

INTELLECTUAL PROPERTY AS COLLATERAL: RECONCILING PROPRIETARY RIGHTS AND SECURITY INTERESTS UNDER INDIAN LAW

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ABSTRACT

Indian businesses increasingly hold value in patents, trademarks, copyright, designs, software, trade secrets, and associated licensing streams rather than in land or machinery. Yet intellectual property (IP) remains an underused form of loan collateral. Indian scholarship identifies a paradox: existing legislation can accommodate the transfer of IP and the treatment of knowledge capital as an asset, but no integrated regime clearly resolves creation, perfection, priority, valuation, enforcement, licensing, and insolvency. The result is a gap between formal proprietary capacity and practical creditability. This article argues that Indian law should not treat IP collateral as an ordinary pledge of documents or as an unqualified transfer of ownership. It should recognize a functional security interest over defined economic rights, supported by coordinated registry practice, asset-specific perfection rules, standardized valuation, transparent enforcement, and insolvency procedures that preserve going-concern value. The article distinguishes patents, trademarks, copyright, and royalty streams; examines the interaction among the SARFAESI Act, 2002, the Companies Act, 2013, IP legislation, and the Insolvency and Bankruptcy Code, 2016; and proposes a reform architecture that protects lenders without allowing enforcement to destroy innovation, goodwill, licensee reliance, or authors' non-economic interests.

Keywords: intellectual property; collateral; secured transactions; Indian law; SARFAESI Act; Insolvency and Bankruptcy Code; valuation; perfection; licensing; insolvency

1. Introduction

The conventional credit model assumes that a lender can identify, value, possess, and sell the borrower's collateral. Intellectual property challenges each assumption. A patent may be valuable only as part of a portfolio and may lose value if the underlying technology is not maintained. A trademark depends on goodwill, market continuity, and control over the quality associated with the mark. Copyright may generate a stream of royalties, but its economic value can be difficult to separate from contractual relationships and future exploitation. The collateral is therefore not merely a certificate or registration entry. It is a legal and commercial bundle of exclusionary rights, contractual claims, licences, goodwill, and future income.

This matters most for innovation-driven enterprises that possess few conventional assets. Indian research reports that start-ups face difficulty raising capital because they lack sufficient tangible assets, while debt finance against IP remains largely untapped despite the recognition of knowledge capital as an asset under the SARFAESI framework. The same literature identifies improper valuation as a principal constraint on lending against IP.¹ A study focused on trademarks similarly finds that Indian financial institutions remain more comfortable with tangible collateral and that the processes for creating and enforcing security over trademarks are not streamlined.²

¹ B. Panda and S. Joy, "Intellectual Property-Based Debt Financing by Indian Banks: Scope and Challenges," SSRN Electronic Journal, 2019.

² M. Rodrigues, R. Rautdesai, and U. P. Nandekar, "Intellectual Property Financing: Collateralizing a Trademark in India," 2019.

The central legal problem is not whether IP can have economic value. It plainly can. The problem is how to reconcile two different legal relationships. The first is the proprietor's right to exclude, license, assign, renew, maintain, and commercially exploit the IP. The second is the lender's contingent right to realize value after default. A security interest must strengthen credit without silently converting a limited security arrangement into an absolute assignment, frustrating prior licensees, impairing public-facing goodwill, or transferring rights that the relevant IP statute treats differently.

Indian scholarship characterizes the current position as fragmented. The SARFAESI Act, 2002 and the Companies Act, 2013 are identified as making passing references to IP collateral, but not as providing a complete set of rules for its intricacies.³ The literature also identifies unresolved questions concerning the authority to control an encumbered IP asset when the same asset is pledged again and the absence of a clear Indian rule of perfection.⁴ These are not drafting inconveniences. They determine whether a lender can discover an earlier interest, establish priority against competing claimants, preserve the asset after default, and realize it without destroying the value that made it useful as collateral.

This article advances three propositions. First, Indian law should adopt a functional conception of IP security: the relevant object is the economic interest secured by the transaction, not the physical possession of an IP document. Second, perfection and priority should be coordinated across corporate-charge records, IP registries, and a searchable notice system rather than left to disconnected filings. Third, enforcement and insolvency should be designed around value preservation. A sale, assignment, or licence that preserves the operating business may produce greater recovery than an immediate foreclosure that fragments the portfolio or interrupts licences.

³ S. Basu, "A Transformational Approach Towards Collateralization Of Intellectual Property," NUJS journal of regulatory studies., 2025, doi: 10.69953/nurs.v10i1.367.

⁴ N. S. Zachariah, "Patent as security in insolvency process: Problems and solutions," The Journal of World Intellectual Property, 2022, doi: 10.1111/jwip.12219.

2. Research Questions and Method

The article addresses four questions:

1. What legal and commercial features make IP suitable, but difficult, as collateral in India?
2. How should proprietary rights be reconciled with a lender's security interest?
3. What weaknesses arise from the interaction among Indian secured-credit, company-law, IP, and insolvency frameworks?
4. What reforms could create a credible system of valuation, perfection, priority, enforcement, and insolvency administration?

The method is doctrinal and analytical. It synthesizes Indian scholarship on IP-backed lending, securitization, valuation, and insolvency with comparative secured-transactions literature. It does not claim to provide a comprehensive report of Indian judicial decisions or current administrative practice where the retrieved literature does not state those details. That limitation is material: the available studies repeatedly describe the Indian regime as nascent, fragmented, or insufficiently specific.⁵

3. IP as an Economic Asset and a Legal Object

⁵ M. Ayilyath, "Lending Against Intellectual Property Assets – Underlying Challenges in India," SSRN Electronic Journal, 2018, doi: 10.2139/ssrn.3246410.

3.1 From exclusionary right to financeable asset

A security transaction requires an asset that can be identified, encumbered, valued, and realized. IP meets the first requirement more readily than the others. Registered patents and trademarks have identifiable legal titles; copyright and unregistered rights may be identifiable through authorship, works, contracts, and royalty accounts. The secured asset may also include proceeds, licences, receivables, and future rights. A global comparative account describes the basic premise of secured credit as the debtor granting the creditor a proprietary interest in assets so that, upon default, the creditor may look to their liquidated value. It identifies valuation, validation, and legal uncertainty as central obstacles to IP financing.⁶

The financeability of IP is therefore relational. A patent's value depends on validity, remaining term, enforceability, technological relevance, freedom to operate, and the ability to commercialize it. A trademark's value depends on goodwill and continuing use. Copyright value depends on the work, the rights transferred, the duration and territorial scope of exploitation, and the reliability of royalty flows. A collateral agreement that identifies only "all IP" without distinguishing these legal and economic characteristics may be broad in wording but weak in realization.

3.2 Asset-specific differences

The form of security should reflect the asset. Comparative literature emphasizes that different IP rights require different methods of collateralization. It reports that securitization is more suitable for copyright and trademarks where predictable royalty or licensing streams exist, whereas

⁶ C. Walsh, "Mobilisation of Intellectual Property in Secured Financing: Managing the Intersection between Territoriality and Globalism," SSRN Electronic Journal, 2007, doi: 10.2139/ssrn.2732737.

patents present distinctive risks because they may be invalidated and are difficult to value.⁷ This insight is directly relevant to India: a single generic instrument for all IP would obscure the different sources of value and the different risks of enforcement.

Patents are particularly vulnerable to portfolio fragmentation. A commercial product may depend on several related patents, know-how, designs, software, contracts, and regulatory approvals. Taking one patent in isolation may not provide a commercially realizable asset. Comparative analysis therefore proposes a universal or comprehensive security approach for patent-intensive businesses, in which patents are secured together with related movable property and receivables. Indian lenders should similarly examine the operating asset bundle rather than rely on a certificate detached from the business that gives it value.

Trademarks raise a different problem. The lender may be able to realize the registered mark, but a forced sale that severs the mark from goodwill, quality control, distribution contracts, or the operating business may reduce value and create consumer confusion. Indian research describes lender reluctance toward trademarks, the lack of streamlined creation and enforcement procedures, and the mismatch between legal rules and practical utilization. A workable security arrangement must therefore regulate use, quality control, renewal, and post-default licensing rather than treat the mark as a static object.

Copyright presents a further distinction because some rights may be unregistered and because economic rights can coexist with authors' non-economic interests. Comparative literature identifies copyright's unregistered nature as a specific difficulty for registration and realization. Although foreign doctrinal conclusions cannot simply be transplanted into India, the underlying lesson is applicable: the lender's economic remedy must be separated from interests that cannot be transferred or should not be destroyed by enforcement.

⁷ W. Jon, "Creating Security Interests in and Securitization of Intellectual Property Rights - Universal Security Interests in the Context of Utilizing Patents for Loans -," The Korean Association of Civil Law, 2023, doi: 10.52554/kjcl.2023.105.267.

4. The Indian Legal Position: Recognition without Integration

4.1 The statutory mosaic

The Indian position is best understood as a statutory mosaic rather than a consolidated IP-collateral code. Indian scholarship identifies the SARFAESI Act, 2002 and the Companies Act, 2013 as statutes that refer to IP collateral but do not resolve its full legal intricacies. Other work examines the acceptability and enforceability of IP security under Indian law and the precautions and risks relevant to lenders. The practical implication is that the parties must construct the transaction from several legal components: the underlying credit agreement, the security instrument, corporate-charge disclosure, IP-specific assignment or licensing rules, applicable registry practice, and the remedies available after default or insolvency.

This fragmented architecture creates uncertainty at each stage. At creation, the parties must determine whether the transaction is a charge, assignment by way of security, mortgage-like arrangement, licence of proceeds, or a combination of devices. At perfection, they must decide which record should notify third parties. At priority, they must reconcile corporate records, IP registers, contractual restrictions, prior licences, and competing secured creditors. At enforcement, they must identify what can be sold, licensed, or assigned and who may authorize the transaction. At insolvency, they must determine how the interest interacts with the resolution process, the insolvency professional, licensees, and other creditors.

4.2 Creation and perfection

The most serious weakness is the absence of a clear, uniform perfection rule. The literature notes that IP documents are commonly used to create security interests but that Indian law does not clearly answer who has authority over IP that is later pledged again. It proposes the use of international principles, including a rule of perfection, to address the problem. This uncertainty undermines notice and priority. A lender may have a valid contract with the borrower but still face difficulty demonstrating an enforceable, opposable interest against a later lender, purchaser, licensee, or insolvency representative.

A reformed Indian model should separate three questions. First, did the debtor and lender agree to a security interest in an identifiable economic right? Second, did the lender complete the legally prescribed act that makes the interest effective against third parties? Third, what priority rule resolves conflict with another claimant? These questions should not be collapsed into the existence of a signed loan document.

The preferred mechanism is a notice-based system supplemented by IP-registry recording. The central notice filing would identify the debtor, secured party, collateral category, and proceeds. The relevant patent or trademark register would carry an asset-level notation where the right is registered. Copyright and other unregistered rights would be supported by a description of the work, contracts, royalty accounts, and proceeds. Comparative secured-transactions work highlights the need to coordinate a general security register with specialized IP registries and to establish clear choice-of-law rules.⁸ India should adopt the same coordination principle while preserving the distinct functions of corporate and IP records.

4.3 Priority and control

⁸ A. Tosato, “The UNCITRAL Annex on Security Rights in IP: A Work in Progress,” *Journal of Intellectual Property Law & Practice*, 2009, doi: 10.1093/jiplp/jpp128.

Priority rules are indispensable because IP is frequently exploited through licences, assignments, royalty arrangements, and successive financing. A lender that takes an interest over a trademark may not intend to prevent ordinary-course licensing. A patent lender may need to permit continued development and commercialization. A copyright lender may need to distinguish existing licences from future licences and determine whether royalty proceeds are included.

The security agreement should therefore specify the debtor's permitted use of the IP, the power to grant ordinary-course licences, the treatment of proceeds, and the lender's consent rights for extraordinary dispositions. A rule that freezes all exploitation on the date of security creation would destroy the cash flow supporting repayment. A rule that leaves the debtor entirely free to dispose of the IP would weaken the collateral. The balance should be contractual but bounded by mandatory notice and priority rules.

Comparative scholarship shows why priority disputes are difficult: patents, trademarks, and copyright may be governed by different recording and property concepts, while general secured-transactions law may use a unified security-interest concept.⁹ Indian reform should avoid reproducing that structural dissonance. It should establish a single functional concept of security interest, then apply asset-specific rules only where the nature of the IP genuinely requires them.

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5. Valuation: The Practical Centre of the Regime

Valuation is not a peripheral banking concern. It determines whether the transaction is creditworthy, how much can be lent, whether covenants are triggered, and whether enforcement is likely to produce a meaningful recovery. Indian research identifies the lack of IP-valuation expertise as a major challenge and warns that unreliable valuation or rating discourages investment in IP-backed assets. Another Indian study argues that current valuation standards

⁹ T. M. Ward, "The Perfection and Priority Rules for Security Interests in Copyrights, Patents, and Trademarks: The Current Structural Dissonance and Proposed Legislative Cures," *Maine law review*, 2001.

treat IP as a class within intangible assets and that a transparent mainstream lending process requires a standardized approach that values IP in its own right.¹⁰

A statutory valuation framework should not promise a single objective price. IP value changes with purpose. The value for continued use by the borrower may exceed liquidation value; the value of a patent portfolio may exceed the sum of individual patents; and the value of a trademark may depend on the survival of the business. The law should instead require a disclosed valuation methodology and a conservative lending value.

The framework should include: (a) identification of the legal rights and their remaining term; (b) verification of ownership, encumbrances, validity challenges, and licences; (c) separation of asset value from goodwill that is not transferred; (d) assessment of income, market, and cost indicators where appropriate; (e) scenario analysis for continued operation, licensing, sale, and liquidation; and (f) periodic revaluation for material changes. Independent accredited valuers or specialized valuation panels could reduce information asymmetry. Indian insolvency scholarship specifically proposes specialized IP valuation panels because IP is often undervalued and insolvency professionals may lack the tools to manage intangible assets.¹¹

Valuation should also be connected to disclosure. Indian research proposes disclosure measures and greater clarity in patent claims to improve transparency and securitization. Borrowers seeking IP-backed credit should disclose a schedule of assets, registrations, renewals, licences, litigation, encumbrances, royalty contracts, material development obligations, and dependencies among portfolio rights. This is not excessive formalism: a lender cannot value what it cannot identify.

¹⁰ S. Sarkar and N. Mitra, “Secured Lending on Intellectual Property Rights in India: Issues on Valuation,” *Asian Journal of Legal Education*, 2023, doi: 10.1177/23220058231172092.

¹¹ R. Vidya A and S. Nagaraj, “Aligning Indian Insolvency Law with an IP-Driven Startup Economy,” *Proceedings of the International Conference on Industrial Engineering and Operations Management*, 2025, doi: 10.46254/in05.20250204.

6. Default and Enforcement: From Foreclosure to Value Preservation

6.1 Why ordinary realization is inadequate

The lender's remedy must be capable of converting the security into value without destroying the asset. A bare transfer of an IP certificate may not transfer the contracts, know-how, customer relationships, goodwill, or licences that make the right valuable. The enforcement design should therefore permit several routes: continued operation under supervision, licensing, assignment of economic rights, sale of a portfolio, or sale of the enterprise that uses the IP.

The literature on IP realization identifies appraisal and foreclosure as separate problems. It emphasizes that imperfect appraisal systems contribute to under-use of IP as collateral and that legal gaps can reduce the efficiency of execution. The Indian framework should respond with an IP-specific realization protocol, not merely import procedures designed for land or physical goods.

Before enforcement, the debtor should receive notice and an opportunity to cure or propose a value-preserving disposition. The lender should be required to maintain registrations, renewals, confidentiality, and necessary quality control during the enforcement period. A sale should disclose the scope of the rights, existing licences, litigation, validity risks, and limitations on transfer. Where a licence or controlled assignment produces higher value than an auction, the secured party should be permitted to use it subject to transparency and independent valuation.

6.2 Protecting proprietary and personal interests

Reconciliation requires limits on the lender's power. The security interest should attach to specified economic rights and proceeds, not automatically to every personal or non-transferable interest connected with creation. The principle is especially important for copyright and for technology where the creator's continuing participation is necessary to preserve value. Comparative scholarship warns that collateralization may lack transparency and can unfairly advance secured creditors at the expense of authors and inventors, potentially discouraging future creation.

Indian law should therefore distinguish: (i) transferable economic rights; (ii) contractual royalty and licensing claims; (iii) source materials and confidential know-how; (iv) moral or personality interests; and (v) statutory powers held by registries or public authorities. Enforcement should transfer only what the security agreement and applicable law permit. It should not authorize a lender to claim rights that the debtor could not lawfully assign or to use confidential information beyond the purpose of realization.

7. Insolvency and the Continuity Problem

The value of IP is most vulnerable when the borrower enters insolvency. The asset may be under-maintained, licences may be disputed, employees may leave, and counterparties may refuse to continue performance. Indian research on the IBC identifies a major gap: the Code does not expressly address the treatment of IP licences in insolvency, creating uncertainty concerning licence continuity, the role of resolution professionals, disclaimer of onerous property, avoidance powers, and cross-border conflicts.¹²

¹² L. L. M. Shraddha Singh, "Insolvency and Intellectual Property Rights Protection and Enforcement Issues in Bankruptcy Proceedings," *International Scientific Journal of Engineering and Management*, 2024, doi: 10.55041/isjem01450.

A further study argues that the IBC treats IP like any other asset without adequate valuation frameworks or protections suited to its distinct character. It reports uncertainty for licensees and insufficient tools for insolvency professionals, and proposes valuation protocols, ownership safeguards, licensing continuity, and targeted legislative amendments. These observations have direct consequences for secured lending. A lender will discount IP if insolvency can terminate valuable licences or if the resolution process can sell a right without preserving the ecosystem that generates its value. Conversely, a licensee will invest less if insolvency makes its right vulnerable to unexplained termination.

The solution is not to give the secured lender automatic control over the IP. That would allow collateral enforcement to defeat the collective objectives of insolvency law and could destroy going-concern value. The better approach is an insolvency-specific continuity rule. Existing licences should be classified according to their terms, transferability, performance obligations, confidentiality requirements, and dependence on the debtor's personal service. A resolution professional should prepare an IP schedule and obtain expert valuation early in the process. The committee or adjudicatory authority should be able to approve a sale or licence that preserves the operating business while respecting the secured creditor's priority.

Where a resolution plan preserves the IP and produces higher value, the secured creditor should receive the benefit of its security through the plan rather than insist on a fragmented sale. Where no viable plan exists, realization should proceed through a transparent sale or licensing process. The governing test should be value maximization consistent with statutory priority, not the formal identity of the asset as "IP."

8. A Reform Architecture for India

India does not need to choose between proprietary autonomy and creditor security. It needs an integrated architecture with six elements.

First, a functional statutory definition. IP security should cover present and future economic rights, identifiable proceeds, royalties, licences, and related contractual claims, subject to exclusions for non-transferable interests. The possibility of taking security over future IP is identified in comparative legislative work as a useful feature of a modern secured-transactions framework.¹³

Second, coordinated registration. India should create an interoperable search system connecting corporate-charge records, a general security notice register, and asset-specific IP registries. The system should state whether the record is a transfer, licence, security interest, release, or continuation. Coordination between general and specialized registries is a recognized problem in international reform discussions.

Third, clear priority rules. The law should define the effect of registration, possession of documents, later licences, ordinary-course transactions, proceeds, and competing security interests. The parties should not be left to infer priority from an uncertain mixture of assignment law, company records, and IP registry practice.

Fourth, accredited valuation and disclosure. A national framework should specify minimum reports, independence standards, methodology disclosure, periodic review, and treatment of invalidity, infringement, portfolio dependence, and licence continuity. The need for standardized and understandable valuation is repeatedly identified in Indian research.

¹³ J. S. Lee, “A Legislative Framework for Intellectual Property Financing,” *The Journal of Intellectual Property*, 2010, doi: 10.34122/jip.2010.12.5.4.1.

Fifth, value-preserving enforcement. The law should permit supervised licensing, portfolio sale, going-concern sale, and assignment of economic rights, with safeguards for confidentiality, quality control, existing licensees, and authors' interests. A lender's strongest remedy should be measured by recoverable value, not by the speed with which it can obtain formal title.

Sixth, IP-sensitive insolvency administration. The IBC and subordinate rules should require early identification of IP, specialist valuation, preservation of registrations and renewals, treatment of licences, and transparent disposition. The reform should protect secured creditors' economic priority while preventing an enforcement step that destroys the enterprise value securing the debt.

These reforms should be phased. Immediate steps can include model security agreements, registry guidance, valuation standards, and training for lenders and insolvency professionals. The next phase should establish interoperable filing and search procedures. Legislative amendments should then codify creation, perfection, priority, enforcement, and licence continuity. The objective is not to imitate the United States, Singapore, or another jurisdiction wholesale. Comparative literature shows that different systems struggle with transferability, perfection, creditor remedies, and cost in different ways.¹⁴ India should adapt the functional principles to its own registries, institutions, insolvency process, and IP statutes.

9. Conclusion

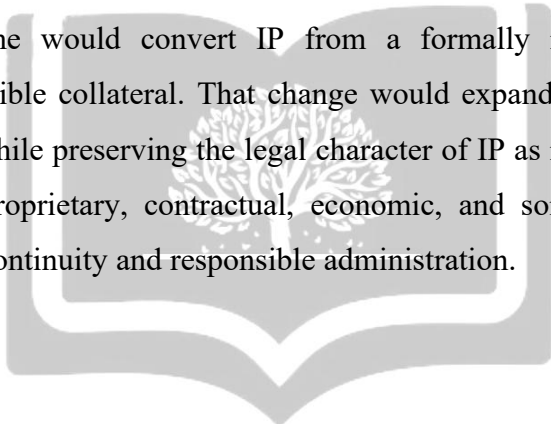
IP collateral is legally possible but institutionally incomplete in India. The current framework recognizes the economic significance of knowledge capital and contains legal routes that can support transfer and security, yet it does not provide a sufficiently integrated answer to valuation,

¹⁴ E.-M. Kieninger, "Security Rights in Intellectual Property: General Report," *Ius comparatum*, 2020, doi: 10.1007/978-3-030-44191-3_1.

perfection, priority, enforcement, licensing, and insolvency.¹⁵ The resulting uncertainty explains why Indian financial institutions remain reluctant to lend against IP even when the borrower's principal productive assets are intangible.

The correct response is neither to treat IP as ordinary movable property nor to exclude it from secured finance. IP requires a functional security regime that recognizes the differences among patents, trademarks, copyright, and royalty streams. It must make interests discoverable, value the rights conservatively, protect ordinary commercialization, and provide remedies that preserve rather than dissipate enterprise value. In insolvency, creditor security should coexist with licensing continuity and the preservation of innovation. In enforcement, the lender should receive a credible route to recovery, but not an unbounded power to appropriate proprietary or personal interests.

A coherent Indian regime would convert IP from a formally recognized but practically discounted asset into credible collateral. That change would expand access to debt finance for innovation-driven firms while preserving the legal character of IP as more than a certificate: it is a structured bundle of proprietary, contractual, economic, and sometimes personal interests whose value depends on continuity and responsible administration.



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¹⁵ R. Maurya and R. Singh, "Intellectual Property as Financial Collateral: Ethical Dimensions of Securitisation and Default Enforcement in India," THE SCIENTIFIC TEMPER, 2026, doi: 10.58414/scientifictemper.2026.17.3.26.