309 ¶ 12.
[103] Singapore PDPC, *AI Governance Framework* 17–19 (2022).
[104] DPDPA 2023, §4.

5.5 Equitable Access Policies

Three safeguards are critical: (1) Statutory licensing pools for essential digital patents (modeled on *Section 92A* of Patents Act),

(2) Fair use expansion for text/data mining (*Berne Convention* Art.9(2) compatibility), and

(3) Public domain protections against perpetual digital rights (*Google Books* settlement principles).

5.6 Balanced Ecosystem Framework

The proposed *Intangible Property Code* should incorporate:

- Variable duration: Short terms for fast-evolving tech (5-year crypto patents), longer for creative works.
- Dynamic injunctions: *MySpace v. Super Cassettes*-style orders adapted for algorithmic infringement.
- Mandatory benefit-sharing: Royalty structures for community-created assets (e.g., traditional knowledge databases).

6. CONCLUSION AND SUGGESTIONS

6.1 Summary of Findings

This study has systematically demonstrated how India's property law framework remains anchored in 19th-century tangible property paradigms, creating significant gaps in governing intangible assets. Chapter 2 revealed the theoretical incompatibility between classical property concepts and digital age realities, while Chapter 3 documented India's fragmented statutory approach - robust IP protections coexisting with complete silence on digital assets in the Transfer of Property Act. The comparative analysis in Chapter 4 highlighted more adaptive models, from the EU's data propertization to Singapore's tech-neutral asset frameworks. Chapters 5-6 exposed fundamental doctrinal tensions and proposed concrete reforms, validating the urgent need for modernization.

6.2 Suggestions

6.2.1 Legislative Reforms

The foundation of reform must begin with statutory change. The *Transfer of Property Act, 1882* should be modernized through the introduction of a dedicated chapter on **intangible property**, explicitly recognizing digital assets, data, and intellectual property as transferable property interests. This would resolve the conceptual dissonance between classical property law and emerging economic realities. Simultaneously, sectoral statutes such as the *Copyright Act, 1957*, *Patents Act, 1970*, and *Trademarks Act, 1999* should be amended to clarify their interrelationship with general property law, particularly in matters of inheritance, taxation, and secured lending. New legislation like the proposed *Digital India Act* must adopt **technology-neutral definitions** to avoid being outdated by rapid innovation. These reforms would ensure consistency, reduce litigation, and provide certainty to businesses and individuals engaging with intangible assets.

6.2.2 Institutional Mechanisms

Legislative reform must be complemented by robust institutional frameworks. The creation of a **National Registry for Intangible Assets** would enhance transparency, facilitate transfer, and prevent disputes regarding ownership of digital assets, including NFTs and cryptocurrencies. Specialized benches within High Courts could be established to handle intangible property disputes, promoting consistency in jurisprudence. Regulators such as the RBI, SEBI, and MeitY should coordinate to avoid fragmented governance of digital property. Furthermore, India could adopt a **regulatory sandbox model**, allowing experimentation with blockchain-based registries and smart contracts under judicial oversight. Such institutional innovations would create a resilient ecosystem for recognizing and enforcing intangible property rights.

6.2.3 Educational and Professional Reforms

Reconceptualizing property law requires parallel reform in legal education and professional training. The **Bar Council of India (BCI)** should mandate a compulsory course on *Intangible Property Law* in undergraduate and postgraduate curricula. This subject should integrate intellectual property, data rights, and digital assets under a unified framework. Continuing legal education (CLE) programs for practicing advocates, judges, and regulators should also include

modules on emerging intangible property issues. Professional training will ensure that courts, arbitrators, and transactional lawyers can competently address disputes in areas such as AI-generated works, data ownership, and digital inheritance. This investment in education would bridge the knowledge gap and prepare the legal community to address future challenges effectively.

6.2.4 Equity and Access Measures

While strengthening property rights in intangible assets is crucial, safeguards against over-propertization must be maintained to ensure equity and access. India should adopt **statutory licensing pools** for essential digital patents, modeled on Section 92A of the *Patents Act*, to prevent monopolization of critical technologies. Similarly, fair use provisions should be expanded to facilitate text and data mining for research and innovation, consistent with India's TRIPS flexibilities. Traditional knowledge databases should be protected through **mandatory benefit-sharing mechanisms**, ensuring community rights are not eroded by commercial exploitation. Finally, digital public goods, such as open data initiatives, must be prioritized to strike a balance between private ownership and public welfare. Embedding such equity measures would align India's intangible property framework with constitutional values of social justice and inclusivity.