

“From Human-Centricity to Machine Autonomy: Modernizing India’s Patent Law for the Era of Generative AI”¹

Dr. KUMARA N H

Assistant Professor

Vidyodaya Law College, Tumakuru, Karnataka

ABSTRACT

The growing popularity of Generative Artificial Intelligence (AI) and Large Language Models (LLMs) is disrupting our understanding of innovation in law. The Indian patent law is still based on the human model, but with the advent of AI systems that can produce on their own, the question is enormous: Who is the owner of the invention if the human contribution is only a prompt? This paper challenges the ‘true and first inventor’ provision under Section 2(1)(y) alongside the definitions of ‘patentee’ and ‘person’ under Sections 2(1)(p) and 2(1)(s) of the Patents Act, 1970, as it is not suited to the transition from human-assisted to machine-driven invention.

By conducting a comparative analysis of trends and recent judicial trends, such as the DABUS case, this research finds that there is an increasing “legislative lacuna” in India. This paper will offer a real-world example of a process that has been produced through LLMs to demonstrate the ownership gap that exists between the user, the developer, and the AI. Finally, this research argues that there needs to be a modernization of the patent system in India, and that a sui generis system needs to be developed that considers technological development and the fundamental principles of Intellectual Property.

KEYWORDS

Artificial Intelligence, Indian Patent Law, Inventorship, Generative AI, Legislative Reform.

01. INTRODUCTION

A. The Evolution of Generative AI in the Innovation Landscape

By the year 2026, Artificial Intelligence has shifted its function from being only a tool to an “agent” with its own autonomy who can write complex programs, identify those pharmaceutical molecules to design and invent novel technological processes with minimal human assistance.² Generative AI models, particularly LLMs, are not merely information processors anymore; rather, they function as information synthesizers. So, it comes under

¹ Dr. KUMARA N H., Assistant Professor, Vidyodaya Law College, Tumakuru, Karnataka.

² R.K. Dewan & Co., How India's Patent Framework Is Evolving to Tackle AI-based Inventions, R.K. DEWAN (Jan. 12, 2026), <<https://www.rkdewan.com/blogs/indias-patent-framework-ai-based-inventions/>> (evaluating how self-learning models unsettle the foundational human-centric assumptions of the Indian patent regime)

‘outputs’ that satisfy traditional patent criteria novelty, inventive step, and industrial application. We observed AI transitioning from augmented intelligence wisdom knowledge understanding to alternative intelligence, which raises the question about a key assumption, innovation can be carried out by machine only.³

B. Statement of Problem: The Human-Centric Bias of Patent Law

The framework of the Patents Act of India, 1970 is inherently “human-centric,” meant for a period when the concept of the “true and first inventor” was that of a natural person.⁴ The presence of a gap in legislation while dealing with inventions generated by machines is evident:

(i) Statutory Barriers: Section 2(1) (p)⁵ and Section 6⁶ mandate that the inventor be a “person” which according to Indian courts means a “natural person” who can conceive.

(ii) The “Ownership Vacuity”: As AI does not possess the status of a legal person, it cannot enjoy any rights nor assign them to its creator/user.

(iii) Disclosure Problem: The inability to understand the “black-box” nature of LLMs makes the fulfilment of the statutory condition of full written disclosure of the invention difficult.⁷

C. Research Methodology and Objectives

This research utilizes a **doctrinal methodology**, involving a critical analysis of the Patents Act, 1970,⁸ recent judicial precedents, and international comparative studies (such as the DABUS case).⁹

(i) Scope of Study

The study is confined to patent law within the Indian jurisdiction, specifically focusing on inventions generated or significantly aided by Generative AI. While it touches upon global trends (UK, USA, and EU)¹⁰ for comparative purposes, its primary aim is to propose a modern legislative framework for India.

³ Artificial Intelligence as an Inventor and role of Patent Law Explained, ANALYSTIP (Feb. 3, 2026), <<https://analystip.com/artificial-intelligence-as-an-inventor-patent-law-explained/>>

⁴ Raj Kumar, AI-Generated Drug Innovations and Indian Patent Law: Legal Challenges and Ethical Responses, RESEARCH GATE (Nov. 26, 2025) (analyzing the sector-specific impact of generative models on pharmaceutical R&D).

⁵ The Patents Act, 1970, § 2(1)(p), No. 39, Acts of Parliament, 1970 (India).

⁶ The Patents Act, 1970, § 6, No. 39, Acts of Parliament, 1970 (India).

⁷ Microsoft Technology Licensing, LLC v. Assistant Controller of Patents and Designs, (2024) 2024: MHC: 2537 (Mad HC) (clarifying that computer-implemented inventions are patentable if they demonstrate a “technical effect” or “technical contribution”, regardless of being software-driven).

⁸ The Patents Act, 1970, No. 39, Acts of Parliament, 1970 (India).

⁹ Thaler v. Comptroller-General of Patents, Designs and Trademarks [2023] UKSC 49 (appeal taken from Eng.) (U.K.); see also Thaler v. Vidal, 43 F.4th 1207 (Fed. Cir. 2022) (U.S.).

¹⁰ WIPO, Artificial Intelligence and the Concept of Inventorship, SCP/35/7 (Sept. 13, 2023), https://www.wipo.int/edocs/mdocs/scp/en/scp_35/scp_35_7.pdf (providing a comparative framework of national and regional legal frameworks regarding the “inventor as a natural person” doctrine).

(ii) Research Questions

1. Does the current definition of “true and first inventor” under Section 2(1)(y) of the Patents Act, 1970, accommodate autonomous AI creators?
2. In the absence of a human inventor, how should ownership be allocated between the AI developer, the end-user, and the owner of the AI system?
3. What *sui generis* (unique) legal reforms are necessary to protect AI-aided innovation without devaluing human intellectual contribution?

02. LITERATURE REVIEW

This research will extend the existing literature on the topic of AI technology and Intellectual Property. The key publications to review in the current study include:

A. Gaurav Chhibber: “Patent Protection For AI-Based Innovations in India” (2026)

In this paper, the author discusses the situation regarding patenting of AI developments in India. He argues that despite the trend towards issuing patents for computer-implemented inventions and some aspects of Machine Learning systems, the Indian Patent Office should still take into account the need for contribution from the inventor. The author suggests that the criterion of ‘effect’ does not help determine the ownership of invention where there is no contribution by anyone to a machine in terms of creative input. This paper will provide a critique of Chhibber’s findings showing that a mere presence of a “technical solution” would not guarantee a patent grant.¹¹

B. Raj Kumar: “AI-Driven Innovations in Drugs and Indian Patent Law: Legal Issues and Ethical Approaches” (2025)

In the article, Raj Kumar provides an industry-specific analysis of the employment of AI technologies in the pharmaceutical industry for additional drug discovery purposes. The author focuses on the problems connected with the emergence of the ethical and legal issues of monopoly over the drugs created by machines. The author states that India’s patent law should make sure that the incentives to conduct R&D through AI technologies are compatible with the constitutional commitment to provide citizens with cheap medicines. This paper is actually valuable for us since it serves as a pragmatic background for our concepts of “social justice” and “compulsory licensing” approaches.¹²

¹¹ Gaurav Chhibber, Patent Protection For AI-Based Innovations In India, GLOBAL LAW EXPERTS (2026), <<https://www.globallawexperts.com/patent-protection-ai-india/>>

¹² RAJ KUMAR, AI-Generated Drug Innovations and Indian Patent Law: Legal Challenges and Ethical Responses, RESEARCH GATE (Nov. 26, 2025), <<https://www.researchgate.net/publication/355487784>>

03. THE INDIAN PATENT REGIME: A TRADITIONALIST FRAMEWORK

A. Interpretation of ‘True and First Inventor’ in Patents Act, 1970

The phrase “true and first inventor” is one of the crucial phrases in Indian patent law but is described through negation as opposed to a general positive description. In Section 2(1)(y),¹³ the act defines that a true and first inventor does not include:

- The first importer of an invention in India.
- An individual who is the recipient of the invention communicated to him for the first time from abroad.

It is clear from the above that a true and first inventor must be the individual who has applied his mental effort and creativity to create the invention. Historically, this meant that there had to be an act of the mind or human element involved, thus disallowing any non-human entity like artificial intelligence.¹⁴

B. Statutory Analysis of Section 2(1)(p) and Section 2(1)(s)

The traditionalist character of the Act is also reflected in the way it defines those individuals capable of holding a patent or applying for one:

- Section 2(1)(p)¹⁵ - Patentee: Defines “patentee” as a person who at the moment is entered in the register as a grantee or proprietor.
- Section 2(1)(s)¹⁶ - Person: States explicitly that “person” includes the Government but in all other cases refers to a generally accepted concept of a natural person or a juristic person.

Regarding the generative AI, these provisions create a circular obstacle, the patent needs to be issued to a “person”, yet the AI technology cannot have a legal status of a “person” or “patentee”.

C. Judicial Interpretation of Inventorship in India

In India, Courts have been consistent in holding that inventorship entails technical skill and intellectual input, and not financial or managerial help alone.

(i) V.B. Mohammed Ibrahim v. Alfred Schafranek (1960)

This highly significant case becomes a basis to reiterate that nobody could claim the title of an inventor merely on account of contributing finances but lacking technical skills and invention. In its obiter dictum, it was stated that

¹³ The Patents Act, 1970, § 2(1)(y), No. 39, Acts of Parliament, 1970 (India).

¹⁴ On the horns of a dilemma: Inventorship of AI-generated inventions, BAR AND BENCH (Sept. 30, 2021), <<https://www.barandbench.com/view-point/the-viewpoint-on-the-horns-of-a-dilemma-inventorship-of-ai-generated-inventions>>

¹⁵ The Patents Act, 1970, § 2(1)(p), No. 39, Acts of Parliament, 1970 (India)

¹⁶ The Patents Act, 1970, § 2(1)(s), No. 39, Acts of Parliament, 1970 (India)

“the true inventors were those who made use of their skill and labour in creating the invention”. This is a crucial case for the AI discussions as it suggests that a person who only “finances” or merely “inspires” an AI without using his creative skills could find himself in fight for inventorship.¹⁷

(ii) *Bishwanath Prasad Radhey Shyam v. Hindustan Metal Industries (1978)*

The Supreme Court made it clear that to grant validity to a patent, an application must be filed by the “true and first inventor” or by his assignee. It once again reiterates that patents are meant for exercising the intellectual property right which results from the effort of humans.¹⁸

(iii) *The DABUS Rejection in India*

Like in the UK and USA, the Indian Patent Office has given indications that DABUS kind of AI system cannot be designated as an inventor since the statute mandates a natural person or a legal person as a condition for filing a patent application. The above scenario shows the “legislative lacuna”, where the statutory provision acknowledges the outcome (invention) but not the author (AI).¹⁹

(iv) Some of the recent decisions in *Microsoft v. Assistant Controller (2024)* indicate “technical advance” as a requirement for filing patents based on AI. Nevertheless, the refusal to recognize AI as the sole inventor by the Indian Patent Office (after the global DABUS trend) indicates a “status quo”, which does not acknowledge the machine’s autonomy, strictly following the natural person mandate of Section 2(1)(s).²⁰

04. THE MACHINE AUTONOMY DILEMMA: OWNERSHIP v/s INVENTORSHIP

A. Case Study: Identification of Ownership for LLM-Generated Innovations

As an example for the statutory void, let us imagine that the engineer employs a Generative AI model (for example, LLMs) to optimize a chemical manufacturing process. Here, the human gives the generic goal “optimize the catalyst ratio for carbon capture efficiency” but the machine, through reiterations of its processing capability, finds a particular molecular arrangement that the human did not think of.

As per Patents Act, 1970, this case fits within the definition of “industrial application”. But since the “conception” (that is the unique molecular arrangement) comes out of the processing of the AI rather than the input of the human being, making the human the “true and first inventor” becomes a mere fiction. This case study shows how

¹⁷ **V.B. Mohd. Ibrahim v. Alfred Schafranek**, AIR 1960 Mys 173 (holding that a person such as a financial partner who contributes no technical skill cannot be considered a “true and first inventor”)

¹⁸ **Bishwanath Prasad Radhey Shyam v. Hindustan Metal Industries**, (1979) 2 SCC 511: AIR 1982 SC 1444.

¹⁹ **Dr. Stephen Thaler v. The Controller General of Patents, Designs and Trademarks**, Indian Patent Application No. 202017019068 (filed March 19, 2021).

²⁰ The Patents Act, 1970, § 2(1)(s), No. 39, Acts of Parliament, 1970 (India).

the lack of a statutory definition of the output created by AI makes it impossible to protect such innovations in India.²¹

B. Triad of Claims: User? Developer? Or AI?

In the absence of a clear legal framework, there arises a “Triad of Claims”: three possible claimants to the rights could include:

(i) The User (or “Prompter”): The user may claim the rights on the basis of “Human in the Loop” theory,²² claiming that the AI is an extension of his intellectual capability.²³ However, this is a weak legal case, especially when the result of the AI exceeds the instruction of the user.

(ii) The Developer (the creator of the AI system): They may claim rights as their code and training data led to the discovery.²⁴ It follows the “Work for Hire” principle but poses challenges to the patent regime, which favours the inventor over the investor.²⁵

(iii) The AI System: Although theoretically the “creator”, legally it is a “non-person”. As per the current Indian law, an AI cannot be a “grantee” under Section 2(1)(p).²⁶ Hence, it means that if the AI is the inventor, the invention automatically falls in the public domain.²⁷

C. Analysis of the ‘Inventive Step’ for AI-Assisted Innovation

Section 2(1)(ja)²⁸ of the Act states that an “inventive step” is defined as any feature which includes an advancement in technology or economic significance, such that the invention is not obvious to a person skilled in the art.

- When a technology like AI is able to analyze billions of permutations within seconds, the definition of “obvious” gets changed. If a “person skilled in the art” has access to advanced LLMs, will the answer provided by the AI be “non-obvious”?²⁹

²¹ PARLIAMENTARY STANDING COMMITTEE ON COMMERCE, Review of the Intellectual Property Rights Regime in India, Report No. 161, ¶ 8.5 (July 2021) (recommending the creation of a separate category of rights for AI-generated works and autonomous inventions to bridge the gap between technical progress and the current human-centric legal framework).

²² **Navtej Singh Johar v. Union of India**, (2018) 10 SCC 1 (Supreme Court of India) – though not a patent case, frequently cited for the principle that constitutional and statutory rights are premised on natural persons, reinforcing the human-centric approach in Indian jurisprudence.

²³ **Thaler v. Comptroller-General of Patents, Designs and Trademarks** [2023] UKSC 49 (U.K.).

²⁴ **University of Utah v. Max-Planck-Gesellschaft zur Förderung der Wissenschaften e.V.**, 734 F.3d 1315 (Fed. Cir. 2013).

²⁵ **Thaler v. Comptroller General of Patents, Designs and Trade Marks**, [2023] UKSC 49 – The UK Supreme Court rejected AI (DABUS) as an inventor, holding that inventorship requires a natural person; relevant in comparative patent discourse and persuasive in Indian analysis.

²⁶ Section 2(1)(p), The Patents Act, 1970 (India).

²⁷ **Thaler v. Assistant Commissioner of Patents**, [2021] FCA 879 (Australia, single judge) reversed on appeal in **Commissioner of Patents v. Thaler**, [2022] FCAFC 62 – The appellate court held that an AI cannot be an inventor under Australian law, reinforcing the prevailing international position that AI lacks legal personality.

²⁸ Section 2(1)(ja), The Patents Act, 1970 (India).

- In this context, this paper proposes that the “Inventive Step” has to be reassessed. As the answer comes from the AI, the skill now lies with the machine, and there has to be a new standard of measurement of the “obvious”.³⁰

05. COMPARATIVE GLOBAL PERSPECTIVES

A. Lessons from the DABUS Case: UK, USA, and South Africa

The “Artificial Inventor Project”, led by Dr. Stephen Thaler, has put the global patent systems to test by naming the AI system DABUS as the sole inventor. From the outcomes of these cases, we can draw the following lessons:

(i) United Kingdom (*Thaler v. Comptroller-General, 2023*):³¹ The UK Supreme Court decided that an inventor has to be a natural person as per their definition. This is because DABUS is a machine and hence does not have any legal personality and therefore cannot pass any rights to its human owner under the “doctrine of accession”.

(ii) United States (*Thaler v. Vidal, 2022*):³² The U.S. Court of Appeals for the Federal Circuit decided that there could be no doubt about the meaning of “inventor” from the language used in the Patent Act which only applies to individuals (i.e., a human). However, the USPTO issued guidance later on (2024) that although AI cannot be an inventor, but humans can be declared as inventors in case they made a “significant contribution”.

(iii) South Africa (*The 2021 Grant*): South Africa became the first country to grant a patent to DABUS.³³ It is important to point out that this was done because of the non-substantive examination process followed by South Africa wherein patents are checked only for compliance and not for their technicality. Regardless of the shortcomings, it is still the one example in the world wherein an AI has been patented as the inventor of the invention.

B. International Policies Trends (WIPO) and Position of India

World Intellectual Property Organization (WIPO) is currently leading a “Conversation on AI and IP” in order to reconcile these various perspectives

- **Global Trends (2024–2026),**³⁴ As reported by WIPO, there has been a 25% rise in AI related IP disputes since 2024. There is a developing international consensus towards a “Human-Centric Approach”, wherein AI would be considered a high-tech tool and not an independent entity.

²⁹ **F. Hoffmann-La Roche Ltd & Anr v. Cipla Ltd**, 2008 (37) PTC 71 (Del).

³⁰ **Pozzoli SPA v BDMO SA**, [2007] EWCA Civ 588; [2007] FSR 37 (CA).

³¹ **Thaler v Comptroller-General of Patents, Designs and Trade Marks** [2023] UKSC 49.

³² **Thaler v. Vidal**, 43 F.4th 1207 (Fed. Cir. 2022)

³³ **Thaler v. Comm’r of Patents**, S. Afr. Pat. No. 2021/03242 (granted July 28, 2021), published in South African Patent Journal (July 28, 2021).

³⁴ **World Intellectual Property Organization**, WIPO Technology Trends 2023: Generative Artificial Intelligence (WIPO 2023); WIPO Arbitration and Mediation Center, WIPO Caseload Summary 2024.

- India's position continues to agree with that of the **United Kingdom and the USA**. However, unlike the latter two, India has not passed any sui generis laws despite acknowledging in the 161st Report of the Parliamentary Standing Committee (2021) the need to revisit the Patents Act.
- The CRI guidelines of Indian Patent Office (as of 2025) are based on the term **“technical advancement”**. As a result, the CRI guidelines make provision for the patenting of AI processes but still rule out any inventorship of AI. It puts India in an awkward position: being one of the world leaders in AI development, India has a traditionalist legal framework which may find difficulties in protecting autonomous inventions of its growing \$10 billion AI market.³⁵

06. ANALYSIS AND FINDINGS: ANSWERING THE RESEARCH QUESTIONS

A. Direct Findings on the ‘True and First Inventor’ Status (Research Question - 1)

The existing definition of “true and first inventor” according to Section 2(1)(y) of Patents Act 1970 does not leave space for the autonomous creations of AI. The finding was made on the base of triple legal analysis:

(i) Statutory Construction and the Principle of ‘Ejusdem Generis’

Section 2(1)(y) is a narrow definition where the inventor is defined as what it is not, and therefore excludes importers and communicators and indicates that the inventor is someone who has actually conceived the invention itself. Upon reading Section 6 (Persons entitled to apply for patents) along with the rest of the Act, it can be observed that the use of the word “person” is common throughout the Act. In the interpretation of statute, “person”, without any broader definition means either a natural person or a juristic person. As a current state-of-the-art AI system does not have “juristic personality” in India, it cannot qualify as a “person”.

(ii) The Doctrine of ‘Mental Conception’

The Indian Patent regime is based on the jurisprudence that an “invention” is a creation through “mental conception”. It necessitates the “cognitive exercise of the mind”, a feature that is exclusively possessed by humans³⁶ that the question of inventorship hinges upon the skill and intellect of the person involved. Autonomous AI, though capable of producing inventions, engages itself in “computational synthesis” and not “legal conception” which disqualifies its creations from falling within the purview of Section 2(1)(y).

³⁵ NITI AAYOG, India AI Governance Guidelines: Principles for Responsible AI (2025), <https://niti.gov.in/sites/default/files/IndiaAI_Governance_2025.pdf>

³⁶ JUSTICE G.P. SINGH, PRINCIPLES OF STATUTORY INTERPRETATION 502-510 (14th ed. 2016) (explaining the application of ejusdem generis and the construction of restrictive definitions in Indian law).

(iii) *Precedential Conformity to the ‘Bishwanath Prasad’ Test*

In ***Bishwanath Prasad Radhey Shyam*** case,³⁷ the Supreme Court ruled that the ‘basic tenet’ of patent law is to encourage “human intellectual labour”. The act of declaring an invention made by a non-human entity defeats the basic purpose of the Act which is to encourage human ingenuity. Moreover, the rejection of the claim for recognition of AI as inventor by the Indian Patent Office (as has been done internationally in DABUS cases) reiterates the need for legislative intervention to amend the definition of ‘inventor’.

B. Proposed Ownership Allocation (Research Question - 2)

Without an acknowledged human inventor, the question of allocation of ownership rights for inventions created by AI continues to be contentious within the field of IP jurisprudence. Legal ownership involves considering the “Triad of Claims” that arise between the AI designer, the end-user (prompter), and the person who owns the AI system.

(i) The End-User as the Main Claimant; the ‘Directing Mind’ Principle. The most plausible allocation based on current doctrines of agency and equity would be to the end-user. For an AI generated invention as in the case of the LLMs process described above, the end-user is responsible for providing the ‘creative spark’ through specific iterations of prompts. In the legal context, the AI would be considered an advanced device a CAD software analogy. Here, the ‘directing mind’ is the end-user who controls the AI output; thus, the assignment of patent rights to the end-user as an assignee of the machine-generated work.

(ii) The Case for the *Developer and “Work-for-Hire”* Analogy AI developers can argue for their ownership on the grounds that their base algorithms and training data are actually the ‘causes’ of the invention. Nevertheless, in patent law, the use of “Work-for-Hire” concept (Section 17 of the Copyright Act, as analogy) is quite complicated. In the case where the developer was not involved in the particular implementation of the invention or in its “prompting”, their argument is invalid. The developer's ownership would mean the creation of “innovation monopolies” with a small number of software companies owning an enormous variety of innovations that were not created by them.

(iii) The Owner of the AI System: Property Rights versus Intellectual Rights: There is a third argument arising out of the person who owns the hardware of the system or the one who pays for the computer power. According to the Doctrine of Accession, the owner of the ‘fructifying’ asset (such as an orchard) will have the fruits. Nevertheless, there is a distinction made in Indian patent law between chattel property and intellectual property. Being the owner of the hardware alone does not meet the condition of ‘intellectual labor’ set forth in Bishwanath Prasad case.

³⁷ ***Bishwanath Prasad Radhey Shyam v. Hindustan Metal Industries***, (1979) 2 SCC 511: AIR 1982 SC 1444.

The End-User ought to be considered the primary owner of the product under a ‘Contribution Disclosure’. In cases where the autonomy of the AI system is so high as to make the contribution of the human user insignificant, then it would be desirable that the invention falls into the Public Domain to avoid registration of ‘low-effort’ patents that might hinder future research.³⁸

C. Evaluative Framework for a *Sui Generis* Reform (Research Question - 3)

The last question concerns the need for a *sui generis* reform for the conflict resolution between technological advancements and principles of patents. This paper suggests a *sui generis* reform, which will be a special legal framework for the protection of AI-generated works along with the current Patents Act, 1970.

(i) Adoption of the ‘Qualified Human Agency’ Standard, the legislative reform needs to discard the dichotomy of “Human v/s Machine” and rather adopt a “Qualified Human Agency” standard.³⁹ This reform will allow a particular invention to be considered patentable when “a human being exercises significant creative control over its machine-generated creation”. This reform would require the amendment of Section 6⁴⁰ of the Patents Act wherein a “person” shall apply for a patent in case of the use of the AI technology for the invention.

(ii) Creation of a ‘Tiered Patent’ Time Frame, to protect the incentive to innovate while also recognizing that there will be less “human effort” involved in the quick process through machines, the reform would entail the introduction of tiered time frame. While conventional human-generated inventions maintain the 20 years patent term, “AI-Generated Inventions” may be granted with a shorter Utility Patent Term or even a Special AI-Patent Time Frame (10 to 12 years). This will stop any AI monopolies from dominating the field for long periods of time.⁴¹

(iii) Mandatory Statutory Disclosure and “Algorithmic Transparency”, an important reform would entail the inclusion of mandatory “Source Disclosure” in the patent specification. This would require the disclosure of Generative AI usage, nature of training data used (in order to avoid infringement of any existing work), and the specific algorithms used. This ensures that the ‘Inventive Step’, which is a part of **Section 2(1)(ja)**,⁴² is measured on current standards, comparing the invention not only to “a person skilled in the art”, but also to “a person with similar AI tools”.

³⁸ **Dr. Stephen Thaler v. The Controller General of Patents, Designs and Trademarks**, Indian Patent Application No. 202017019068 (filed March 19, 2021) (noting the Indian Patent Office’s administrative stance that an AI cannot be recognized as a “person” for the purpose of inventorship).

³⁹ WIPO, Draft Issues Paper on Intellectual Property Policy and Artificial Intelligence, WIPO/IP/AI/2/GE/20/1 (May 21, 2020) (discussing the “Qualified Human Agency” model where the human operator’s creative intervention determines the patentability of AI-assisted outputs).

⁴⁰ The Patents Act, 1970, § 6, No. 39, Acts of Parliament, 1970 (India).

⁴¹ PARLIAMENTARY STANDING COMMITTEE ON COMMERCE, Review of the Intellectual Property Rights Regime in India, Report No. 161, ¶ 8.3 (July 2021) (proposing a separate framework for AI-generated inventions to maintain a balance between technical advancement and the human-centric patent system).

⁴² The Patents Act, 1970, § 2(1)(ja), No. 39, Acts of Parliament, 1970 (India).

(iv) **Ensuring Balance in Social Justice via Compulsory Licensing**, lastly, any proposed change should be in compliance with the principle of social justice under the Constitution of India. The sui generis system should have adequate provisions for Compulsory Licensing for break throughs in AI developed in crucial areas such as public health and climate technology.⁴³ It would ensure that although the “User” or “Developer” is adequately compensated, the advantages of machine autonomy are put into good use to serve the common good.

07. FILLING THE GAPS IN LEGISLATION

A. Fixing the Problem of Absence of an AI Regulation in India

In February 2026, India still adheres to the “pro-innovation, techno-legal” approach and does not pass a comprehensive law on artificial intelligence (AI) as it happened in Europe with the EU AI Act. Although it is known that the Digital India Act (DIA) will in due time replace the IT Act, for now, the legislative system consists of both statutory and non-statutory laws.⁴⁴

(i) **Fragmented Oversight:** Governance is carried out based on sectoral regulations such as India AI Governance Guidelines (2025) and the ethical codes developed by ICMR for using AI in healthcare, which do not have the mandatory statutory power to help solve complicated ownership disputes regarding patents.

(ii) **Relying on Pre-existing Legislation:** The view held by the Indian Government was that the existing laws can solve any potential problems caused by AI but those laws were created when there was no issue of autonomous generative models, resulting in a loophole in the “creator-status” of AI.⁴⁵

B. Proposed Sui Generis Approach to AI-Assisted Inventions

Given that the Patents Act, 1970 is very human-centric, a *sui generis* (meaning unique approach to something) approach will be proposed for AI generated inventions.

(i) **Dual Approach towards Inventorship:** Granting legal status to AI as a legal entity does not seem like a viable approach and therefore, “AI-Generated Inventions” should be recognized wherein the human being is considered as “Patentee” while the AI as the “Generator”.

(ii) **Shorter Term for Patent Protection:** For encouraging innovation, the patents for AI-Assisted Inventions can have a shortened period compared to human beings (i.e., 10 years instead of 20 years).

⁴³ The Patents Act, 1970, § 84, No. 39, Acts of Parliament, 1970 (India).

⁴⁴ European Patent Office, Guidelines for Examination, Part G, Ch. II, 3.3.1 (2025) (emphasizing the need for disclosure of algorithmic contribution to evaluate technical character in AI-implemented inventions).

⁴⁵ Ministry of Electronics and Information Technology, Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2026, G.S.R. 120(E) (notified Feb. 10, 2026) (introducing the first formal regulatory framework for “Synthetically Generated Information” (SGI) and mandating technical traceability and labeling for AI-generated content).

(iii) Notification of AI Contribution: An obligatory “AI-contribution Statement” ought to be mandated during patent applications in order to keep things clear and to differentiate the human cognitive contribution from the computer output.

C. Harmonizing Social Justice and Intellectual Property Right (IPR)

In the Indian scenario, besides safeguarding the interests of creators through IPR, its purpose must be to benefit society at large as well.

(i) Avoiding monopolies: Unrestrained patent rights over AI inventions could lead to monopolization of IP rights by a select few “Big tech” companies having the computing capabilities and information.

(ii) Ensuring Access: The scheme needs to include the aspect of social justice like section 84 (Compulsory Licensing)⁴⁶ in such a manner that critical inventions generated through AI technology (especially those relating to medical field and green energy), remain available to people at affordable prices.

(iii) Preserving Human Value: Through proper definition of minimum human creative contribution, the statute will avoid depreciation of the human inventor, thereby ensuring “social justice” to the individual inventor through automation.⁴⁷

08. CONCLUSION AND SUGGESTIONS

A. Summary of Findings

This study has clearly shown that the Patents Act of 1970 is based on a “human-centric” philosophy which fails to take into account the self-sufficient creativity of Generative AI technology. Section 2(1)(p) and Section 2(1)(s), the legal stipulations of the Act, form a vicious circle that denies entry of inventions from Generative AI as it requires a “natural person” for both inventorship and ownership. Even though the 2025 CRI Guidelines have updated the criteria of “technical advancement”, the critical issue of owning an invention produced by an LLMs has remained unanswered thus posing a threat to the \$10 billion AI industry of India.

B. Recommendations for the Modernization of the Patents Act

To close this gap without undervaluing human intelligence, the following policy recommendations have been made:

⁴⁶ The Patents Act, 1970, § 84, No. 39, Acts of Parliament, 1970 (India).

⁴⁷ Ministry of Electronics and Information Technology, Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2026, G.S.R. 120(E) (notified Feb. 10, 2026) (introducing the first formal regulatory framework for “Synthetically Generated Information” (SGI) and mandating technical traceability and labeling for AI-generated content).

(i) Acknowledgment of ‘AI-assisted’ Inventorship: The Act should be amended so that the model of “Collaborative Inventorship” is included, under which human inventors get the status of “primary inventors” because of their role in leading the invention through AI.

(ii) Compulsory AI Disclosure: Like the trends followed until 2025, there must be a disclosure in the form of “AI-Contribution Statement” that will describe the nature of the training data set and level of machine’s autonomy.

(iii) Implementation of Sui Generis Registry: In the case of inventions generated exclusively by AI, there could be a registry that provides limited protection period (for example, 10 years).

09. BIBLIOGRAPHY

Statutes:

- The Patents Act, 1970, No. 39, Acts of Parliament, 1970 (India).
- The Digital Personal Data Protection Act, 2023, No. 22, Acts of Parliament, 2023 (India).

Case Law:

- *Bishwanath Prasad Radhey Shyam v. Hindustan Metal Industries*, AIR 1978 SC 1441.
- *Microsoft v. Assistant Controller of Patents and Designs*, (2024) (MAD HC).
- *Thaler v. Comptroller-General of Patents, Designs and Trademarks*, [2023] UKSC 49.

Articles & Reports:

- DPIIT, *Working Paper on Generative AI and Copyright* (Dec. 26, 2025).
- Gaurav Chhibber, *Patent Protection For AI-Based Innovations In India*, Global Law Experts (2026).
- Raj Kumar, *AI-Generated Drug Innovations and Indian Patent Law: Legal Challenges and Ethical Responses*, Research Gate (Nov. 26, 2025).
- Nishith Desai Associates, *Technology Law & Policy 2026: Disruption, Direction and Strategy* (Jan. 31, 2026).

Guidelines:

- Office of the Controller General of Patents, Designs & Trademarks, *Guidelines for Examination of Computer Related Inventions (CRI)* (2025).

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