



RESEARCH ARTICLE

Intellectual Property as Financial Collateral: Ethical Dimensions of Securitisation and Default Enforcement in India

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Abstract

In modern knowledge-driven economies, intangible assets like intellectual property (IP) form the bulk of business worth—typically 80-90%—but Indian financial institutions routinely overlook them in secured loan arrangements. Through doctrinal review of key laws including the SARFAESI Act 2002, IBC 2016, relevant IP legislation, and RBI guidelines, alongside comparisons with advanced systems in the US (UCC Article 9, Bowie Bonds), Singapore (IP Financing Scheme), and South Korea (Technology Guarantee Program), plus ethical scrutiny via distributive justice and human dignity principles, this study explores IP's viability for collateral use, appraisal, and securitization amid borrower insolvency. In contrast, legal provisions support IP transfer, obstacles such as disjointed registries, inconsistent valuations, and limited institutional readiness block progress. International examples highlight success through cohesive systems, emphasising the urgency of integrated regulatory reforms and principled oversight to promote fair lending and broader economic participation.

Keywords: Intellectual property, financial ethics, collateral valuation, securitisation, distributive justice, banking regulation, insolvency law

Introduction

This exclusion constitutes a moral failure of distributive justice, contravening principles of equal opportunity and substantive equality enshrined in constitutional mandates. The present analysis systematically examines whether intellectual property can serve as enforceable collateral under existing legal frameworks, identifies structural barriers to implementation, and proposes ethically grounded reform architectures. Beyond technical legal analysis, this study engages fundamental bioethical questions: Does financial exclusion of innovators constitute systemic injustice? Can market

mechanisms equitably value human creativity? What moral responsibilities do financial institutions bear toward knowledge creators during default proceedings?"

The ethical foundation of modern financial systems rests upon equitable access to capital, ensuring that innovation and enterprise flourish without arbitrary barriers. In contemporary knowledge economies, intangible assets—particularly intellectual property (IP)—constitute the predominant source of corporate value, often accounting for 80-90% of a firm's worth in sectors like technology, pharmaceuticals, and creative industries. Intellectual property, encompassing patents, trademarks, copyrights, and designs, serves as the cornerstone of innovation-driven enterprises, enabling creators and businesses to monetise human ingenuity through licensing, commercialisation, and strategic partnerships.

Yet, in India, secured lending paradigms remain stubbornly anchored in tangible collateral traditions—land, machinery, and inventory—systematically excluding knowledge-intensive firms, especially startups and SMEs, from formal credit markets. This exclusion is not merely a technical oversight but a profound structural impediment, as evidenced by Reserve Bank of India data showing that MSMEs with IP-rich portfolios face rejection rates 2-3 times higher than those offering physical assets. Traditional risk aversion among public sector banks, coupled with underdeveloped valuation and enforcement mechanisms,

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perpetuates a credit chasm that stifles India's ambition to become a \$5 trillion economy by 2027, where innovation must drive 50% of GDP growth.

This exclusion constitutes a moral failure of distributive justice, contravening the constitutional mandates of equal opportunity (Article 14) and substantive equality (Article 39), which demand that economic resources be accessible without discrimination based on asset type. From a Rawlsian perspective, denying IP-backed loans to innovators violates the difference principle, as it entrenches inequality by favoring established players with tangible assets over emerging creators from marginalised regions or backgrounds. Amartya Sen's capability approach further illuminates this injustice: financial exclusion systematically diminishes innovators' substantive freedoms, curtailing their ability to convert ideas into societal value and perpetuating cycles of poverty in knowledge-dependent communities.

The present analysis systematically examines whether intellectual property can serve as enforceable collateral under existing legal frameworks, including the SARFAESI Act, 2002; Insolvency and Bankruptcy Code, 2016; and IP statutes like the Patents Act, 1970. It identifies structural barriers—such as fragmented registries (CERSAI, ROC, and IP offices), valuation subjectivity, market illiquidity, and institutional incapacity—and proposes ethically grounded reform architectures, including unified digital registries, standardised valuation protocols, and IP-specific securitisation guidelines.

Beyond technical legal analysis, this study engages fundamental ethical questions at the intersection of law, finance, and human dignity: Does financial exclusion of innovators constitute systemic injustice, akin to historical biases against intangible cultural assets? Can market mechanisms equitably value human creativity, or do they inevitably undervalue it through lender conservatism? What moral responsibilities do financial institutions bear toward knowledge creators during default proceedings—mere recovery agents, or stewards of creative labour entitled to procedural fairness and dignity-preserving enforcement?

By integrating doctrinal analysis with comparative insights from mature IP financing regimes (USA's UCC Article 9, Singapore's IP Financing Scheme, South Korea's Technology Guarantee Program) and bioethical lenses, this research advocates for a transformative paradigm. It calls for an IP Finance Act that harmonises banking, insolvency, and IP laws, fostering financial inclusion while upholding distributive justice. Ultimately, unlocking IP as collateral is not just an economic imperative but a moral one, aligning India's legal architecture with its constitutional ethos and global innovation leadership aspirations.

Literature Review

Intellectual property (IP) represents a significant portion of corporate value in knowledge economies, often comprising

80-90% of assets, yet Indian banking practices largely exclude it from secured lending frameworks. Indian statutes like the Patents Act, 1970 (Section 68), Trademarks Act, 1999 (Sections 37-45), Copyright Act, 1957 (Sections 18-19), and Designs Act, 2000 (Section 30) affirm IP's transferability as movable property under the Transfer of Property Act, 1882, enabling its use as collateral. Security interests are created via mechanisms such as the Companies Act, 2013 (Section 77), SARFAESI Act, 2002 (Section 2(1)(zf)), and CERSAI registrations, though challenges like registry fragmentation persist.^[1]

IP valuation employs cost, market, and income approaches, guided by Companies (Registered Valuers and Valuation) Rules, 2017, ICAI Valuation Standards, 2020, and RBI prudential norms, raising ethical tensions between lender risk and borrower equity. Enforcement under the SARFAESI Act allows non-judicial possession, while IBC 2016 integrates IP into liquidation estates (Section 36), but faces issues like illiquid markets and priority conflicts. Comparative analyses highlight successes: US UCC Article 9 and Bowie Bonds (\$55M securitization), Singapore's IP Financing Scheme, and South Korea's Technology Guarantee Program demonstrate mature IP financing infrastructures.

Ethical dimensions draw on Rawls' distributive justice and Sen's capability approach, critiquing IP exclusion as systemic injustice, while emphasising institutional duties for fair valuation and dignity in defaults

Juridical Foundations of IP Collateralization

Statutory Recognition as Transferable Property

Indian intellectual property legislation unequivocally establishes transferability:

- Patents Act, 1970 [Section 68]: Mandates written instruments for assignment, satisfying formal requirements for collateralization.
- Trademarks Act, 1999 [Sections 37-45]: Authorises comprehensive assignment and transmission rights.
- Copyright Act, 1957 [Sections 18-19]: Permits ownership transfer through registered written agreements.
- Designs Act, 2000 [Section 30]: Facilitates proprietary interest transfers.

These provisions collectively qualify IP as "movable property" under Section 3 of the Transfer of Property Act, 1882, establishing the foundational predicate for security interest creation.

Security Interest Creation Mechanisms

- Companies Act, 2013 [Section 77]: Compulsory charge registration with Registrar of Companies.
- SARFAESI Act, 2002 [Section 2(1)(zf)]: Expansive "security interest" definition encompasses intangible right.
- CERSAI Regulations: Central registry mandates for all security interests exceeding ₹10 lakhs.

Dual registration protocol (ROC + CERSAI + IP offices) ensures priority establishment and public notice, though cross-registry interoperability remains technically deficient.

Valuation Methodologies: Technical and Ethical Dimensions

IP valuation integrates economic forecasting with ethical judgment regarding fair value determination.

Established Methodologies

- Cost Approach: Reproduction/replacement cost less depreciation—provides conservative floor valuation.
- Market Approach: Comparable transactions analysis—dependent upon transaction database quality.
- Income Approach: Discounted cash flow from licensing/royalty streams—preferred methodology reflecting economic substance.

Regulatory Framework

- Companies (Registered Valuers) Rules, 2017: Procedural standards for valuer qualification and independence.
- ICAI Valuation Standards, 2020: Technical guidelines for intangible asset assessment.
- RBI Master Circular (2023): Mandates periodic collateral revaluation under prudential norms.

Ethical tension arises between lender risk minimisation (discounting IP heavily) and borrower equity (recognising the true economic value).

Rnforcement Architecture During Default

SARFAESI Non-Judicial Enforcement [Section 13(4)]

Empowers secured creditors to take symbolic possession of intangible collateral without court intervention, subject to:

- Valid registration perfection
- Statutory compliance verification
- Sixty-day notice period observance

Securitization Pathways

- Conceptual Framework: Royalty streams pooled into asset-backed securities (cf. Bowie Bonds, 1997: \$55 million music catalogue securitisation).
- Legal Basis: SARFAESI [Section 7] permits asset reconstruction companies to acquire financial assets.
- Practical Constraints: Absence of IP-specific securitisation guidelines; underdeveloped secondary markets.

Insolvency and Bankruptcy Code Integration

- Liquidation Estate Inclusion [Section 36]: IP constitutes corporate assets subject to distribution to creditors.
- Valuation Protocol: IBBI-registered valuers determine fair market value.
- Resolution Challenge: Limited bidder interest in distressed IP portfolios.

Systemic Barriers to Ethical Implementation

- Registry Fragmentation: Parallel systems (CERSAI, ROC, four IP registries) create transparency deficits.
- Valuation Subjectivity: Methodological divergence undermines lender confidence.
- Market Illiquidity: Distressed IP lacks established secondary markets.
- Institutional Incapacity: Commercial banks lack IP commercialisation expertise.
- Priority Conflicts: Competing claims between statutory licensees and secured creditors.

Comparative International Frameworks

International jurisdictions with advanced IP financing ecosystems provide actionable models for India, demonstrating how legal clarity, institutional support, and market mechanisms can unlock IP as viable collateral. The table below summarizes key frameworks, highlighting their statutory foundations, innovations, and impacts (Table 1). In the USA, UCC Article 9 governs security interests in personal property, including IP, allowing perfection via filing and federal recordings (e.g., Copyright Office), fostering a robust environment where Bowie Bonds securitised David Bowie’s future royalties for \$55 million at 7.9% interest, proving IP’s liquidity without transferring ownership. Singapore’s IP Financing Scheme, launched in 2014 with S\$100 million in government-backed loans, enables IP-rich firms to pledge granted patents (expanded to other IP) through participating banks, sharing risks to boost tech sector growth. South Korea’s programs, via Korea Credit Guarantee Fund (KODIT) and Invention Promotion Association (KIPA), offer guarantees up to KRW 1 billion for R&D and commercialization, supported by standardized IP valuations and subsidies, mainstreaming tech financing for startups.

These models succeed through integrated registries, standardized valuations, and government de-risking—

Table 1

<i>Jurisdiction</i>	<i>Statutory Foundation</i>	<i>Institutional Innovation</i>	<i>Market Impact</i>
USA	UCC Article 9	Bowie Bonds (\$55M precedent in 1997)	Mature IP securitization markets
Singapore	IP Financing Scheme (2014)	Government risk-sharing via banks (DBS, OCBC, UOB)	SME credit expansion (S\$100M loans)
South Korea	Technology Guarantee Program	National valuation infrastructure (KODIT, KIPA)	Mainstream technology lending

elements absent in India's fragmented CERSAI-IP setup—offering blueprints for equitable IP collateralization

VIII. Bioethical Analysis: Justice, Dignity, and Stewardship

Distributive Justice Framework

- Rawlsian Perspective: Exclusion of IP-rich SMEs from credit markets constitutes unjust inequality violating the “difference principle”.
- “Sen’s Capability Approach: Financial exclusion systematically diminishes innovators’ substantive freedoms.

Human Dignity Considerations

- Procedural Justice: Borrowers entitled to fair valuation processes preventing strategic undervaluation.
- Substantive Protections: Recognition of creative labor’s moral worth through adequate collateral valuation.

Institutional Moral Responsibility

Financial institutions bear fiduciary duties toward equitable wealth recognition, transcending narrow profit maximization.

Normative Policy Architecture

- Statutory Harmonization: Comprehensive IP Finance Act integrating banking, IP, insolvency statutes.
- Unified Digital Registry: Blockchain-enabled interoperability across CERSAI/IP registries.
- Standardized Valuation Protocols: RBI/IBBI joint guidelines for IP collateral.
- Institutional Capacity: Dedicated IP valuation cells within public sector banks.
- Securitization Framework: Royalty-backed securities guidelines.
- Ethical Oversight: Independent IP valuation tribunals ensuring procedural fairness.

Future Scope

While statutory foundations exist, implementation gaps in unified registries, standardised valuations, and secondary markets warrant empirical studies on IP collateral performance in Indian banks. Prospective research could evaluate blockchain-enabled unified registries and RBI/IBBI joint guidelines for IP finance, testing their impact on SME credit access. Developing IP-specific securitisation frameworks, ethical oversight tribunals, and dedicated bank valuation units offers avenues for interdisciplinary work blending law, finance, and technology

Conclusion

Intellectual property collateralization represents both economic necessity and moral imperative for India’s innovation ecosystem. Beyond technical implementation, success demands ethical commitment to distributive justice,

procedural fairness, and recognition of creative labor’s intrinsic dignity.

The proposed integrated architecture—unifying legal frameworks, technological infrastructure, and ethical oversight—offers a pathway toward financial inclusion, aligning market efficiency with social justice principles.

Author Contributions

RM: Conceptualisation, methodology, original draft preparation, legal analysis.

RS: Supervision, validation, review, and ethical analysis framework.

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