
PROPERTY WITHOUT POSSESSION: RETHINKING OWNERSHIP OF INTELLECTUAL PROPERTY UNDER INDIAN LAW

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ABSTRACT

Intellectual property law uses the vocabulary of ownership while regulating subject matter that cannot be possessed in the physical sense. A book, machine, or branded product may be possessed, but the literary expression, inventive concept, commercial sign, or confidential information embodied in it is protected through legally constructed exclusion, control, attribution, and transfer. This article reconsiders the idea of ownership in Indian intellectual property law through the proposition that intellectual property is “property without possession.” It argues that Indian law does not treat intellectual property as an unrestricted dominion over an idea. Rather, ownership is a legally delimited relationship constituted by statute, registration, authorship, priority, contractual allocation, confidentiality, and remedies. The Copyright Act, 1957, the Patents Act, 1970, the Trade Marks Act, 1999, and the common-law protection of confidential information create distinct and non-interchangeable forms of proprietary entitlement. Their differences become visible in the rules concerning subject matter, duration, exhaustion, assignment, licensing, infringement, public interest, and constitutional values. Indian patent jurisprudence, especially the treatment of pharmaceutical patents and section 3(d), illustrates that exclusivity is conditional upon social and statutory purposes. Copyright doctrine demonstrates that expression can be protected without granting control over ideas. Trademark law protects source-identifying goodwill rather than a monopoly over language as such. Trade-secret protection demonstrates the limits of ownership language most clearly because control depends upon secrecy and relational obligations rather than registration. The article proposes a relational and layered model of ownership for Indian intellectual property: ownership should identify the legally recognized entitlement, while possession, control, use, access, and benefit should be analyzed separately. This model better explains Indian law’s commitment to innovation, competition, public access, freedom of expression, and the constitutional value of social welfare.

Keywords: intellectual property, possession, ownership, Indian law, copyright, patents, trademarks, trade secrets, licensing, public interest.

I. Introduction

Property is often imagined through physical control. The owner occupies land, holds a chattel, excludes strangers, and transfers the object to another. Intellectual property unsettles this picture. An invention may be used by many people without being consumed; a song may be copied without depriving the author of the original file; a trademark may be reproduced on a counterfeit product while remaining in the proprietor's possession; and confidential information may lose its value precisely when it becomes generally known. The legal system nevertheless speaks of "ownership" in each setting. The central question is what that language means when possession of the protected subject matter is impossible, incomplete, or strategically undesirable.

Indian intellectual property law is not built on one general property right. It is a collection of statutory and common-law regimes that create different entitlements over different informational, expressive, technological, and commercial resources. Indian legislation addresses patents, copyright, trademarks, designs, geographical indications, plant varieties, and related subject matter through separate rules. These laws operate within a constitutional framework that recognizes property in Article 300A while also requiring legal institutions to respond to public welfare, equality, health, education, culture, and economic development. An overview of Indian innovation law accordingly treats the relevant statutes as operating within the constitutional guarantee of property and alongside judicially developed remedies.¹

The phrase "property without possession" captures both the strength and the limits of intellectual property. Intellectual property is property because law creates enforceable positions against defined classes of persons, permits assignment and licensing, supports commercial valuation, and supplies remedies. It is without possession because the protected object is not exhausted by physical control and because the right ordinarily concerns legally specified acts—making, using, reproducing, communicating, selling, registering, or disclosing—rather than dominion over a thing in the ordinary sense. Knowledge is non-rivalrous in the physical sense: one person's acquisition does not necessarily diminish another's ability to know it. The legal response is therefore not to locate and recover the thing, but to regulate conduct around it.²

¹ J. S. R. Bhat, "Innovation and intellectual property rights law—an overview of the Indian law," 2017. doi: 10.1016/J.IIMB.2017.12.003.

² W. Buskop, "Intellectual Property Rights," 2005. doi: 10.1061/40775(182)42.

This article makes three claims. First, ownership in Indian intellectual property law is a bundle of institutionally differentiated entitlements, not a uniform power of dominion. Second, the absence of possession does not make intellectual property less proprietary; it changes the legal techniques through which ownership is recognized and limited. Third, the strongest interpretation of ownership under Indian law is relational and conditional. It protects creative and inventive investment, but it does so through finite terms, subject-matter limits, public-interest exceptions, competition-sensitive doctrines, and the eventual return of protected material to common use.

II. From Physical Possession to Legal Entitlement

The traditional categories of personal property do not map neatly onto intellectual creations. A chose in possession is generally associated with a tangible object capable of physical possession. A chose in action is associated with a claim enforceable through legal action. Copyright works do not fit comfortably into either category: the work is intangible, but copyright is not merely a debt or claim against one identified person. Recent property theory therefore questions whether copyright should be forced into a binary division between choses in possession and choses in action. A property-spectra approach treats property institutions as resource-dependent and recognizes that intellectual goods resemble land, natural resources, corporations, and financial instruments in different respects.³

This conceptual difficulty is not merely academic. If intellectual property is treated as ordinary ownership, the owner may appear to possess complete control over an idea or information. That implication is inaccurate and normatively dangerous. A recent account of the “proprietary drift” of intellectual property warns that traditional property analogies can encourage right holders to presume mastery over the subject matter and thereby threaten freedom of expression and access to information.⁴ The Indian position is better understood by distinguishing the protected subject from the legal incidents attached to it. A patent protects a claimed invention meeting statutory conditions; it does not confer ownership over every scientific principle related to that invention.

³ E. Müller, “PoornaMysoor, Copyright and Personal Property, Oxford, OUP, 2025, 252 pp, hb £100.00,” *Modern Law Review*, 2026, doi: 10.1111/1468-2230.70028.

⁴ J. E. Cohen, “Property as Institutions for Resources: Lessons from and for IP,” *SSRN Electronic Journal*, 2014, doi: 10.2139/ssrn.2478051.

Copyright protects original expression; it does not ordinarily protect ideas, facts, methods, or themes as such. A trademark protects the sign in its source-identifying and commercial context; it does not grant an absolute monopoly over every ordinary word. Confidential-information law protects secrecy under circumstances imposing a duty of confidence; it does not convert publicly available information into property.

Ownership therefore performs an organizing function. It identifies who may invoke the legal system, who may authorize specified uses, who may assign or license the right, and who may claim remedies. It does not answer every question about use. In intellectual property, “who owns?” must be followed by “what is owned, against whom, for which acts, for how long, subject to which exceptions, and with what public consequences?” The answer depends on the regime.⁵

The institutional character of property is especially important in India. Intellectual-property rights are created and administered through statutes, registries, courts, contracts, and enforcement institutions. Their purposes include rewarding creative and inventive effort, facilitating disclosure, protecting consumers from confusion, preserving commercial trust, and enabling socially valuable access. The Indian system has developed through interaction between domestic legislation, international obligations, and constitutional commitments. Recent scholarship describes this development as a movement through pre-TRIPS reform, TRIPS transition, post-2005 consolidation, and an era of specialized intellectual-property adjudication, while emphasizing the continuing tension between innovation incentives and public access.⁶

III. Ownership Under Indian Copyright Law

Copyright offers the clearest example of property without possession. The Copyright Act, 1957 recognizes rights in literary, dramatic, musical, and artistic works, cinematograph films, and sound recordings. The protected work may be fixed in a physical or digital medium, but the copyright is distinct from the copy. Ownership of a book does not ordinarily transfer copyright

⁵ F. Martin-Bariteau, “The Idea of Property in Intellectual Property,” SSRN Electronic Journal, 2019, doi: 10.2139/ssrn.3371128.

⁶ Dr. P. Jhamnani, “Evolution and Development of Intellectual Property Rights in India: A Legal Perspective,” International Journal of Advanced Scientific Research and Engineering Trends, 2025, doi: 10.65521/ijasret.v9i10.1488.

in the text. The purchaser of a compact disc, hard drive, or printed volume acquires a material object, while the copyright owner retains statutory rights in reproduction, adaptation, communication, and other specified acts.

The distinction between work and copy demonstrates why possession is insufficient. A person can possess an authorized copy without owning the right to reproduce it. Conversely, a copyright owner may control reproduction while possessing no physical copy at all. The legal entitlement is constituted by the statute's allocation of exclusive rights and exceptions. The Supreme Court's copyright jurisprudence has been described as relying on both labour and utilitarian theories, even though those theories are not identical and have sometimes been applied mechanically.⁷ This mixed foundation helps explain why copyright ownership is neither purely a natural entitlement nor merely an administrative privilege. It is a statutory right justified by creative labour and by the social objective of encouraging production and dissemination.

The idea-expression distinction is central to the non-possessory character of copyright. The law can protect the form in which an author has expressed an idea without allowing the author to appropriate the underlying subject matter of thought. This limitation preserves later creation, criticism, research, education, and public communication. Copyright ownership is therefore strongest at the level of protected expression and weaker at the level of ideas, facts, methods, and general concepts. It resembles possession only as an exclusionary signal: originality and expression identify a legally protected contribution, but they do not authorize control over all intellectual material connected with it. The analogy between taking possession in personal property and expression in copyright has been used to show how both can communicate an exclusionary and relational signal to third parties.

Digital dissemination makes the distinction more difficult. Digital files can be copied, indexed, recommended, transformed, and monetized at scale, and online platforms complicate the relationship among reproduction, communication, intermediary activity, and liability.⁸ The traditional first-sale or exhaustion intuition is also unsettled when a consumer receives a permanent digital download rather than a physical copy. Indian scholarship identifies

⁷ A. Raza, "Theoretical Underpinnings of Copyright and Design Laws: Decisions of the Supreme Court of India," *Journal of intellectual property rights*, 2021, doi: 10.56042/jipr.v26i4.47010.

⁸ M. T. Rajesh, "Intellectual Property Rights in the Digital Age," *Zenodo*, 2025, doi: 10.5281/zenodo.20688590.

unresolved questions concerning whether digital circulation is distribution or communication to the public, how fair dealing applies, and whether contractual restrictions should control the legal consequences of a digital transfer.⁹ The absence of possession is decisive: a digital transfer may leave the transferor with an identical file, so the physical logic of exhaustion cannot simply be imported into the digital environment.

Copyright ownership is also divisible. Economic rights can be assigned or licensed in whole or in part, while moral interests and statutory limitations may continue to shape the relationship between author, assignee, licensee, and public. This divisibility confirms that copyright is better described as a structured bundle of powers than as a single absolute right. The legal owner may authorize publication but not necessarily waive attribution; a licensee may receive limited rights for a defined territory, medium, or period; and the public retains statutory exceptions. Ownership thus coordinates relationships rather than placing the work under unrestricted dominion.

IV. Patent Ownership and the Conditional Monopoly

Patent law presents the most visible claim to exclusive control over an intangible subject. A patent is not possession of a machine or chemical compound. It is a legally granted entitlement to exclude specified acts concerning an invention for a limited period, in exchange for disclosure and subject to statutory conditions. The patent system therefore converts technical knowledge into a time-bound legal position. The owner's power is exclusionary and transferable, but it is not unlimited: the invention must satisfy patentability standards, the claims define the scope of protection, and the statute preserves exceptions and public-interest mechanisms.

Indian patent law is particularly instructive because it places social purpose inside the structure of ownership. Indian patent jurisprudence has been described as predominantly utilitarian: protection rewards the inventor's labour while requiring the invention and associated knowledge to be made available to society.¹⁰ The pharmaceutical context makes this

⁹A. Lath, "Permanent Downloads and the Resale of Digital Content: Another Exhausting Journey?," *Indian Journal of Law and Technology*, 2020, doi: 10.55496/gzbu9098.

¹⁰ Patent Law: Decisions of the Supreme Court of India, *Journal of Intellectual Property Rights*, 2022, doi: 10.56042/jipr.v27i4.55928.

conditionality explicit. Section 3(d) of the Patents Act, 1970, and the jurisprudence surrounding new forms of known substances, reflect the conflict between exclusive property rights and constitutional and industrial-policy objectives. The historical development of Indian patent law shows that debates over medicines have repeatedly placed innovation policy and social policy in tension, with social objectives influencing the scope of patent protection.¹¹

This does not mean that patents are not property. It means that patent ownership is a regulated monopoly whose legitimacy depends on statutory boundaries. The owner does not possess the underlying scientific truth. The owner holds a legal power to prevent defined commercial acts during the patent term. The public, meanwhile, receives disclosure and eventually access after expiration. Compulsory licensing further demonstrates that ownership and exclusivity are analytically distinct. A patent may remain owned by the patentee while the legal system authorizes use by another person under defined conditions. Public health, reasonable requirements of the public, and access to medicines can therefore limit the practical incidents of ownership without denying the existence of the property right.

The Indian approach is consistent with a broader understanding of intellectual property as a balance between incentive and access. Indian scholarship describes the regime as seeking to reward creators and inventors while providing the public with information and use of inventions, including through section 3(d) and compulsory licensing.¹² The result is a model in which ownership is inseparable from disclosure, duration, claim construction, and public purpose. A patent owner's strongest argument is not "this idea is mine in the physical sense," but "the statute has granted me a defined exclusionary entitlement because I satisfied the conditions of the patent bargain."

V. Trade Mark Ownership: Goodwill, Signification, and Control

Trade mark law further exposes the limits of possession. A mark is a sign, but the legal interest is not necessarily ownership of the sign in the abstract. The core concern is the relationship among the sign, the proprietor, the goods or services, and consumer perception. Trade mark ownership protects source identification and the goodwill associated with commercial activity.

¹¹ T. Garde, "Circumventing the Debate over State Policy and Property Rights: Section 3(d) of the Indian Patents Act Law," 2009. doi: 10.1007/978-3-540-88743-0_18.

¹² D. Sohoni, "Legal Aspects of Intellectual Property Rights," 2026. doi: 10.5281/zenodo.18987064.

It combats confusion, deception, and appropriation of reputation. The owner's entitlement is therefore relational: it operates against uses likely to mislead or dilute the commercial significance of the mark, not against every utterance or depiction of the word or symbol.

Indian trademark law has developed through statutory interpretation and judicial construction. A review of Supreme Court trademark decisions emphasizes that the Court has interpreted and constructed statutory provisions even where constitutional validity was not directly challenged, and that trademark law has generated a substantial body of judicial doctrine. The history of Indian trademark law also reflects doctrines such as prior user protection and deceptive similarity, which place commercial context and consumer perception at the centre of the entitlement.

The distinction between possession and ownership is clear in counterfeit cases. A counterfeiter may possess the physical goods bearing a mark, but that possession does not confer ownership of the goodwill or authorization to use the sign. Conversely, the proprietor may have no physical possession of every product or advertisement in the market but can enforce the legal connection between the mark and the source it identifies. The property is therefore not the ink, label, or digital image as such. It is the legally protected commercial signification attached to the mark.

Trademark rights also demonstrate that the non-rivalrousness of intangible subject matter is not uniform. Economic analysis suggests that trademarks and trade secrets can resemble tangible property more closely than some copyrights and patents because unauthorized use can directly interfere with market identity, reputation, or secrecy. Copyright and patent interests may permit greater coexistence in some markets, while trademark misuse can divert consumers and damage goodwill.¹³ This insight supports a differentiated account of ownership. The legal incidents of ownership should respond to the resource and the harm, rather than follow one generic property template.

VI. Trade Secrets and Ownership Through Confidentiality

Trade secrets are the strongest challenge to the language of ownership because India has no

¹³ I. D. Manta, "Keeping IP Real," SSRN Electronic Journal, 2019.

comprehensive, stand-alone trade-secret statute. Protection generally arises through contracts, equitable principles, breach-of-confidence actions, employment obligations, and related legal doctrines. The interest is not created by registration or public disclosure. It depends on secrecy, commercial value, and circumstances that impose an obligation not to use or disclose the information improperly.

The absence of possession is especially visible here. A trade secret can be known by several employees, contractors, or licensees while remaining secret. The owner does not possess it as a physical object; the owner controls the conditions under which it is communicated and used. Once information enters the public domain through lawful means, the proprietary claim may disappear. Ownership is thus contingent and relational. It is constituted by a pattern of confidence rather than by exclusive physical control.

The Indian position has been criticized for relying on copyright and contract law in ways that do not adequately recognize the nature of confidential information. Scholarship on Indian trade-secret protection argues that copyright categories can obscure the distinction between literary expression and confidential information, while contractual analysis may fail to examine the conditions that make information confidential. It therefore supports a *sui generis* mode of protection.¹⁴ Whether or not a separate statute is enacted, the critique shows why ownership language must be used carefully. The law protects an interest in secrecy and authorized use, not an eternal property in information.

Trade-secret protection also illustrates the role of voluntary arrangements. Non-disclosure agreements, employment contracts, access controls, compartmentalization, and reasonable security measures can determine whether the law recognizes a confidential relationship. This is not a weakness of property; it is a reminder that intangible property often depends on governance. Where patents use public disclosure and registration, trade secrets use controlled disclosure and contractual discipline. Two rights may protect technological information while embodying opposite strategies: one secures a time-limited public bargain, the other preserves secrecy until lawful public knowledge makes exclusion impossible.

¹⁴ T. Sebastian, "Locating Trade Secrets under Indian Laws: A *Sui Generis* Mode of Protection," *Journal of intellectual property rights*, 2022, doi: 10.56042/jipr.v27i3.52633.

VII. Assignment, Licensing, and the Fragmentation of Ownership

If possession is the defining incident of ordinary ownership, transfer is normally accomplished by delivery. Intellectual property cannot be transferred by delivery alone. Assignment and licensing perform the work that physical delivery performs for tangible property, but they do so through legal instruments specifying scope, territory, duration, medium, field of use, royalty, exclusivity, and enforcement authority.

Assignment transfers an interest; licensing authorizes use without necessarily transferring ownership. The difference matters because a licensee may exercise substantial control while the proprietor retains title. In digital and platform markets, licensing is often the principal technique for allocating access to works, software, data, brands, and technology. Property theory recognizes the widespread use of licensing to delineate rights and obligations in intellectual-property ecosystems. The result is a fragmented structure in which several factors may hold different legally enforceable positions in relation to the same subject matter.

This fragmentation challenges the idea that ownership is a single status. An author may own copyright, a publisher may hold an exclusive license for print distribution, a streaming platform may hold a limited communication license, and a consumer may hold a contractual access entitlement. A patentee may assign rights in a territory, license a field of use, and retain rights for research or internal production. A trademark proprietor may appoint distributors without transferring goodwill. A trade-secret holder may disclose information to a contractor subject to confidentiality. Each arrangement divides control without requiring physical division of the underlying intellectual resource.

The legal system should therefore distinguish title from control, and control from benefit. A party may have title but lack operational control because it granted an exclusive license. Another may have control over a channel of exploitation without owning the underlying right. A third may benefit economically through royalties without having power to sue for infringement. This vocabulary would reduce disputes caused by treating every commercial participant as either “owner” or “non-owner.” It would also improve interpretation of contracts, particularly where digital services describe access as ownership or sale while reserving extensive powers of revocation and technological control.

VIII. Limits, Exceptions, and the Public Domain

Intellectual property ownership is incomplete without its limits. Every major Indian regime places boundaries on the right through subject-matter exclusions, originality or novelty thresholds, duration, exceptions, exhaustion doctrines, compulsory licensing, fair dealing, prior-user principles, public-interest requirements, and the public domain. These limits are not external corrections to property; they help define what the property right is.

The temporal dimension is central. Copyright, patents, and designs are limited in duration, while trademark protection can continue through renewal so long as the mark performs its legal function and statutory requirements are met. Trade-secret protection may continue indefinitely, but only while secrecy and the relevant legal relationship remains. Different durations reflect different justifications. Patent law exchanges disclosure for a limited period of exclusion. Copyright balances creative incentive with eventual public access. Trademark law protects continuing source identification rather than a finite inventive contribution. Trade-secret law protects secrecy rather than disclosed knowledge.

Exhaustion illustrates how ownership changes after authorized commercialization. In physical markets, the first authorized sale may limit the right holder's ability to control subsequent disposition of the particular article. But the copyright or patent does not necessarily disappear; rather, a specific incident of control is exhausted. Indian scholarship on film copyright and the Delhi High Court's treatment of exhaustion demonstrates that the doctrine is contested and varies by subject matter.¹⁵ Digital delivery complicates the issue because reproduction may occur even when the user merely resells or transfers access.

Public-interest limits are equally significant. Indian patent law's treatment of pharmaceutical innovation, section 3(d), and compulsory licensing shows that ownership is evaluated in relation to health and access. The wider Indian framework has been described as balancing proprietary incentives with constitutional values such as the right to life and public welfare. Copyright limitations protect education, criticism, research, and expression. Trademark law protects competition and consumer autonomy by preventing confusion without granting control over ordinary language. Trade-secret law preserves lawful reverse engineering and independent

¹⁵ K. D. Dodeja, "The Sheer 'Film' of Protection - An Exercise in Exhaustion," 2013.

discovery because secrecy cannot create a monopoly over knowledge that others obtain lawfully.

The public domain is therefore not the absence of law. It is a legally significant space created by the limits of ownership. Intellectual property succeeds when it stimulates creation, disclosure, and reliable markets without enclosing more knowledge and expression than the statutory purpose requires. A property framework that ignores the public domain turns a limited entitlement into a theory of perpetual control. Indian law's statutory structure and judicial practice resist that result, though digital technologies and platform markets continue to test the adequacy of existing distinctions.

IX. Rethinking Ownership: A Relational and Layered Model

The preceding analysis supports a relational and layered model of intellectual-property ownership under Indian law. The first layer is the subject matter: expression, invention, sign, design, or confidential information. The second is the legal title or status created by statute, registration, authorship, priority, or confidence. The third is the set of exclusive acts that the right holder may control. The fourth is the network of authorized users, licensees, assignees, intermediaries, consumers, competitors, and members of the public. The fifth is the set of limitations that preserve access, competition, health, expression, and eventual public use.

This model has four advantages. First, it avoids the false choice between calling intellectual property "real property" and denying that it is property at all. The law can recognize proprietary entitlements without pretending that intangible subject matter is physically possessed. Second, it explains why patents, copyrights, trademarks, and trade secrets cannot be collapsed into one theory. Third, it treats licensing and assignment as central features rather than secondary commercial practices. Fourth, it places public-interest limits inside the concept of ownership rather than describing them as unfortunate exceptions.

The model also clarifies the proper role of courts. Courts should identify the protected subject, define the relevant act, determine the claimant's title or legally protected relationship, and assess the statutory and equitable limits. They should be cautious about extending property analogies beyond the purpose of the particular regime. Indian judicial development has often filled gaps in areas such as geographical indications, trade secrets, software protection,

compensation, and standing, but scholarship also observes that reactive judicial development may leave some communities unable to share fully in the benefits of intellectual-property protection.¹⁶ A relational model makes that distributional question visible.

For legislators, the model suggests that reform should focus less on expanding ownership vocabulary and more on clarifying incidents of control. Digital copyright would benefit from clearer rules on permanent downloads, exhaustion, platform responsibility, and lawful user activity. Trade-secret reform should define confidentiality, lawful acquisition, remedies, and evidentiary protections without converting secrecy into an indefinite monopoly. Patent policy should preserve disclosure and public-health safeguards. Trademark enforcement should distinguish confusion and unfair advantage from legitimate reference, criticism, and comparative communication. Across these fields, the operative question is how to allocate control while preserving the social conditions that make innovation and culture possible.

X. Conclusion

Intellectual property is property without possession because its legal value lies not in physical custody but in the allocation of legally recognized powers over intangible subject matter. Indian law confirms this proposition while refusing to treat ownership as absolute dominion. Copyright protects expression but not every idea; patents grant conditional and time-limited exclusion in exchange for disclosure; trademarks protect commercial signification and goodwill rather than language in the abstract; and trade secrets protect confidential relationships rather than information that has become public.

The more accurate account of ownership is therefore statutory, relational, and layered. Ownership identifies the person or institution entitled to invoke legal control, but the content of that control depends on the resource, the regime, the relevant act, the contractual arrangement, and the public interests at stake. Indian patent jurisprudence and the constitutional orientation of intellectual-property law demonstrate that the right is not measured only by the owner's exclusion but also by the social purposes that justify exclusion.

¹⁶ K. Pandey and S. Choudhuri, "Role of Judiciary with Special Reference to Global Intellectual Property Regime," SSRN Electronic Journal, 2011, doi: 10.2139/ssrn.1921263.

Rethinking ownership in this way does not weaken intellectual property. It makes the concept more precise. A legal system can protect intangible investment without confusing control with possession, title with use, or exclusivity with perpetual dominion. “Property without possession” is not a contradiction. It is a description of a modern legal institution whose legitimacy depends on maintaining the boundary between private entitlement and the shared intellectual resources on which future creation depends.