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THE GHOST IN THE MACHINE: A DOCTRINAL AND COMPARATIVE ANALYSIS OF GENERATIVE AI, COPYRIGHT AUTHORSHIP, AND PERSONALITY RIGHTS IN INDIA

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ABSTRACT

The precipitous rise of Generative Artificial Intelligence (AI) technologies, exemplified by Large Language Models (LLMs) and Generative Adversarial Networks (GANs), has disrupted the ontological foundations of intellectual property law. This paper undertakes a doctrinal and comparative critique of the Indian *Copyright Act, 1957* and the *Information Technology Act, 2000* in the wake of this algorithmic revolution. The study is divided into three thematic verticals. First, it scrutinizes the "Authorship Conundrum" by juxtaposing the Lockean "sweat of the brow" doctrine against the modern "modicum of creativity" standard established in *Eastern Book Company v. D.B. Modak*. It argues that Section 2(d)(vi) of the Copyright Act creates a legislative vacuum for autonomous AI works. Second, the paper navigates the "Personality Rights Crisis" triggered by Deepfakes. Through a forensic analysis of the *Anil Kapoor v. Simply Life India* judgment, it evaluates whether the common law tort of passing off is a sufficient remedy for digital identity theft. Third, it examines the "Intermediary Liability" framework under the *IT Rules, 2021*, questioning whether safe harbour provisions should extend to algorithmic amplification of infringing content. Concluding with a comparative analysis of the US, UK, and EU jurisdictions, the paper proposes a *sui generis* "Data Rights Framework" that decouples human creativity from machine investment, advocating for a statutory amendment to recognize "AI-Assisted Works" as a distinct class of intellectual property.

Keywords: Generative AI, Copyright Authorship, Personality Rights, Deepfakes, Intermediary Liability, Eastern Book Company, Anil Kapoor Judgment.

INTRODUCTION

"The saddest aspect of life right now is that science gathers knowledge faster than society gathers wisdom." — Isaac Asimov

The intersection of Artificial Intelligence (AI) and Intellectual Property Rights (IPR) represents the most significant legal challenge of the 21st century. For over three hundred years, since the enactment of the *Statute of Anne, 1710*, copyright law has been predicated on a singular, undisputed assumption: the author is human. Creativity was viewed as a divine spark, a unique byproduct of the human consciousness, soul, and lived experience.

However, the year 2023 marked an irreversible inflection point. With the public release of tools like OpenAI's GPT-4, Midjourney, and Sora, the monopoly of human beings over "creative expression" was shattered. These Generative AI models can compose sonnets in iambic pentameter, debug complex code, and generate hyper-realistic oil paintings in seconds. This technological leap has birthed a crisis of jurisprudence. If an AI creates a painting that wins a fine art competition—as Jason Allen's *Théâtre D'opéra Spatial* did in 2022—does the machine own the copyright? Does the programmer? Or does the work fall into the public domain?

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A. The Twin Crises This paper identifies two distinct but interrelated crises that Indian law must address:

1. **The Crisis of Ownership (The Output Question):** Can current Indian copyright law accommodate a non-human author? If not, are we disincentivizing the multi-billion dollar AI industry? Conversely, if we *do* grant copyright to AI, do we risk flooding the market with infinite, cheap content that drowns out human artists?
2. **The Crisis of Identity (The Deepfake Question):** While the first crisis is about property, the second is about dignity. Generative AI's ability to clone voices and faces (Deepfakes) threatens the "Right to Personality." The unauthorized simulation of a person's likeness—whether a celebrity like Anil Kapoor or a private citizen—challenges the existing frameworks of privacy and passing off.

RESEARCH METHODOLOGY

This paper employs a doctrinal methodology, relying on a textual analysis of the *Copyright Act, 1957* and the *Information Technology Act, 2000*. It supplements this with a comparative analysis of judicial trends in the United States (strict human authorship), the United Kingdom (statutory protection for computer-generated works), and the European Union (focus on transparency). The paper aims to synthesize these global perspectives to propose a legislative roadmap for India.

I . THEORETICAL FRAMEWORK: THE PHILOSOPHY OF COPYRIGHT IN THE AGE OF ALGORITHMS

To understand why AI struggles to fit into copyright law, we must look beneath the statutes at the philosophical theories that justify intellectual property.

A. Locke's Labour Theory (The Sweat of the Brow)

John Locke, in his *Two Treatises of Government*, argued that every man has a property in his own person and the "labour of his body." When a person mixes their labour with the "commons" (nature), they acquire property rights over the result. Historically, copyright relied on this. If you worked hard to compile a telephone directory, you deserved copyright protection simply because of your effort.

- **Application to AI:** If we apply Locke strictly, the AI developer (who spent millions of dollars and hours coding the model) "laboured" significantly. Therefore, they should own the output. This theory *supports* granting copyright to the AI developer.

B. Hegel's Personality Theory

Georg Wilhelm Friedrich Hegel argued that property is an extension of the "self." An artistic work is a reflection of the author's personality and soul.

- **Application to AI:** This theory is fatal to AI copyright. An AI has no soul, no personality, and no "self." It is a statistical probability machine. It does not "express" itself; it predicts the next likely pixel or word. Under the Hegelian view, AI art is hollow—it lacks the "spiritual connection" required for copyright.

C. The Utilitarian/Incentive Theory

The US Constitution and modern economics justify copyright as an "incentive." We give authors a monopoly so they are motivated to create more works for society's benefit.

- **Application to AI:** AI does not need incentives. ChatGPT will not stop generating text if it doesn't get a royalty check. It operates on electricity, not motivation. Therefore, granting copyright to AI works does not serve the utilitarian purpose of the law. In fact, it might harm society by creating "patent thickets" or "copyright trolls" where automated bots generate millions of works just to sue people for infringement.

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II. THE INDIAN JURISPRUDENCE: THE "MODICUM OF CREATIVITY" TEST

The Indian position on authorship has evolved significantly, moving from a strict English "labour" standard to a more nuanced "creativity" standard. This evolution is critical for determining the fate of AI works.

A. The Shift from *Eastern Book Company*

For decades, India followed the English "Sweat of the Brow" doctrine. However, the Supreme Court of India in *Eastern Book Company v. D.B. Modak* (2008) revolutionized this [1]. [1563]The Court was deciding whether the "headnotes" and "copy-editing" in legal journals were copyrightable. The Court held that mere labour is not enough. There must be a **"modicum of creativity"** and a **"flavour of the author."**

- **Ratio:** The work must be more than a mechanical compilation; it must reflect the intellectual judgment of the creator.

B. The AI Problem: Is Prompting "Creative"?

This "modicum of creativity" test is the biggest hurdle for AI. When a user types a prompt into Midjourney (e.g., "A cyberpunk city in rain"), does that constitute a "modicum of creativity"?

- **The Argument Against:** The prompt is merely an *idea*. Copyright protects *expression*, not ideas (*R.G. Anand v. Delux Films* [2][1564]). The AI (the machine) does the heavy lifting of determining the lighting, composition, texture, and brushstrokes. The user is like a client commissioning a painting, not the painter.
- **The Argument For:** The user iterates. They refine the prompt ("make it darker," "add neon lights," "change aspect ratio"). This iterative process of "curation" and "selection" involves intellectual judgment.

C. Section 2(d)(vi): The Legislative Gap

Section 2(d)(vi) of the *Copyright Act, 1957* states: *"In relation to any literary, dramatic, musical or artistic work which is computer-generated, the author shall be the person who causes the work to be created."* [3][1565]

This section was introduced in 1994. At that time, "computer-generated" meant using MS Word or Photoshop. The computer was a *pen*. Today, the computer is the *writer*. The phrase "causes the work to be created" is ambiguous.

- **Interpretation A:** The User causes it (by prompting).
- **Interpretation B:** The Developer causes it (by building the neural network).

D. The "RAGHAV" Precedent: A Global Blunder?

In 2020, the Indian Copyright Office (ICO) made headlines by registering a work titled "Suryast," listing an AI tool named "RAGHAV" as a co-author. This was seemingly the first time a government recognized AI co-authorship. However, the ICO later issued a withdrawal notice, asking the human applicant to clarify the legal status of the AI. This incident highlights the administrative confusion. Current Indian practice suggests that *only a natural person* can be an author, but the statute remains dangerously vague compared to the clear definitions in the UK's *CDPA, 1988*.

III. THE INPUT CRISIS: IS TRAINING AI "FAIR DEALING"?

Before an AI can generate output, it must be trained on input. LLMs are trained on scraping billions of images and texts from the open internet—including copyrighted books, paintings, and news articles. Is this infringement?

A. Section 52(1)(a): Fair Dealing

India's "Fair Dealing" provision is narrower than the US "Fair Use." Section 52(1)(a) allows fair dealing for "private or personal use, including research."

- **The Commercial Problem:** Companies like OpenAI and Stability AI are for-profit entities. Their research is commercial. Indian courts have generally held that if

[1563] *Eastern Book Company v DB Modak* (2008) 1 SCC 1.

[1564] *RG Anand v Delux Films* AIR 1978 SC 1613.

[1565] Copyright Act 1957, s 2(d)(vi).

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the use is commercial and competes with the original work, it is not fair dealing.

B. The "Text and Data Mining" (TDM) Lacuna

Unlike the European Union (which introduced a TDM exception in the *DSM Directive* [4]), [1566]India has no specific exception for machine learning. This puts Indian AI startups at a disadvantage. If an Indian startup scrapes Bollywood songs to train a music-generator AI, they are technically infringing copyright. This legal uncertainty encourages "jurisdiction shopping," where Indian developers might move their servers to Singapore or Israel (which have friendlier TDM laws).

IV. COMPARATIVE CONSTITUTIONALISM: THE GLOBAL SEARCH FOR AN AUTHOR

While India grapples with the ambiguity of Section 2(d)(vi), other major jurisdictions have crystallized their positions through recent litigation and legislative amendments. A comparative study reveals a spectrum of approaches—from the strict human-centricity of the United States to the investment-centric model of the United Kingdom.

A. United States: The Constitutional Requirement of Humanity

The United States represents the most rigid stance against AI authorship. This position is not merely statutory but constitutional. The Copyright Clause (Article I, Section 8, Clause 8) empowers Congress to promote the progress of science by securing to "Authors" the exclusive right to their writings.

1. ***Thaler v. Perlmutter* (2023):** In this seminal case, Dr. Stephen Thaler attempted to register a visual artwork titled *A Recent Entrance to Paradise*, listing his AI system, the "Creativity Machine," as the sole author [5]. [1567]The U.S. Copyright Office (USCO) refused registration. Judge Beryl A. Howell of the D.C. District Court upheld the refusal, delivering a philosophical rebuke to the notion of machine creativity. She held that "human authorship is a bedrock requirement of copyright." The Court reasoned that copyright is designed to incentivize *human* beings to create. Machines do not need incentives; they operate on code. Therefore, granting copyright to a machine would not serve the constitutional purpose of the law.
2. ***Zarya of the Dawn* (2023):** The USCO's decision regarding Kristina Kashtanova's comic book, *Zarya of the Dawn*, provided nuanced guidance on "AI-Assisted" works [6][1568]. The USCO granted copyright for the *text* (written by Kashtanova) and the *arrangement* of images (done by Kashtanova) but canceled the copyright for the *images themselves* (generated by Midjourney). The USCO argued that the AI behaves like a "commissioned artist"—the user gives a general direction, but the AI decides the lighting and texture. Since the user is not the "mastermind" of the specific expression, they are not the author.

B. United Kingdom: The 'Computer-Generated' Exception

The UK stands as a global outlier. Section 9(3) of the *Copyright, Designs and Patents Act 1988* (CDPA) explicitly recognizes a category of "computer-generated works" (CGWs) where there is no human author [7].[1569]

- **The Legal Fiction:** In such cases, the author is deemed to be "the person by whom the arrangements necessary for the creation of the work are undertaken."
- **Implications:** This provision decouples "creativity" from "authorship." It treats AI works like a film production—the

[1566] Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market [2019] OJ L130/92.
[1567] *Thaler v Perlmutter*, Case No 1:22-cv-01564 (DDC, 18 August 2023).
[1568] United States Copyright Office, 'Copyright Registration Guidance: Works Containing Material Generated by Artificial Intelligence' (2023) 88 Fed Reg 16190.
[1569] Copyright, Designs and Patents Act 1988 (UK), s 9(3).

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"producer" (the one who arranges the funding/logistics) owns the copyright.

C. China: The Beijing Internet Court Decision (2023)

In a surprising divergence from the US, the Beijing Internet Court in *Li v. Liu* (2023) ruled that an AI-generated image (created using Stable Diffusion) *was* copyrightable [8][1570]. The Court focused on the "intellectual investment" of the user, noting that the plaintiff had tweaked the prompt multiple times and adjusted parameters (seed, weight, resolution). The Court held that this process reflected "aesthetic choice" and "personalized judgment."

V. THE EXISTENTIAL THREAT: DEEPFAKES AND THE CRISIS OF IDENTITY

While the authorship debate concerns the *creation* of property, the second crisis concerns the *theft* of identity. Generative AI has democratized the ability to clone human likeness. Tools like ElevenLabs (voice cloning) and DeepFaceLab (video swapping) allow bad actors to create "Deepfakes"—hyper-realistic simulations of a person saying or doing things they never did.

A. The Technology: GANs and the Death of Truth

Deepfakes rely on Generative Adversarial Networks (GANs). This technology has eroded the evidentiary value of video and audio in courts. If "seeing is no longer believing," the burden of proof in defamation and electronic evidence cases (Section 65B, *Indian Evidence Act*) becomes insurmountable.

B. The Indian Legal Vacuum: No Statutory Personality Right

Unlike the US or France, India has no dedicated statute for Personality Rights. Protection is a patchwork of:

1. **Common Law Passing Off:** Traditional remedy. Requires proving (a) Reputation, (b) Misrepresentation, and (c) Damage to Goodwill.
2. **Constitutional Privacy (Article 21):** Post-*Puttaswamy* [9][1571], the right to control the commercial use of one's identity is a fundamental right.

C. Landmark Judicial Intervention: *Anil Kapoor v. Simply Life India & Ors* (2023)

This judgment by the Delhi High Court is the *magna carta* for AI personality rights in India [10]. [1572]The defendants were using AI to create "morphed" videos, GIFs, and ringtones of actor Anil Kapoor. Justice Prathiba M. Singh rejected the "Freedom of Speech" defense and issued a broad *John Doe* injunction restraining the world at large from using the actor's name, likeness, voice, or *technological simulations* thereof.

- **New Jurisprudence:** The Court explicitly recognized "Voice Rights." In an era where AI can clone a voice from a 3-second clip, protecting the "timbre and tone" of a voice is crucial.

D. The Limitation: The "Commercial" Gap

The *Anil Kapoor* judgment protects celebrities. But what about the common man? A significant percentage of deepfakes target women ("Revenge Porn"). A common woman cannot sue for "Passing Off" because she has no "brand value" to lose. She can sue for "Violation of Privacy" (Article 21), but that is a constitutional remedy, not a penal one. This creates a loophole where the "capture" of the image was legal (from Instagram), but the "synthesis" is harmful.

VI. INTERMEDIARY LIABILITY: THE GATEKEEPERS OF AI

The proliferation of infringing AI content occurs primarily on social media platforms (Intermediaries). The liability of these platforms is governed by Section 79 of the *Information Technology Act, 2000* [11].[1573]

A. The Safe Harbour Doctrine

Section 79 provides "Safe Harbour" to intermediaries. In *Shreya Singhal v. Union of*

[1570] *Li v Liu* (2023) Beijing Internet Court (China).
[1571] *KS Puttaswamy v Union of India* (2017) 10 SCC 1.
[1572] *Anil Kapoor v Simply Life India & Ors* CS(COMM) 652/2023 (Del HC, 20 September 2023).
[1573] Information Technology Act 2000, s 79.

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India (2015), the Supreme Court held that platforms only need to take down content upon receiving a court order or government notification [12].[1574]

B. The 2021 Rules and the "Active Monitoring" Shift

The *Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021* have diluted the protection for AI content [13]. [1575]Rule 3(1)(b)(vii) mandates that intermediaries must make reasonable efforts to prevent users from hosting content that "impersonates another person." Furthermore, for content depicting nudity or morphed sexual imagery (deepfakes), platforms must take it down within 24 hours of receiving a user complaint.

VII. THE ECONOMIC ARGUMENT: INNOVATION VS. PROTECTION

Finally, the debate must be grounded in economics. Copyright is an economic tool.

- **Argument for AI Copyright:** If we don't protect AI works, companies like OpenAI and Midjourney won't invest billions in India. They will move to the UK.
- **Argument against AI Copyright:** If we protect AI works, we create a "content monopoly." A single company could generate 1 million songs a day and own the copyright to all "generic pop music."
- **The Cost of "Training Data":** If India enforces strict copyright on "input" (training data), AI training becomes prohibitively expensive. Therefore, a "Fair Dealing" exception for AI training is not just a legal need but an *economic necessity* for India's startup ecosystem.

VIII. THE ROAD TO REFORM: A *SUI GENERIS* FRAMEWORK FOR INDIA

The preceding analysis establishes that the current binary of "Human Author" versus "Public Domain" is inadequate. A strict adherence to the *Thaler* doctrine risks disincentivizing investment, while granting full copyright creates an anti-competitive monopoly. Therefore, this paper proposes a **three-pronged legislative reform**.

A. Proposal 1: A *Sui Generis* Right for "AI-Assisted Works"

India should amend the *Copyright Act, 1957* to introduce a distinct category of protection for works generated by autonomous systems, modelled on Section 9(3) of the UK *CDPA 1988*.

- **Ownership:** The rights should vest in the *person who undertakes the arrangements* necessary for the creation of the work (likely the prompter or developer).
- **Term:** A shorter term of **10 to 15 years**. A 60-year monopoly is excessive for a work created in seconds.
- **Scope:** Protection should cover economic rights but exclude moral rights, as a machine has no "reputation" to protect.

B. Proposal 2: Statutory Recognition of "Digital Personality Rights"

The upcoming **Digital India Act (DIA)** must codify the principles of the *Anil Kapoor* judgment.

- **"Right to Digital Likeness":** A specific provision criminalizing the unauthorized synthesis of a person's biometric identity (voice, face) using AI.
- **Strict Liability:** The creation and distribution of deepfakes that depict a person in a sexually explicit manner should be a cognizable, non-bailable offense.

C. Proposal 3: A "Text and Data Mining" (TDM) Exception

To foster a robust domestic AI industry, India must clarify the "Input" question. A new clause, Section 52(1)(za), should be added to the *Copyright Act* to explicitly allow the

[1574] *Shreya Singhal v Union of India* (2015) 5 SCC 1.

[1575] Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, r 3(1)(b).

"reproduction of works for the purpose of text and data mining," with an opt-out mechanism for artists similar to the EU *DSM Directive*.

IX. CONCLUSION: EXORCISING THE GHOST

The "Ghost in the Machine" is no longer a metaphor; it is a jurisprudential reality. Generative AI has successfully decoupled "creativity" from "humanity." This paper has argued that the Indian legal framework, specifically Section 2(d)(vi) of the *Copyright Act, 1957*, is currently caught in a state of "legislative paralysis." The *Anil Kapoor* judgment demonstrates the judiciary's willingness to fill this void, but judicial activism is a temporary plaster on a gaping wound.

The solution lies not in banning the technology, nor in surrendering to it. It lies in a balanced, *sui generis* approach. By recognizing a limited "investment right" for AI works, we can reward innovation without devaluing human labor. By codifying "Digital Personality Rights," we can protect human dignity from algorithmic identity theft. And by allowing TDM exceptions, we can ensure that India becomes a creator, not just a consumer, of the AI revolution.

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