
"OWNERSHIP OF THOUGHT: CAN NEURAL DATA BE "PROPERTY"? AN ANALYSIS UNDER THE TRANSFER OF PROPERTY ACT, 1882

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ABSTRACT

Can your thoughts be considered property? Can it be sold?, bequeathed?, or stolen? These questions have transcended science fiction and entered the domain of live legal inquiry with the advent of Brain-Computer Interface (BCI) technology. Elon Musk's Neuralink, a device capable of capturing, decoding, and transmitting the brain's electrical impulses into machine-readable data, thereby converting literal thought into transferable information. This research examines whether such neural data, information extracted directly from the human brain, constitutes 'property' under India's Transfer of Property Act, 1882. The paper interrogates the statutory categories of 'movable property', 'actionable claims', and 'transferable property' under the TPA to assess neural data's potential legal classification. It further analyses whether treating neural data as commodifiable property violates constitutional rights to privacy, mental autonomy, and dignity as recognised in Justice K.S. Puttaswamy v. Union of India (2017). The paper ultimately argues that while neural data technically satisfies certain definitional thresholds for property under the TPA's broad, non-exhaustive framework, commodifying it as freely transferable property is constitutionally untenable. The paper concludes by advocating for a sui generis legal regime, similar to Chile's constitutional neurorights amendment, tailored to India's constitutional culture and technological realities.

Keywords: Neural Data, Brain-Computer Interface, Neuralink, Transfer of Property Act 1882, Movable Property, Actionable Claim, Right to Privacy, Mental Autonomy, Cognitive Liberty, Sui Generis, Digital Personal Data Protection Act 2023, Neurorights.

I. INTRODUCTION

The history of property law is the history of society's evolving relationship with value. What was once confined to land and chattels has progressively expanded first to debts, then to intellectual creations, and now, inexorably, to data. The twenty-first century's most radical frontier is not outer space but inner space: the human mind itself. Brain-Computer Interface (BCI) technology has rendered this a legal emergency rather than a philosophical abstraction.

On January 29, 2024, Neuralink announced its first successful human implant. The patient, Noland Arbaugh, a quadriplegic, was reported to control a computer cursor purely through thought. Neuralink's implant, "Telepathy" uses 1,024 electrodes to capture and transmit neural signals wirelessly via Bluetooth to external devices. The data so generated is, in its essence, a digitised record of thought. It can be stored, processed, copied, and transmitted¹. It can apparently also be intercepted. Arbaugh himself confirmed in a public interview that the chip could, in principle, be hacked².

This last possibility crystallises the central legal question: if neural data is generated, stored, and transmitted as a form of information property, is it 'property' in the eyes of Indian law? And if yes, can it be freely bought, sold, bequeathed, licensed, or stolen? The Transfer of Property Act, 1882, India's foundational statute governing the transfer of property inter vivos, provides the primary analytical lens. This paper scrutinises the TPA's property categories, interrogates the constitutional boundaries on treating neural data as commodifiable property, and proposes a sui generis framework to govern this unprecedented form of intimate information.

II. UNDERSTANDING NEURAL DATA AND BCI TECHNOLOGY

A. What Is Neural Data?

Neural data, also referred to as brain data or neurodata is defined by the Organisation for Economic Co-operation and Development (OECD) as 'data relating to the functioning or structure of the human brain of an identifiable person.'³ In the BCI context, it specifically refers

¹ <https://timesofindia.indiatimes.com/technology/tech-news/first-human-patient-with-elon-musks-neuralink-brain-chip-noland-arbaugh-shares-100-days-update-says-100-days-in-and-i-already-cant/articleshow/129743039.cms>

² <https://oecd.ai/en/incidents/2024-06-21-8c09>

³ <https://pmc.ncbi.nlm.nih.gov/articles/PMC11951885/>

to the electrical impulses generated by neurons and captured by implanted or external sensors. This data is not an abstraction it encodes intentions, motor commands, emotions, cognitive states, and potentially memories.

The qualitative difference between neural data and other forms of personal data is profound. A financial record reveals transactions; a medical record reveals conditions; but neural data, decoded with sufficient precision, can reveal the architecture of thought itself, it can reveal preferences, anxieties, biases, and decisions before they are consciously expressed. The Neurorights Foundation's 2024 report found that virtually every consumer BCI company it reviewed appeared to have access to users' neural data with 'no meaningful limitations' on that access.⁴

B. Neuralink: The Technical Architecture

Neuralink's device consists of a surgically-implanted chip containing 1,024 electrodes across 64 micro-threads finer than a human hair. These electrodes detect the electrical firing patterns of neurons in the motor cortex. The resultant data stream is transmitted wirelessly, typically via Bluetooth to an external receiver, where proprietary algorithms decode it into actionable commands. The device enables paralysed patients to control computers, prosthetics, and other assistive technologies⁵.

The legal significance of this architecture is threefold. First, the neural signals captured are raw expressions of the user's mental activity. Second, the wireless transmission creates a data stream that is technically interceptable, a point confirmed both by cybersecurity researchers and the first Neuralink patient himself. Third, Neuralink retains the decoded data on its servers, raising questions about data ownership and the company's rights over information that is, in origin, the user's own cognitive output.

C. The Global BCI Market and Regulatory Context

BCI technology has been identified as one of the seven most noteworthy technologies of 2024. Global market projections by Towards Healthcare estimate the BCI market will reach USD 3.21 billion in 2025, expanding to USD 15.04 billion by 2035 at a compound annual

⁴ https://perseus-strategies.com/wp-content/uploads/FINAL_Consumer_Neurotechnology_Report_Neurorights_Foundation_April-1.pdf

⁵ <https://www.capttechu.edu/blog/neuralinks-brain-chip-how-it-works-and-what-it-means>

growth rate of 16.7%. This explosive growth has outpaced legal frameworks across virtually every jurisdiction⁶.

In India, the regulatory landscape is nascent. The Central Drugs Standard Control Organisation (CDSCO) holds jurisdiction over clinical-grade neural implants under the Medical Devices Rules, 2017, but consumer BCIs marketed as wellness, gaming, and productivity devices occupy a regulatory grey zone. Indian startups such as Neuphony and Nexstem already market EEG-based consumer devices, making these questions immediate rather than speculative⁷.

III. NEURAL DATA AS 'PROPERTY' UNDER THE TRANSFER OF PROPERTY ACT, 1882

A. The TPA's Expansive, Non-Exhaustive Definition of 'Property'

The TPA, 1882 is notable for what it deliberately omits: a definition of 'property' itself. Section 5 defines 'transfer of property' as 'an act by which a living person conveys property, in present or in future, to one or more other living persons.' The absence of a definitional boundary is not a legislative lacuna but an intentional choice.

Indian courts have consistently interpreted 'property' under the TPA as encompassing the widest possible range of legally cognisable interests. As summarised in legal scholarship, the word 'property' has a 'very wide meaning and includes properties of all descriptions' including 'intangible properties such as ownership, tenancy, copyrights, etc.' This interpretive tradition is crucial as it means that the question of whether neural data is 'property' is not a definitional barrier but a normative and constitutional question.

B. Neural Data as Movable Property

The TPA classifies property into movable and immovable categories. Section 3 of the TPA provides that 'immovable property does not include standing timber, growing crops or grass', by implication treating all other property as potentially movable. The General Clauses Act, 1897 defines 'movable property' as 'property of every description, except immovable property', while the Sale of Goods Act, 1930 defines 'goods' as 'every kind of movable property

⁶ <https://www.towardshealthcare.com/insights/brain-computer-interface-market>

⁷ <https://www.indiascienceandtechnology.gov.in/technologies/neuphony>

other than actionable claims and money.'

Digital data has been treated as movable property in Indian jurisprudence. In the cybercrime context, Section 303 of the Bharatiya Nyaya Sanhita (formerly Section 378, IPC) has been applied to digital data theft on the basis that digital data is movable property since 'it can be transferred, copied, or moved from one system to another.' The LexOrbis cybersecurity analysis confirms that Indian courts and enforcement authorities have accepted that 'digital data is intangible, it is considered movable property as it can be transferred, copied, or moved from one system to another.'⁸

Neural data satisfies the technical characteristics of movable property. It can be: (i) generated and stored digitally; (ii) transmitted from the implant to external devices; (iii) copied and replicated without depletion of the original; (iv) processed, analysed, and sold as an information asset; and (v) 'moved' from one party's possession to another through data transfer agreements. The State of Andhra Pradesh v. NTPC (2002) 5 SCC 203 recognises the broad characterisation of intangible economic rights as property interests. Neural data, as a form of intangible information capital, fits within this tradition.

However, a critical limitation exists: unlike conventional movable property, neural data is not merely in one's 'possession', it is constitutive of one's personhood. The same data that constitutes property in commercial terms simultaneously constitutes evidence of one's internal mental life. This dual character as information asset and as cognitive expression, creates the fundamental tension this paper addresses.

C. Neural Data and Actionable Claims Under Section 3 TPA

Section 3 of the TPA, as amended by Act II of 1900, defines an 'actionable claim' as 'a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property, or to any beneficial interest in movable property not in the claimant's actual or constructive possession.' Actionable claims are expressly characterised as intangible movable property, transferable under Chapter VIII of the TPA (Sections 130-137) through a written, signed instrument.

The question is whether neural data or more precisely, rights over neural data constitute

⁸ <https://www.lexorbis.com/recent-changes-to-the-cybersecurity-regulatory-space-in-india/>

an 'actionable claim.' Two scenarios arise. First, where a Neuralink user has a contractual right to access or control their stored neural data held by Neuralink's servers (and not in their physical possession), that contractual right resembles a 'beneficial interest in movable property not in the claimant's actual or constructive possession'. Second, where a user purports to 'license' or 'sell' their neural data to a third party (such as an AI research company), the assignment of that beneficial interest could be characterised as a transfer of an actionable claim under Section 130 TPA.

As Section 3 confirms, 'actionable claims as defined under Section 3 of the TOPA are transferable in nature ... It is a movable property of intangible nature that could be assigned as per the provisions and rules mentioned in Chapter VIII.' The digital assets context where the law has been adapting to accommodate new intangible rights suggests that rights over neural data could be fitted, at least technically, within this framework.

Nonetheless, this characterisation is analytically imperfect. Actionable claims are typically claims arising from contracts or debt relationships between discrete legal persons. Neural data is a continuous biological emanation. It is not created by a transaction but by the ongoing functioning of the human brain. Classifying it purely as a contractual beneficial interest risks reducing the organic output of consciousness to a species of debt claim, would distort both legal categories and human dignity.

D. Section 6: Non-Transferable Property and Mental Autonomy

Section 6 of the TPA enumerates categories of property that, 'notwithstanding anything in the foregoing sections', cannot be transferred. These include 'a right to future maintenance', 'a mere right to sue', and critically, 'a right which is personal in its nature and cannot be transferred.' The TPA's non-exhaustive character means this list is illustrative, not closed.

An argument of considerable force can be constructed that neural data as the digitised expression of an individual's cognitive processes is so personal in its nature as to fall within this residual category of non-transferable property. Section 11 of the TPA further provides that where a transfer of property is made subject to a condition inconsistent with the nature of the interest transferred, such conditions are void. A condition purporting to allow a corporation to indefinitely retain and commercially exploit a person's neural data i.e. the record of their thoughts could be challenged as inconsistent with the nature of a property right grounded in

personhood.

IV. CONSTITUTIONAL DIMENSIONS: PRIVACY, DIGNITY, AND MENTAL AUTONOMY

A. The Puttaswamy Framework

The Supreme Court's unanimous judgment in Justice K.S. Puttaswamy v. Union of India (2017) 10 SCC 1 constitutes the constitutional bedrock for any analysis of neural data rights in India. The nine-judge bench held that the right to privacy is a fundamental right under Articles 14, 19 and 21 of the Constitution of India. The Court held that 'privacy is an attribute of human dignity' and identified three dimensions directly relevant to neural data: informational privacy, decisional autonomy, and bodily integrity.

The Court, as per Justice Chandrachud, held that 'informational privacy is a facet of the right to privacy' and that 'the dangers to privacy in an age of information can originate not only from the state but from non-state actors as well.' It expressly 'commended to the Union Government the need to examine and put into place a robust regime for data protection' a mandate that acquires acute urgency in the context of neural data⁹.

Applied to neural data, the Puttaswamy framework generates several constitutional propositions. First, neural data which encodes thoughts, intentions, and cognitive states lies at the absolute core of the 'inner sphere' that the right to privacy is designed to protect. Second, any state or private action that compels the generation, disclosure, or commercial transfer of neural data without free and informed consent constitutes a prima facie violation of Article 21. Third, the Court's proportionality test requires that any limitation on informational privacy must be (i) legally prescribed, (ii) necessary for a legitimate aim, and (iii) proportionate, a standard that broad commercial exploitation of neural data would almost certainly fail¹⁰.

Specifically relevant is the Court's observation that 'the collection of information about a person gives power over them' and that this has a 'chilling effect not only on the expression of dissent but also on the exercise of fundamental rights.' Neural data gives power of an entirely

⁹ <https://www.scconline.com/blog/post/2017/08/24/9-judge-bench-declares-privacy-as-a-fundamental-right-information-family-life-sexual-orientation-are-all-part-of-privacy-judgment/>

¹⁰ <https://ohrh.law.ox.ac.uk/defining-the-right-to-privacy-in-india-in-light-of-justice-ks-puttaswamy-anr-v-union-of-india-2017/>

unprecedented kind of access to pre-decisional cognitive states. The constitutional implications are qualitatively different from conventional data privacy concerns^{11,12}.

B. Mental Autonomy as a Distinct Constitutional Value

While *Puttaswamy v UOI* establishes privacy as fundamental, the concept of mental autonomy or cognitive liberty extends beyond privacy as conventionally understood. Cognitive liberty has been described in international neuroethics literature as 'the substrate of all other freedoms'¹³ and encompasses both the right to use neurotechnology (positive dimension) and the right to be free from non-consensual neurotechnological intervention (negative dimension).

Article 21's guarantee of 'personal liberty' has been expansively interpreted by the Supreme Court to include mental liberty freedom not merely from physical restraint but from invasions of the mind. In *Justice Puttaswamy v UOI*, Justice Chandrachud wrote that 'privacy also includes the negative autonomy of not acting in a certain way', and that 'the right to privacy is inextricably bound up with all exercises of human liberty.'¹⁴ Treating neural data as freely marketable property available to be bought, sold, and aggregated by corporations directly imperils this mental liberty by rendering the mind's output a commercialisable commodity.

The Supreme Court's 2023 decision in *Kaushal Kishor v. State of U.P.* further extended the horizontal application of fundamental rights to private entities, holding that private actors can be held accountable for violating fundamental rights. This principle is of direct significance in the neural data context, where Neuralink and other corporations pose a threat to cognitive liberty.¹⁵

C. Bodily Integrity and the Right Against Compelled Neural Disclosure

The Constitution's protection of bodily integrity under Article 21 has been read to prohibit non-consensual medical procedures and forced disclosures of biological information. Neural data, being directly extracted from brain tissue through implanted electrodes, is as intimate as any bodily sample. The Supreme Court's observations on biometric data in the

¹¹ <https://translaw.clpr.org.in/case-law/justice-k-s-puttaswamy-anr-vs-union-of-india-ors-privacy/>

¹² <https://www.scobserver.in/cases/puttaswamy-v-union-of-india-fundamental-right-to-privacy-case-background/>

¹³ https://link.springer.com/rwe/10.1007/978-94-007-4707-4_166

¹⁴ <https://www.scobserver.in/cases/puttaswamy-v-union-of-india-fundamental-right-to-privacy-case-background/>

¹⁵ <https://clpr.org.in/blog/the-rehashing-of-horizontal-rights-discourse-kaushal-kishor-v-union-of-india/>

Puttaswamy v UOI context arising from the Aadhaar challenge, apply a fortiori to neural data, which is not merely a physical identifier but a window onto mental processes.

Any legal framework that classifies neural data as freely transferable movable property, without constitutional safeguards, would effectively permit the compelled extraction of mental content through contractual fine print. The unconscionability doctrine in contract law, combined with the fundamental rights framework, provides grounds to invalidate consent clauses that are uninformed, coerced, or procured in conditions of desperation (for example, consent from paralysed patients who depend on BCIs for basic communication).

V. NEURAL DATA THEFT, CYBERCRIME, AND EXISTING CRIMINAL LAW

A. The Hackability of Neural Data

Neuralink's first patient, Noland Arbaugh, confirmed in a June 2024 public interview that the device could be hacked¹⁶. Cybersecurity researchers have corroborated this assessment. Because neural data is transmitted wirelessly via Bluetooth, it is vulnerable to eavesdropping, replay attacks, and man-in-the-middle interceptions. A 2025 study demonstrated that hackers could manipulate BCI sensory inputs to extract sensitive information including PINs and private data using techniques involving invisible stimuli. Experts have described current BCI security as 'fundamentally inadequate.'^{17,18,19}

The stakes of BCI hacking are existentially different from conventional data breaches. An attacker who intercepts financial data obtains a transactable credential. An attacker who intercepts neural data obtains a real-time map of the user's cognitive processes, a form of surveillance that has no precedent in human history.

B. Indian Criminal Law and Neural Data Theft

Under the Bharatiya Nyaya Sanhita, 2023 (BNS), Section 303 defines theft as the dishonest taking of movable property from the possession of a person without their consent. Indian cybercrime jurisprudence has extended this provision to digital data. The LexOrbis

¹⁶ <https://www.bbc.com/news/articles/cewk49j7j1po>

¹⁷ <https://dl.acm.org/doi/10.1145/3605758.3623497>

¹⁸ <https://pmc.ncbi.nlm.nih.gov/articles/PMC6290799/>

¹⁹ <https://www.ndtv.com/science/can-hackers-take-over-your-brain-neuroscience-reveals-the-disturbing-truth-8829838>

cybersecurity analysis notes, 'although digital data is intangible, it is considered movable property as it can be transferred, copied, or moved from one system to another.'²⁰

If neural data is movable property as the foregoing analysis suggests its unauthorised interception would constitute theft under Section 303 BNS, subject to three years' imprisonment. Additionally, Section 66 of the Information Technology Act, 2000 (IT Act) criminalises dishonest or fraudulent access to computer systems, and Section 43 imposes civil liability for unauthorised access. The IT Act's provisions would apply to the interception of neural data streams insofar as the BCI device and its connected infrastructure constitute 'computer systems' within the Act's definition.

However, a critical gap emerges: neither the BNS nor the IT Act specifically addresses the neural character of the data being stolen. The theft of a credit card number and the theft of a real-time neural signal carrying information about a person's intentions, anxieties, or motor commands are qualitatively different violations, even if both technically constitute 'property theft.' The absence of graduated criminal liability reflecting the heightened intimacy of neural data is a significant lacuna in India's legal architecture.

VI. THE DIGITAL PERSONAL DATA PROTECTION ACT, 2023: PROMISE AND GAPS

A. The DPDP Act's Framework

India's Digital Personal Data Protection Act, 2023 (DPDP Act) enacted as Act No. 22 of 2023, establishes a consent-centric data protection regime. It imposes duties on 'data fiduciaries' (entities that determine the purpose and means of processing personal data) to process data only on the basis of valid consent, maintain data security, and delete data when the purpose for which it was collected expires. It also creates a Data Protection Board of India for enforcement and provides data principals with rights to access, correction, and erasure.²¹

The DPDP Act broadly applies to 'personal data' defined as 'any data about an individual who is identifiable by or in relation to such data.' Neural data, being uniquely attributable to an individual's brain activity, falls squarely within this definition. A Neuralink operator collecting,

²⁰ <https://www.lexorbis.com/recent-changes-to-the-cybersecurity-regulatory-space-in-india/>

²¹ <https://www.glocertinternational.com/resources/guides/dpdp-act-and-rules-overview/>

storing, and processing a user's neural signals would be a 'data fiduciary' under the Act, subject to its consent and security obligations.

B. The Critical Legislative Gap: No Sensitive Category for Neural Data

The DPDP Act's most significant limitation in the neural data context is its deliberate omission of 'sensitive personal data' as a category. The Act 'does not create special categories such as sensitive personal data. That was a design choice to simplify the law. In practice it leaves regulators without an explicit lever to impose heightened safeguards on neural signals that are continuous, intimate and open to future reinterpretation.'²²

This is not a theoretical concern. The United States, which also lacks a federal neural data law, has seen California amend its Consumer Privacy Act (CCPA) through SB 1223 (September 2024) to classify neural data as 'sensitive personal information'²³, and Colorado's Privacy Act was amended (April 2024, effective August 2024) to explicitly include neural data as sensitive data, recognising residents' rights to access, delete, and restrict commercial use of their neural data²⁴. The EU's General Data Protection Regulation (GDPR) similarly classifies health and biometric data as special categories requiring explicit consent²⁵.

India's DPDP Act, lacking such a classification, treats neural data as the output of a person's cognitive processes with the same regulatory weight as a customer's email address. This legislative deficit must urgently be cured.

VII. COMPARATIVE ANALYSIS: INTERNATIONAL REGULATORY APPROACHES

A. Chile: The First Neurorights Constitution

In October 2021, Chile enacted Law No. 21,383, amending its Constitution to protect 'mental integrity' as a fundamental right²⁶. This amendment is the first of its kind globally, it enshrined protections against the misuse of neurotechnological data at the constitutional level.

²² <https://vidhilegalpolicy.in/research/comments-on-the-draft-digital-personal-data-protection-rules-2025/>

²³ <https://www.hunton.com/privacy-and-cybersecurity-law-blog/california-amends-ccpa-to-cover-neural-data-and-clarify-scope-of-personal-information>

²⁴ <https://www.blankrome.com/news-and-events/colorado-becomes-first-state-explicitly-protect-neural-data/>

²⁵ <https://gdpr-info.eu/art-9-gdpr/>

²⁶ <https://courier.unesco.org/en/articles/chile-pioneering-protection-neurorights>

Chilean courts have already applied these protections in what is widely regarded as the world's first neuroprivacy judicial decision, a court ordered the deletion of collected brain data and affirmed that neural data implicates constitutional rights to physical and psychological integrity and privacy²⁷. Crucially, Chile's framework treats personal brain data with the same status as an organ it cannot be bought, sold, trafficked, or manipulated.

B. United States: State-Level Regulation

In the absence of a federal neural data law, U.S. states have led regulatory innovation. Colorado's 2024 amendment to its Privacy Act was the first comprehensive data law worldwide to explicitly protect neural data, recognising it as private property and granting residents access, deletion, and anti-marketing rights. California's SB 1223 (2024) classifies neural data as 'sensitive personal information' under the CCPA, defined as 'information that is generated by measuring the activity of a consumer's central or peripheral nervous system.' In April 2025, U.S. Senators introduced the MIND Act (Management of Individuals' Neural Data Act), directing the FTC to study neural data collection and make regulatory recommendations. As of mid-2025, four U.S. states have enacted neural data-specific protections.²⁸

VIII. HYPOTHESIS ASSESSMENT

This paper's hypothesis, that neural data, while capable of classification as property under the TPA, cannot be governed as property due to constitutional limitations relating to privacy, dignity, and mental autonomy, is amply supported by the foregoing analysis.

On the first limb, neural data does technically satisfy the TPA's broad, non-exhaustive property framework. It is an intangible, digitised asset capable of storage, transfer, and commercial exploitation. Rights over stored neural data approximate actionable claims under Section 3 TPA. The extension of theft law to digital data, confirmed in Indian cybercrime jurisprudence, implies that neural data is movable property for criminal law purposes. The TPA's silence on definition, and Indian courts' tradition of expansive property interpretation, supports neural data's technical qualification as property.

On the second limb, treating neural data as freely transferable, commodifiable property,

²⁷ <https://pmc.ncbi.nlm.nih.gov/articles/PMC10929545/>

²⁸ <https://www.lexology.com/library/detail.aspx?g=e21a0ad4-a3c5-4206-8ac5-3508eea76ac7>

subject to ordinary market transactions, violates the constitutional guarantees established in Justice K.S Puttaswamy v Union of India. The right to mental autonomy, informational privacy, and bodily integrity, all of which are embedded within Article 21, are engaged by any legal framework that permits corporations to buy, sell, license, or retain indefinite proprietary rights over an individual's neural signals. The DPDP Act, while applicable to neural data as personal data, lacks the heightened protective architecture that the intimate nature of neural data demands. Section 6 TPA's residual category of non-transferable property, applied through a constitutional reading, would classify neural data as inherently incapable of commercial transfer, belonging to the individual as an expression of their personhood, not as a tradeable asset.

IX. THE CASE FOR A SUI GENERIS FRAMEWORK

A. Inadequacy of Existing Frameworks

The TPA, 1882 was drafted in the age of land and goods, its conceptual vocabulary is inadequate for the governance of mind-generated data. The DPDP Act, 2023 covers neural data as personal data but lacks the category-specific protections that neural data's intimate character demands. The IT Act, 2000 provides cybercrime remedies but does not differentiate neural data from other digital property. Patent law governs BCI devices as inventions but says nothing about ownership of the data they generate. Copyright law protects original expression but does not extend to neural signals that are biological outputs rather than authored works. In aggregate, no single existing statute provides a coherent, rights-protective framework for neural data.

B. Proposed Elements of a Sui Generis Regime

India should enact a standalone Neural Data Protection Act or introduce a dedicated Chapter in an amended DPDP Act, incorporating the following elements:

- (i) **Constitutional Anchoring:** Amend Article 21 jurisprudence, or enact a constitutional amendment analogous to Chile's Law No. 21,383, to explicitly recognise mental integrity and cognitive liberty as aspects of the right to life and personal liberty.
- (ii) **Inalienability Principle:** Declare neural data as raw neural signals or as inalienable personal data that cannot be the subject of commercial transfer, sale, or perpetual

licensing. Derived, anonymised insights may be licensed on time-limited, purpose-specific terms.

- (iii) Enhanced Consent Standards: Mandate granular, informed, revocable consent for each specific purpose of neural data collection and processing, distinguishing therapeutic uses (treatment of paralysis) from commercial uses (AI training, marketing). The current DPDP Act's generic consent framework is insufficient.
- (iv) Cybersecurity Standards: Impose mandatory technical security standards on BCI devices, including end-to-end encryption of neural data streams, security-by-design requirements, mandatory vulnerability disclosure, and criminal liability for providers whose negligent security enables neural data interception.
- (v) Graduated Criminal Liability: Amend the BNS and IT Act to create specific, heightened offences for the interception, theft, manipulation, and commercial exploitation of neural data with penalties reflecting the qualitative difference between neural data theft and conventional data theft.
- (vi) Regulatory Authority: Empower the Data Protection Board of India or a specialised Neurotechnology Regulatory Authority with jurisdiction over BCI devices and neural data processing, with powers to conduct audits, impose penalties, and issue sector-specific guidance.

X. CONCLUSION

The question with which this paper opened, can thoughts be property? admits no simple answer. Neural data generated by BCIs technically satisfies the broad, non-exhaustive property categories of India's Transfer of Property Act, 1882. It is an intangible, digitised, transferable asset that Indian law has begun to recognise in analogous digital contexts. Rights over stored neural data resemble actionable claims; unauthorised interception of neural signals resembles data theft as movable property.

But law is not merely taxonomy. The constitutional framework established by *Puttaswamy v UOI* and the deeper human values it encodes, compels the conclusion that neural data cannot be treated as ordinary, freely tradeable property. It is constitutive of the self. The mental processes it encodes such as intentions, emotions and decisions are the very substrate

of personhood that Articles 14, 19, and 21 of the Constitution are designed to protect. Commodifying neural data as freely marketable property would, in effect, create a market in minds, enabling corporations to own, exploit, and profit from the innermost expressions of human thought. This is constitutionally untenable.

The urgency is real. Neuralink's first human implant is already operational. Consumer BCIs are already marketed in India. The legislative clock is running. India's legal system must decide, before technology outpaces governance entirely, whether the ownership of thought belongs to the individual or to the market. The answer, this paper argues, must be the former and it must be embedded in statute with constitutional force.

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