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## Legal Aspects of Generative AI and Intellectual Property in India: Challenges and Emerging Solutions

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### **Abstract:**

Generative Artificial Intelligence (AI) is transforming how content - ranging from text and images to music, code, and legal writing - is created. As these AI-generated outputs begin to rival human work, they pose new and complex legal questions. India's existing IP laws, particularly the Copyright Act, 1957 and the Patents Act, 1970, lack provisions to address issues of ownership, authorship, and accountability for non-human creators.

This article explores the legal challenges surrounding AI-generated content within the Indian context. It examines gaps in current legislation, draws on international regulatory practices, and considers ethical concerns such as privacy, bias, and liability. Finally, it outlines possible reforms to help Indian law evolve in step with emerging technologies.

### **Introduction:**

Generative AI tools - like ChatGPT, Gemini, DALL·E, and GitHub Copilot - are transforming how content is created, blurring the lines between human and machine authorship. These systems can write, code, compose, and design, challenging traditional notions of creativity as solely human.

India's intellectual property (IP) laws, however, remain human-centric. The **Copyright Act, 1957** and **Patents Act, 1970** assume only natural persons or legal entities can own or create IP. This raise pressing legal questions:

- Can a non-human entity own intellectual property?
- Who is liable when AI infringes others' rights?
- Can AI-generated inventions be patented?

- How can original works be distinguished from algorithmic imitations?

These issues have real-world implications for artists, startups, and innovators. This article examines how Indian IP law addresses these emerging challenges and draws insights from global developments to propose a path forward.

## **Understanding Generative AI and Its Capabilities:**

### **What Is Generative AI?**

Generative AI refers to systems that use machine learning - especially deep learning models like Generative Adversarial Networks (GANs) and Transformer architectures - to create new content. These systems don't merely replicate data; they generate novel outputs that mimic human creativity. Generative AI systems are trained on vast datasets to recognize patterns in language, visuals, and sound, enabling them to mimic human-like style and structure.

### **Examples of Generative AI tools:**

- **ChatGPT / Gemini / Claude:** Text generation
- **DALL·E / Midjourney:** Image creation from prompts
- **GitHub Copilot:** Code suggestion and completion
- **Jukebox / MusicLM:** AI-generated music
- **Runway / Sora:** AI-generated video content

These tools are being used across sectors - education, law, marketing, entertainment, journalism, and even politics.

## **Indian Intellectual Property Law: A Human-Centric Framework:**

### **A. Copyright Protection under the Copyright Act, 1957:**

Under the **Copyright Act, 1957**, only a **natural person can be considered an “author” as per Section 2(d)<sup>1</sup>**, which covers literary, musical, dramatic, and artistic works.

#### **Key Issues:**

- AI, not being a legal person, cannot own copyright.
- Works lacking substantial human input may fall outside protection.

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<sup>1</sup> The Copyright Act, No. 14 of 1957, India Code (1957), § 2(d), < [https://indiankanoon.org/doc/1655540/?utm\\_source=chatgpt.com](https://indiankanoon.org/doc/1655540/?utm_source=chatgpt.com) > accessed 26 July 2025.

- Users may remain unclear whether AI outputs are theirs to own, co-own, or simply use under license.

### **Judicial Viewpoint:**

"The Supreme Court in **Eastern Book Co. v. D.B. Modak**<sup>2</sup> held that a work must reflect a 'minimum level of creativity', thereby excluding purely mechanical or automated content -implicitly suggesting that most AI-generated works without significant human input may not qualify for protection."

### **Practical Example:**

An unedited legal draft generated by ChatGPT would not attract copyright protection under Indian law - posing concerns for firms using such content commercially.

### **B. Patent Framework under the Patents Act, 1970:**

Section 6 of the **Patents Act, 1970** allows only natural persons or legal entities to apply for patents<sup>3</sup> - AI systems cannot be listed as inventors.

### **The DABUS Example:**

Patent offices in India, the US, and the UK rejected applications by Dr. Stephen Thaler that named his AI system "DABUS" as the inventor, affirming that only humans qualify under current legal standard<sup>4</sup>.

### **Key Problems:**

- AI-driven innovations - common in pharma and tech - remain unpatentable unless linked to a human.
- This creates incentives to mask AI involvement, undermining transparency and innovation tracking.

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<sup>2</sup> Eastern Book Co. v. D.B. Modak, (2008) 1 SCC 1 (India), < <https://lawbhoomi.com/eastern-book-company-v-db-modak/> > accessed 26 July 2025.

<sup>3</sup> The Patents Act, No. 39 of 1970, India Code (1970), § 6, < [https://ipindia.gov.in/writereaddata/portal/ev/sections/ps6.html?utm\\_source=chatgpt.com](https://ipindia.gov.in/writereaddata/portal/ev/sections/ps6.html?utm_source=chatgpt.com) > accessed 26 July 2025.

<sup>4</sup> Thaler v. Comptroller-General of Patents, [2021] EWCA Civ 1374 (U.K.), < <https://www.judiciary.uk/judgments/thaler-v-comptroller/> > accessed 26 July 2025.

### **C. Design, Trademarks, and Moral Rights:**

#### **1. Design Rights:**

Industrial designs generated by AI may not qualify for protection if human creativity isn't clearly involved.

#### **2. Trademarks:**

AI-generated logos often lack distinctiveness and may unintentionally resemble registered marks, increasing the risk of infringement.

#### **3. Moral Rights:**

Section 57 of the Copyright Act grants moral rights to authors - but again, only humans are recognized<sup>5</sup>.

Attribution, integrity, and objection to distortion are irrelevant for AI outputs.

### **Real-World Implications of IP Gaps in India:**

#### **1. Startups and MSMEs:**

- Depend on AI tools for coding, design, and marketing content.
- Face risks of IP infringement and unclear ownership.

#### **2. Artists and Designers:**

- AI mimics existing styles, threatening originality.
- Without attribution norms, creators lose both credit and earnings.

#### **3. Academia and Research:**

- AI aids in writing, coding, and visuals.
- Raises issues around plagiarism and rightful authorship.

#### **4. Entertainment and Gaming:**

- AI-created music and characters lack legal clarity.
- Monetization remains uncertain for AI-based gaming ventures.

### **International Approaches to AI and Intellectual Property:**

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<sup>5</sup> The Copyright Act, No. 14 of 1957, § 57, < [https://www.indiacode.nic.in/show-data?actid=AC\\_CEN\\_9\\_30\\_00006\\_195714\\_1517807321712&orderno=78&utm\\_source=chatgpt.com](https://www.indiacode.nic.in/show-data?actid=AC_CEN_9_30_00006_195714_1517807321712&orderno=78&utm_source=chatgpt.com) > accessed 26 July 2025.

As India considers reforming its IP framework, it can learn from other jurisdictions that have begun grappling with the legal vacuum around AI-generated works.

### **I. United States:**

The U.S. Copyright Office affirms that only human-created content qualifies for protection. In the *Zarya of the Dawn* case, copyright was granted solely for the human-written text, not the AI-generated images<sup>6</sup>.


In 2023, OpenAI and Meta faced lawsuits from authors claiming their works were used without consent for training AI models - raising critical "fair use" debates in U.S. courts<sup>7</sup>.

 **Key Point:** Under U.S. law, authorship is limited to humans, with a focus on regulating AI's use of copyrighted materials.

### **II. United Kingdom:**

Under Section 9(3) of the **Copyright, Designs and Patents Act, 1988**, the person making the "necessary arrangements"<sup>8</sup> for computer-generated content is considered the author.

While this allows limited protection for human-guided AI outputs, the protection term is only 50 years and the scope of "arrangement" remains ambiguous.

 **Key Point:** The UK model values human input in AI creation but does not recognize AI itself as an author.

### **III. European Union:**

The **EU AI Act (2024)** prioritizes transparency and safety over ownership rights. It mandates:

- Transparency in AI-generated content
- Dataset documentation and disclosure

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<sup>6</sup> U.S. Copyright Office, Policy Statement on Works Containing AI-Generated Material (Mar. 2023), < [https://www.federalregister.gov/documents/2023/03/16/2023-05321/copyright-registration-guidance-works-containing-material-generated-by-artificial-intelligence?utm\\_source=chatgpt.com](https://www.federalregister.gov/documents/2023/03/16/2023-05321/copyright-registration-guidance-works-containing-material-generated-by-artificial-intelligence?utm_source=chatgpt.com) > accessed on 26 July 2025.

<sup>7</sup> Sarah Silverman et al. v. OpenAI, No. 3:23-cv-03417 (N.D. Cal. 2023), < <https://www.courtlistener.com/docket/67569254/silverman-v-openai-inc/> > accessed 26 July 2025.

<sup>8</sup> Copyright, Designs and Patents Act 1988, c. 48, § 9(3) (UK), < <https://www.legislation.gov.uk/ukpga/1988/48/section/9> > accessed 26 July 2025.

- Labelling of synthetic content<sup>9</sup>

Ongoing discussions explore AI's fit within existing directives like the Database Directive and the Digital Single Market Copyright Directive.


 Key Point: EU approach is more regulatory and precautionary than ownership-based.

#### IV. China:

China's **Provisions on Deep Synthesis Internet Services (2022)** require platforms to:

- Label AI-generated content.
- Secure user consent before utilizing biometric information.
- Maintain records of training datasets<sup>10</sup>.

While Chinese copyright law hasn't recognized AI authorship, the focus is on control and accountability.

 Key Point: China emphasizes **content traceability and platform liability**, not AI ownership.

#### V. Australia and Singapore:


- **Australia:** Patent authorities have rejected AI inventorship, but legal consultations are ongoing<sup>11</sup>.
- **Singapore:** IPOS is exploring co-authorship models in AI-driven sectors like music and fashion<sup>12</sup>.

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<sup>9</sup> Regulation (EU) 2024/0091 of the European Parliament and of the Council on Artificial Intelligence (AI Act), < <https://eur-lex.europa.eu/eli/reg/2024/1689/oj/eng> > accessed 27 July 2025.

<sup>10</sup> Cyberspace Admin. of China, Provisions on Deep Synthesis Internet Information Services (2022), available at < <https://digichina.stanford.edu/work/translation-provisions-on-the-administration-of-deep-synthesis-internet-information-services-2022/>. > pdf available at < <https://s899a9742c3d83292.jimcontent.com/download/version/1648057926/module/8376704663/name/CAIDP-Statement-PRC-SIIO-DeepSynthesis-2802022.pdf> > accessed 27 July 2025.

<sup>11</sup> IP Australia, Artificial Intelligence and Intellectual Property Policy Issues (Discussion Paper, 2022), < <https://www.ipaustralia.gov.au/tools-and-research/professional-resources/data-research-and-reports/publications-and-reports/generative-ai-and-the-ip-system> > accessed 27 July 2025.

 **Key Takeaway:** These jurisdictions are experimenting with hybrid human-AI authorship frameworks.

### **Training Data Controversy and Copyright Infringement:**

One of the most complex issues in AI and IP law is **training data**. Generative AI tools are trained on enormous corpora - books, articles, images, code, songs - often scraped from the internet without consent or attribution.

### **Legal Risk Involved:**

1. Use of copyrighted content without licenses.
2. AI outputs resembling or replicating original works.
3. Lack of transparency about training sources.

For example:

- AI models trained on Bollywood music may produce melodies infringing existing works.
- AI-drafted legal content may closely reflect proprietary legal texts.

### **Recent Copyright Lawsuits (International):**

#### **1. Sarah Silverman et al. v. OpenAI (2023)**

Claimed unauthorized use of books in AI training violated copyright<sup>13</sup>.

#### **2. Getty Images v. Stability AI:**

Stability AI faced allegations of training its model on Getty's image library without proper licenses<sup>14</sup>.

#### **3. Universal Music v. AI Track Generators (2023):**

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<sup>12</sup> IP Office of Singapore (IPOS), AI and IP Framework Report (2023), < [https://cdl.smu.edu.sg/sites/cdl.smu.edu.sg/files/2024-12/IPOS-CAIDG\\_AI\\_and\\_IP\\_Report.pdf?utm\\_source=chatgpt.com](https://cdl.smu.edu.sg/sites/cdl.smu.edu.sg/files/2024-12/IPOS-CAIDG_AI_and_IP_Report.pdf?utm_source=chatgpt.com) > accessed 27 July 2025.

<sup>13</sup> Silverman, supra note 7, < <https://www.courtlistener.com/docket/67569254/silverman-v-openai-inc/> > accessed 27 July 2025.

<sup>14</sup> Getty Images v. Stability AI, No. 23-cv-01224 (D. Del. 2023), < <https://www.courtlistener.com/docket/66788385/getty-images-us-inc-v-stability-ai-inc/> > accessed 27 July 2025.

Filed against synthetic music clones resembling artists' voices<sup>15</sup>.

These cases are building global pressure to:

- Mandate data transparency.
- Clarify what constitutes derivative work.
- Determine who bears infringement liability.

### **AI and the Risk of Plagiarism in Academic and Creative Fields:**

Indian universities and publishers are grappling with new questions:

- Can AI-generated essays or artwork be submitted as original?
- Does using tools like ChatGPT breach plagiarism rules when drawing from public sources?
- Is AI use in creative work something creators must reveal?

Tools like **Turnitin** and **GPTZero** are being adopted in law schools to detect AI use, but there's no unified national policy yet.

**Recommendations:** India should consider:

- Mandate AI usage disclosure in academic submissions.
- Establish clear guidelines for students and journals.

### **Ethical and Policy Concerns Around Generative AI:**

#### **i. Ethical Dilemmas:**

- **Authenticity:** Who is the true creator of AI content?
- **Consent:** Was the original author aware their work would be used for training?
- **Deception:** AI-generated legal arguments may be crafted with the intent to mislead.
- **Deepfakes:** Pose risks to dignity and privacy, especially with political figures and women.

#### **ii. Policy Vacuum in India:**

- No definition of AI in IT Act, Copyright Act, or Patents Act.

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<sup>15</sup> Universal Music Grp. v. Anthropic, Inc., (2023), Complaint on file with U.S. District Court, S.D.N.Y., < <https://www.courtlistener.com/docket/67894459/concord-music-group-inc-v-anthropic-pbc/> > accessed 27 July 2025.

- No regulator or oversight body for AI and data ethics.
- No guidelines for developers, users, or courts to interpret AI use in IP.

### **Commercial Deployment of Generative AI and IP Risks in India:**

While legal theory debates authorship and inventorship, Indian entrepreneurs are already using generative AI to create value across industries. However, this rapid deployment without a clear legal framework creates significant challenges, especially regarding **ownership, liability, and enforcement**.

#### **1. Startups and MSMEs:**

Startups in India, especially in fintech, health-tech, and edtech, are leveraging AI to:

- Generate marketing content.
- Auto-draft contracts and legal templates.
- Produce user interfaces and automated chat assistants.

However, most small businesses:

- **Don't verify the originality** of AI outputs.
- **May unwittingly commit IP infringement** by reusing AI-generated logos, text, or music.
- **Don't include clauses on AI-generated content** in contracts or privacy policies.

⚠️ Legal Risk: A SaaS startup using AI-generated UI designs could unknowingly replicate a protected template and be liable for infringement, especially in foreign markets.

#### **2. Indian Content Creators and Influencers:**

Influencers are using tools like Canva AI and DALL·E for thumbnails, visuals, and social media posts. But:

- They often don't check the **source data or rights** behind the AI output.
- Many commercialize AI art via NFTs or merchandise, **without guaranteed IP protection**.

🔍 Example: An Indian YouTuber sold AI-generated artwork on merchandise which closely resembled Marvel characters - potentially violating trademark and design rights.

#### **3. Media, Advertising, and Music Industry:**

Agencies use AI to:

- Generate catchy slogans.
- Create voiceovers (using cloned voices).
- Simulate background scores.

Yet, questions remain:

- Who owns these outputs?
- Can voice impersonation (e.g., an AI Amitabh Bachchan voice) be punished under existing laws?
- Are these “works” eligible for copyright?

✂ Under current law, there is **no specific criminal prohibition on voice cloning** unless it qualifies as identity theft, defamation, or copyright violation.

### **Role of Judiciary in Shaping AI-IP Jurisprudence:**

Given the legislative vacuum, Indian courts may become the **primary arena for interpreting AI-related IP disputes**. Courts have historically played a key role in expanding the boundaries of privacy, equality, and digital rights. The same could happen with AI.

### **Key Precedents to Build Upon:**

#### **1. R.G. Anand v. Delux Films, AIR 1978 SC 1613**

The Supreme Court ruled that while copyright safeguards expression rather than ideas, infringement arises when there is a ‘substantial similarity’ between the original and the copied work<sup>16</sup>.

❖ Relevance: Could apply to AI works that mimic copyrighted works.

#### **2. Tata Sons Ltd. v. Greenpeace International, (2011) 178 DLT 705**

The Delhi High Court ruled on **parody and fair use** in digital content.

❖ Relevance: Could guide decisions on AI-generated satire or mimicry.

#### **3. K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1**

Held privacy as a fundamental right.

❖ Relevance: Key when dealing with voice, face, or personal data used by generative AI.

### **What Indian Lawmakers Should Do:**

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<sup>16</sup> R.G. Anand v. Delux Films, AIR 1978 SC 1613 (India), < [https://indiankanoon.org/doc/1734007/?utm\\_source=chatgpt.com](https://indiankanoon.org/doc/1734007/?utm_source=chatgpt.com) > accessed 27 July 2025.

Let's outline specific recommendations that the Indian legal system could adopt to handle the intersection of generative AI and IP.

**A. Define “AI-Generated Work” in Statute:**

- Introduce a definition in the **Copyright Act** and **Patents Act**.
- Differentiate between:
  - **Fully autonomous output.**
  - **Human-AI collaborative works.**

**B. Introduce Limited Recognition for Human Prompt Creators:**

- Grant authorship to the person who supplies substantial creative input (prompt engineering).
- Follow the UK “**person making arrangements**” model.

**C. Mandatory Attribution and Disclosure:**

- Mandate clear disclosure of AI-generated content across academic, media, and advertising domains.
- Add mandatory “**AI Output Disclosure**” clause in IP filings.

**D. IP Office Guidelines for AI-Enhanced Invention:**

- Permit joint inventorship involving both a human and an AI system.
- Add a field to patent forms requiring disclosure if AI assisted in the invention.

**E. Establish an AI & IP Advisory Board:**

- Multidisciplinary experts to guide courts and ministries.
- Model after **Singapore’s IPOS AI Panel** or **EU AI High-Level Expert Group**.

**F. Regulatory Sandboxes for Generative AI:**

- Pilot legal exemptions for startups using AI in IP-heavy sectors (e.g., music, design, legal tech).
- Monitor impact before scaling laws nationwide.
- Could be coordinated by **MeitY, DPIIT, or NITI Aayog**.

**Constitutional Values and the Generative AI Landscape in India:**

The debate on AI and IP is not merely economic or technological - it is also constitutional. The use and regulation of generative AI directly intersect with fundamental rights enshrined under Part III of the Constitution of India.

**1. Article 21 - Right to Privacy and Autonomy:**

The Supreme Court, in *K.S. Puttaswamy v. Union of India*<sup>17</sup>, recognized the right to privacy as fundamental, including an individual's control over their personal data, voice, and image.

✍ **Relevance:** Generative AI technologies - like deepfakes - pose risks by replicating facial or vocal features without consent, infringing informational autonomy.

## 2. Article 19(1)(a) - Freedom of Speech and Expression:

AI can facilitate and hinder free speech:

- It aids journalists in research and content creation.
- But it also risks distorting facts, spreading misinformation, or suppressing dissent.

Regulation must balance innovation with the need to safeguard expressive freedoms, particularly in satire and criticism.

## 3. Article 14 - Equality Before Law:

Unequal access to advanced AI technologies could further widen existing social and economic gaps:

- Resource-rich institutions benefit disproportionately.
- Creators lacking tech access may find their work replicated without protection.

Ensuring fair access, transparency, and redressal mechanisms is essential to uphold equality principles.

### Model Clauses for Developers, Users, and Platforms:

For responsible AI adoption, the following legal clauses and disclaimers can be integrated into user agreements and policy frameworks:

#### A. For Developers (e.g., AI Startups):

**AI Output Attribution:** “Outputs generated via **AI Tool** are synthetic. Human authorship is not implied unless explicitly stated.”

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<sup>17</sup> *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1 (India), <  
<https://www.humandignitytrust.org/resources/puttaswamy-v-union-of-india-writ-petition-civil-no-494-of-2012/?utm>> accessed 27 July 2025.

**Training Data Declaration:** “Our systems are trained using open-source, licensed, or public data; proprietary materials are excluded to the best of our knowledge.”

**B. For Platform Users (e.g., Creators):**

**Usage Terms:** “By accessing **Platform**, users agree to use AI-generated content responsibly and ensure originality before any commercial use.”

**IP Disclaimer:** “The platform disclaims liability for any third-party IP infringements arising from AI-generated outputs.”

**C. For Public Platforms (e.g., YouTube, Instagram):**

**AI Content Tagging:** Require creators to clearly label AI-generated visuals or videos.

**Policy Extension:** Prohibit use of AI for impersonation, disinformation, or automated hate speech.

**Conclusion:**

Generative AI represents a transformative leap in technology, challenging traditional notions of creativity, authorship, and ownership. Though it pushes the boundaries of innovation, India's existing intellectual property framework lacks the adaptability to handle the unique challenges posed by AI-generated content.

This article examined the major legal hurdles - ranging from copyright ambiguity and patent eligibility to training data disputes and unclear ownership. Drawing insights from global practices and constitutional values, it offered a roadmap for legal reform.

To responsibly integrate AI into the creative and commercial ecosystem, India must:

- Update IP laws to reflect AI-assisted authorship.
- Clarify the legal treatment of derivative and AI-generated works.
- Develop advisory frameworks and regulatory sandboxes.
- Promote openness and obtain consent in the use of data for training AI models.
- Strengthen understanding among content creators, legal experts, and policy stakeholders.

The objective is not to restrict technological progress, but to align it with fairness, accountability, and public interest within a balanced legal system.