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Property without a place: Intellectual property right, the Transfers of property act, and the case for a Sui Generis security framework.

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Abstract

The time when the TPA Act was drafted in 1882[1],"property" meant land, buildings, and things you could touch. IPR did not fit that picture, and in many ways it still doesn't. Yet Indian IPR[2] statutes — the Patents Act, the Copyright Act, the Trade Marks Act — quietly borrow the TPA 's vocabulary of "assignment," "transfer," and "security interest" without ever really reconciling it with the general law of property. For years, this was a gap nobody worried much about. That's changing fast. Startups are now pledging patents to raise working capital, banks are quietly experimenting with IPR-backed loans, and yet nobody seems to have a clear answer to a fairly basic question — can you actually mortgage a trademark under Section 58?Does an unregistered IPR licensee get any protection under the doctrine of part performance in Section 53A? Can a pending patent application be assigned the way an actionable claim is assigned under Section 130? This paper works through these questions one at a time. It looks closely at the statutory text — Sections 5, 53A, 58, and 130 of the TPA— against the assignment provisions in India's IPR legislation, pulls in the relevant case law where it exists (and flags where it conspicuously doesn't), and compares the position with Article 9 of the US Uniform Commercial Code, which handles IPR-as-collateral far more directly. The central argument is a fairly simple one: India's silence on this point is no longer a minor doctrinal curiosity; it's a practical obstacle to how IPR gets financed. The paper closes by weighing two ways out — stretching existing TPA doctrine through judicial interpretation, or building a dedicated statutory framework for IPR as collateral — and argues that the latter is, on balance, the more durable fix.

Keyword

IPR, TPA act, IP securitization, actionable claims, mortgage, assignment, part performance and IP-backed financing.

1. Introduction

Not that long ago, if you had walked into a bank and asked whether they'd take a trademark as security for a loan, you had probably have been laughed out of the branch. Property meant land. It meant a warehouse, some machinery bolted to the floor, maybe gold jewelry locked in a vault. Nobody thought

[1] Dr. R.K. Sinha, *The Transfer of Property Act* (Central Law Agency, Allahabad, 22nd edn./2023)
[2] V.K. Ahuja, *Law Relating to Intellectual Property Rights* (LexisNexis, New Delhi, 3rd edn./2017).

of a brand name or a patent as something you could actually borrow money against. That assumption just doesn't hold anymore — though Indian law, in a lot of ways, is still acting like it does. Something has genuinely shifted in how businesses hold value. A generation ago you could more or less see what a company was worth — walk through the factory, count the inventory, look at the land it sat on. That's not really true anymore for a lot of businesses. Some of the most valuable companies today own almost nothing physical. What they have is a patent portfolio, a brand people trust, software nobody else is legally allowed to copy, maybe a library of content built up over years. And this is not some Silicon-Valley-adjacent curiosity limited to startups — Indian pharmacy companies license out patent estates worth enormous amounts, media houses build entire businesses around copyright, and even fairly old-fashioned manufacturers have started realizing their trademark is worth something on its own, separate from whatever they actually make.

Finance has caught on to this, slowly and a bit unevenly. IPR-backed lending — pledging a patent or trademark as collateral instead of land or plant IPR equipment — used to be the kind of thing people talked about at fintech panels without anyone actually doing it. That's changed. Startups with barely any physical assets but a solid IPR position are increasingly leaning on that IPR to raise working capital. A few NBFCs have started experimenting with structured lending built specifically around IPR. Even the RBI, cautiously, has signaled that IPR could count as security under the right conditions. None of this is hypothetical anymore. It's a real, if still fairly young, part of how companies in India are choosing to finance themselves.

Here's the problem, though. Go looking for the legal foundation under any of this and there really is not much there. The TPA Act, 1882[3] — the law that governs how property gets mortgaged or transferred in India — was written at a time when property was, more or less by definition, something physical. IPR wasn't really a commercial idea yet when Sections 58 onward were drafted. The IPR-specific statutes that came much later — the Patents Act[4], the Copyright Act[5], the Trade Marks Act[6] — do technically allow assignment and even mortgage. Section 68 of the Patents Act lets you mortgage or assign a patent, as long as it's registered with the Controller General. But these provisions basically stand alone. Nobody has clearly worked out how they're supposed to connect with the TPA 's general mortgage rules — what happens on default, how competing claims over the same IPR get sorted out, or what a lender is actually left with if a borrower who pledged a patent ends up in insolvency. That gap is not just an academic curiosity — it has real consequences. A lender being asked to take a patent as security has almost nothing solid to lean on: barely any case law, no clear bridge between the IPR statutes and the TPA, and a lot of unanswered questions about enforcement if things go wrong. So lenders do what lenders usually do when they're uncertain — they either refuse to take IPR as collateral at all, or they price the loan so cautiously that it stops being useful for the business asking. And the companies that lose out here are, somewhat ironically, exactly the ones India's innovation economy is meant to be backing — asset-light, IPR-rich businesses with real value on their books that the law still hasn't quite figured out how to recognize.

[3] Dr. R.K. Sinha, *The Transfer of Property Act* (Central Law Agency, Allahabad, 22nd edn./2023)
[4] The Patents Act, 1970
[5] The Copyright Act, 1957
[6] The Trade Marks Act, 1999

This article's argument is fairly simple: this is not a minor gap anymore; it's becoming a genuine obstacle. IPR has already become a working financial asset in India — being used well ahead of any real legal certainty about whether that use is safe. The question this piece tries to answer is whether the TPA Act's existing tools, particularly its provisions on mortgage, transfer, and actionable claims, can reasonably be stretched to cover IPR, or whether India actually needs a dedicated statutory framework built for IPR as collateral from the ground up. What follows takes that question apart piece by piece — starting with whether IPR even counts as "property" under the TPA to begin with, then testing how far its mortgage provisions can realistically go, and ending with what an actual way forward might look like.

2. Conceptual foundation

Before getting into whether the TPA Act can actually handle IPR, it helps to ask a more basic question first: does the Act's idea of "property" even reach that far? Most people assume yes, without thinking much about it — the phrase "IPR" has the word right there in it, so why would anyone doubt it counts? But that's a slightly lazy assumption. Calling something "property" in everyday conversation and having it fit within a specific 1882 statutory definition are two very different things, and that gap is basically where this whole article lives.

Section 5[7] of the Act:
"In the following sections 'TPA' means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself, and one or more other living persons; and 'to transfer property' is to perform such act."

Read that twice and something strange stands out — it never actually says what "property" is. It defines the act of transferring, not the thing being transferred. The Act just assumes everyone already knows what property means and moves on. That's fine when you're talking about a house or a plot of farmland, where nobody's confused. It becomes a real problem the moment you try to stretch the same undefined word to cover something like a patent, which you can't walk around, fence off, or physically hand to someone.

Section 6[8]**-**
"Property of any kind may be transferred, except as otherwise provided by this Act or by any other law for the time being in force."

The default is transferability — property of any kind, unless a law specifically says otherwise. That phrase "any kind" is doing quiet but useful work here. It means there's no built-in statutory wall stopping IPR from being treated as transferable property under the Act. If someone wants to argue IPR doesn't belong, the burden is on them to point to something that excludes it, not the other way around.

[7] The Transfer of Property Act, 1882, s. 5.
[8] The Transfer of Property Act, 1882, s. 6

Now, the traditional way property lawyers have sorted this out, long before 1882, splits property into two broad camps: corporeal and incorporeal. Corporeal property is the kind you can physically point at — a car, a house, a gold necklace. Incorporeal property is more of an abstraction — it's a right, not a thing. A mortgage interest is incorporeal. So is a right of way over someone's land. So is a debt owed to you. Property law made its peace with incorporeal property a long time ago; nobody seriously argues a debt is not "property" just because you can't hold it in your hand.

IPR fits into this incorporeal bucket far more comfortably than most people realize, once you actually think it through. A patent is not the invention itself — it's the legal right to stop everyone else from making, using, or selling that invention without your say-so. A copyright is not the manuscript sitting on someone's laptop — it's a whole cluster of rights: the right to copy it, perform it, adapt it, translate it, sell it. What actually moves hands in an IPR transaction is never a physical object. It's a right. Often a fairly abstract one at that.

This is actually where the analysis gets easier, not harder. Because the TPA defines "immovable property" fairly narrowly — essentially land, benefits arising out of land, and things permanently attached to the earth — anything that clearly doesn't fit that box tends to fall, almost by elimination, into the "movable property" category instead. IPR obviously is not land, and it is not attached to the earth in any sense, so it ends up classified as movable property — not because anyone deliberately decided to put it there, but because there's nowhere else for it to go.

But here's where things get genuinely interesting, and this is really the crux of the conceptual problem: being labeled "movable property" tells you almost nothing about how it should actually be mortgaged, licensed, or pledged as security. The mortgage machinery under Section 58 onward assumes a fairly concrete kind of asset — something with a location, an identifiable value, a physical form you could inspect or, worst case, seize and sell off if a loan goes bad. None of that describes a patent. A patent has no address. Its value might swing wildly depending on a pending lawsuit, or collapse overnight if a competitor invents something better. There's no local auction house for a defaulted patent the way there is for a repossessed flat.

There's a second wrinkle worth sitting with here too — the classic debate between treating IPR as a single, unified thing (what property theorists sometimes call the res, the object of owners IPR) versus treating it as a bundle of separable rights. Under the "bundle of rights" view, a copyright owner doesn't actually hold one solid asset called "the copyright." They hold a stack of distinct entitlements — the right to reproduce, the right to publicly perform, the right to adapt, the right to distribute — each of which can, in theory, be peeled off and assigned or licensed on its own, to different people, for different purposes, at different times. A music label might sell the reproduction rights to one company and keep the performance rights entirely for itself, for instance. Under the older res view, by contrast, you had think of "the copyright" as one indivisible object of owners IPR, the way you had think of a house as one thing even though a house technically has separable interests too — a lease, a mortgage, an easement.

This distinction is not just academic hair-splitting. It matters enormously for how Section 58's mortgage provisions might apply to IPR. A mortgage, as classically understood under the TPA , transfers an interest in one whole, identifiable asset. If IPR is really more like a loose bundle of separable rights than a single solid thing, then applying a single mortgage over "the patent" or "the trademark," as if it were one indivisible unit, starts to look conceptually shaky — even if it's the practically convenient thing for banks and lawyers to do.

None of this means the TPA is a dead end for IPR — later sections of this article will show several of its provisions actually extend to IPR reasonably well. But any such extension has to be made honestly, with a clear acknowledgment that the underlying asset behaves nothing like the land and goods the Act was originally built around. That's the frame the rest of this article works within — not assuming IPR simply is property in the TPA's sense because it's convenient to say so, but testing that claim piece by piece, to see where the analogy actually holds up.

3. Assignment and Transfer Mechanics

So you've accepted, at least provisionally, that IPR counts as movable, intangible property under the TPA Act's general scheme. But accepting that does not actually tell you much about how the transfer is supposed to work in practice — and this is where things start getting genuinely tangled, because you're not dealing with one set of rules here. You are dealing with two: the TPA 's general provisions on transfer, sitting quietly in the background, and each IPR statute's own specific assignment machinery, sitting right up front. They do not always talk to each other. Sometimes they do not even seem to know the other one exists. Let's start with what the TPA says in general terms, since that's supposed to be the foundation everything else builds on.

Section 7[9] deals with who's even allowed to transfer property in the first place:

"Every person competent to contract and entitled to transferable property, or authorised to dispose of transferable property not his own, is competent to transfer such property either wholly or in part."

Simply it means — you need contractual capacity, plus either owners has IPR or proper authority, before you can validly hand something over. But apply this to IPR for a second and an odd question arise. Say a seventeen-year-old invents something clever and somehow gets a patent granted in her name (unusual, but not impossible). Can she assign that patent herself? Contract law says minors cannot contract. Section 7 seems to say, by extension, she cannot transfer the patent either — regardless of anything the Patents Act might allow. It's a small, slightly obscure point, sure. But it's exactly the kind of gap that shows how quietly the general law and the specific statute can pull in different directions without anyone really noticing until a dispute forces the issue.

Section 8[10] sets a default rule about how much actually gets transferred:

"Unless a different intention is expressed or necessarily implied, a TPA passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property..."

[9] The Transfer of Property Act, 1882, s. 7
[10] The Transfer of Property Act, 1882, s. 8

In other words — if you do not say otherwise, the law assumes you meant to hand over everything, not some partial slice. This matters more than it looks like it should, because it's exactly the line the IPR statutes spend so much energy trying to draw more carefully — the difference between assigning a right outright and merely licensing someone to use it for a while.

Section 9[11], on formalities, is probably the most useful bridge between the general law and the specific statutes:

"A TPA may be made without writing in every case in which writing is not expressly required by law."

Read carefully, this just says writing is not always compulsory. But commentary on this provision has consistently treated intangible property as an exception — something that generally does require writing, and usually registration, before a transfer is treated as legally complete. This is interesting, because that's more or less exactly what the IPR statutes independently insist on. The TPA and the IPR statutes arrive at the same demand for formality from two completely different directions, almost by coincidence. Now compare all this against what the Patents Act, the Copyright Act, and the Trade Marks Act actually require — because once you get into the specifics, the general TPA framework starts to look almost casual by comparison.

Start with patents.

Section 68 of the Patents Act, 1970[12] lays out the requirement in fairly unforgiving terms:

"An assignment of a patent or of a share in a patent, a mortgage of a patent or the grant of any license, shall not be valid unless the same were in writing and the agreement between the parties concerned is reduced to the form of a document embodying all the terms and conditions governing their rights and obligations and the application for registration of such document is filed in the prescribed manner with the Controller within six months from the execution of the document..."

Notice how much more demanding this is than the TPA 's plain "writing" requirement under Section 9. It's not enough to just put something in writing — the document has to explain every term and condition, and then get registered with the Controller within six months. Miss that window, and Section 69 makes clear the assignment simply would not be recognized against third parties, though the underlying contract between the two parties may still survive as a matter of private obligation. That's a meaningfully more rigorous than anything the TPA demands on its own, and it's worth pausing on that contrast rather than gliding past it — this is precisely the kind of deviation my article is trying to disclose.

Copyright works a bit differently.

Section 18 of the Copyright Act, 1957[13] permits assignment of copyright, either wholly or partially, and either for the full term or a shorter period, and — notably — even in respect of a work that doesn't exist

[11] The Transfer of Property Act, 1882, s. 9
[12] The Patents Act, 1970, s. 68
[13] The Copyright Act, 1957, s. 18.

yet, provided the assignee is identified with reasonable certainty. Section 19 then lays down the formal requirements, and this is where the illustration-worthy detail sits: the assignment has to be in writing, signed by the assignor or a duly authorised agent, and it must specify the work, the rights assigned, the duration, and the territorial extent of the assignment. If duration and territorial extent are not specified, the Act itself steps in and fills the gap — treating the assignment as limited to five years from the date of assignment, and confined to the territory of India, unless the parties clearly said otherwise, think about how different that default is from Section 8 of the TPA , which assumes you meant to transfer everything, forever, unless you said otherwise. The Copyright Act in IPR’s that completely — it assumes you meant something narrower, time-limited and territorially confined, unless you explicitly said you meant more. That's not a small stylistic difference. It's two opposite starting assumptions about what silence in a contract is supposed to mean, and it's a genuinely useful contrast to draw out in your article.

Trademarks

Complete the regulatory framework, where the statutory language becomes notably more elaborate . Sections 37 to 45 of the Trade Marks Act, 1999[14] deal with assignment and transmission. Section 37 confirms the registered proprietor has the power to assign the mark and give effective recets IPR for any consideration. Section 38 permits assignment either with or without the goodwill of the business — a distinction that doesn't really have any equivalent in ordinary property law at all, since goodwill is such a peculiarly IPR-derivative concept. Section 39 extends this to unregistered trademarks as well. Sections 40 through 43 impose restrictions where the assignment would otherwise create confusing parallel rights in different hands, or where it would carve up the mark territorially in a way likely to deceive the public — restrictions the TPA has no real counterpart for, since ordinary property transfers are not generally worried about consumer confusion. And Section 45 requires the assignment to be registered with the Registrar of Trade Marks, without which the assignee's title, though valid between the parties, won't bind third parties dealing with the mark.

Put all three side by side and a pattern starts to emerge. Every one of these statutes goes well beyond what the TPA 's bare provisions require — more paperwork, tighter default rules, mandatory registration, protections built specifically around the strange, non-physical nature of the asset being transferred. The TPA gives you the skeleton: writing, competency, the general idea of what a transfer even is. The IPR statutes build an entire body around that skeleton, one shaped for an asset that does not behave anything like land or furniture. Whether that's a sign the TPA was never meant to be more than a background framework here, or evidence that Indian IPR law has simply had to fashion an equitable remedy in the absence of any real guidance from the general property statute, is really the question the rest of this article tries to work through.

Mortgaging IPR as Collateral

Section III worked off one assumption — that you can hand IPR over outright, lock, stock, and barrel. Mortgaging is a different beast entirely. You are not giving the thing away, you are holding it hostage, in

[14] The Copyright Act, 1957, ss. 37-45

a manner of speaking, as a kind of promise, pay up, you get it back, do not , and someone else takes it, simple enough as an idea. Except it is not really, and the TPA Act is a huge part of why.

Section 58, and the One Word That Wrecks Everything

The Act defines a mortgage, Section 58(a),

“The transfer of an interest in specific immoveable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability.”

Read that twice and there is one word doing all the damage: immoveable. Section 3 defines immoveable property the lazy way, by telling you what it is not — not standing timber, not growing crops, not grass — but between the courts and the General Clauses Act, everyone's more or less landed on the same picture anyway: land, things stuck to land, rights that flow from owning land. A patent does not fit that no matter how hard you squint. A trademark does not either. Copyright — forget it, not even close.

So taken at face value, the answer's blunt: you can't mortgage a patent under this Act the way you had mortgage a flat. That's not some throwaway technicality buried in a footnote. It's basically the reason this whole article exists. And because Section 58 refuses to bend that far, people lending against IPR have had to piece together their own workaround — bits of the Contract Act's rules on pledges, banking regulation, and, when the borrower happens to be a company, the charge-registration rules under company law. None of it was ever built with statute-created, intangible rights in mind. And honestly, it shows.

SARFAESI[15], Banking Regulation, and a Little False Hope

The SARFAESI Act, 2002 defines “security interest” broadly enough under Section 2(z f) that you could probably squeeze IPR arrangements in there somewhere. Probably, trouble is, the Act was written for things you can physically grab hold of and sell off — its whole enforcement toolkit assumes someone can take possession of something, and then auction it. Try doing that with a patent that's still sitting in the queue waiting for approval, and things fall apart fast. There's scholarship making pretty much this point — that India's knowledge economy needs alternatives to old-fashioned tangible-asset collateral precisely because so much of its value now lives in things nobody can physically touch. Banking law throws in one more twist. Section 6 of the Banking Regulation Act, 1949 spells out what a bank's actually allowed to do, and one part of it — Section 6(a) — has generally been read as allowing banks to deal with intangible things like patents and trademarks as part of ordinary business, meaning there's no flat legal wall stopping an Indian bank from taking IPR as security. Reads like good news. Then you find out what happened to Canara Bank, and the good news gets a lot shakier.

[15] The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

Canara Bank v. N.G. Subbaraya Setty[16]

This case reads almost like something you had get told over chai, half-warning, half-gossip. Back in 2003, a man named N.G. Subbaraya Setty owed Canara Bank money he couldn't pay back, so he signed his trademark — "EENADU," used on agarbathis — over to the bank as security. The bank took the arrangement seriously enough to start collecting royalty payments off it for months. Then, out of nowhere, the bank itself cancelled the whole thing, arguing that under the Banking Regulation Act it had no business holding a trademark at all — banks aren't meant to go around owning patent rights or the like, outside of actual banking.

What followed was years of back-and-forth in court, including a fight over whether an earlier ruling had already put the matter to rest for good. The Supreme Court, in a 2018 judgment written by Justice Nariman, eventually struck the whole assignment down. Partly because it was never registered. Partly because it broke both the Trade Marks Act and the Banking Regulation Act. On the trademark side specifically, Section 45 of the Trade Marks Act was read to mean that an unregistered assignment can't even be produced as evidence in court — the exact same registration headache this article ran into back in Section III.

That leaves anyone trying to build intellectual-property-backed lending in India standing in a fairly uncomfortable spot. People criticize Canara Bank a lot, and not really for how it handled the procedural res judicata question, which was fairly ordinary. It's the narrow reading of what banks can hold as security that draws the fire, plus the way a missing registration got treated as an instant deal breaker rather than something fixable after the fact. It leaves banks and NBFCs with no real template to follow, and it's pushed lawyers toward safer, more roundabout structures — skipping outright assignment altogether, leaning instead on things like negative pledges, step-in rights, or just assigning the royalty stream rather than the underlying asset itself.

What's Actually Happening Out There

Despite all that murkiness, lending against IPR hasn't stayed some theoretical exercise lawyers argue about at conferences. Since there's no outright legal bar on banks taking patents or trademarks as security, a small but genuinely growing slice of NBFC lending has grown up around it — pharmaceutical patents especially, tech licensing deals, and lately media and entertainment copyrights too. The RBI's own working group flagged intangible-asset securitisation as something worth watching more than two decades back, and the National IPR Policy, 2016 openly pushes intellectual-property monetisation and IP-backed financing as an actual policy goal. But wanting a thing and actually building the legal plumbing for it turn out to be two very different projects.

The gap keeps showing up in the same three places. First, valuation — IPR has nothing like land's stable comparables, so banks stay nervous about what they'd genuinely recover if a deal goes bad. Second, perfecting the security — patents and trademarks demand mandatory registration on transfer, copyright demands none whatsoever, so lenders end up juggling completely different title-tracing rules depending

[16] *AIR 2018 SUPREME COURT 3395*

on what kind of IPR happens to be on the table. Third, enforcement once someone defaults — SARFAESI's whole possession-and-sale toolkit was built for physical things, and it sits awkwardly on something like a patent portfolio, where "possession" is basically a legal fiction and "sale" needs a resale market that barely exists in India yet, if we're being honest.

Put it all together and the picture's a little strange. Section 58 gives IPR nowhere to live. Canara Bank gives lenders a real reason to think twice. And RBI policy keeps encouraging something the law hasn't actually finished building the infrastructure for. That gap, between what the market clearly wants and what the statute is prepared to allow, is exactly where Section V starts digging — asking whether even informal, unregistered arrangements around IPR can find any shelter at all under the TPA's part-performance doctrine.

Part Performance[17] and Unregistered IPR Licenses

Here's something that happens all the time in Indian business, way more often than the case law would ever let on. A small manufacturer starts putting a bigger company's trademark on their products, and the whole thing rests on a handshake. Maybe there's an email somewhere in the mix. Maybe not even that. No registered license, nothing on paper that would hold up anywhere. Years go by like this. The manufacturer sinks real money into it — packaging, staff, a whole product line built around that one trademark. And then, one day, the brand owner just decides they're done Walks away now what?

If we were talking about a plot of land instead of a trademark, Section 53A would probably swoop in and save the manufacturer. Whether it does the same job for someone licensing IPR is a lot less obvious, and honestly, you have to go right back to basics to even start answering that.

What is the Doctrine of Part Performance under Section 53A?

The Doctrine of Part Performance is a legal principle recognized in property law. It is a doctrine that allows for the enforcement of an oral or incomplete written contract to transfer immovable property if certain conditions are satisfied. It is based on the principle of equity and aims to prevent injustice and fraud resulting from non-compliance with formal requirements such as registration.
Under the Doctrine of Part Performance, if a person has taken possession of a property and has performed acts in furtherance of a contract for the transfer of that property, they may be protected and allowed to enforce their rights to the property. This is applicable even if the contract is not in compliance with the formal requirements of the law. This doctrine serves as an exception to the general rule that contracts for the transfer of immovable property must be in writing and registered.

The Doctrine of Part Performance in the Transfer of Property Act, 1882

The definition of the doctrine of part performance is incorporated in Section 53-A of The Transfer of Property Act, 1882.
The section states:

[17] The Transfer of Property Act, 1882, s. 53A.

"When any person contracts to transfer for consideration any immovable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty and the transferee has, in part performance of the contract, taken possession of the property or any part thereof or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract and the transferee has performed or is willing to perform his part of the contract, then, notwithstanding that where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefore by the law time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract:

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof."

Illustration:

Consider a scenario where A enters into a contract with B to sell his immovable property and allows B to take possession of the property even before the formal sale deed is executed. This contract is considered partially performed.

However, if A later refuse to fulfill his obligation of executing the proper sale document and instead files a lawsuit against B, treating B as a trespasser and seeking eviction, B can oppose A's claim. B can argue that the contract of transfer in his favour has already been partially performed and A should not be allowed to backtrack on his own agreement.

Ingredients of Section 53-A for Doctrine of Part Performance

In the case of **Kamalabai Laxman Pathak v. Onkar Parsharam Patil**[18], the Bombay High Court has emphasised the requirements outlined in Section 53-A for the application of the Doctrine of Part Performance. These requirements are as follows:

Contract for Transfer of Immovable Property

The first condition for the application of the Doctrine of Part Performance is the existence of a contract for the transfer of immovable property in exchange for value.

Written Contract

The contract must be in writing. If the contract for transfer is oral, Section 53-A does not apply. In the case of **V.R. Sudhakara Rao v. T.V. Kameswari**[19] , it was ruled that the benefits of Section 53-A cannot be claimed by a person who possesses property based on an oral agreement of sale. It is not sufficient for the contract to be in writing; it must also be duly executed, meaning it should be signed by the transferor or someone on their behalf.

[18] *AIR1995BOM113*
[19] *(2007) 7 SCC 482*

Valid Contract

Section 53-A only applies to contracts that are valid in all respects. The agreement must be enforceable by law under the Indian Contract Act, 1872.

Immovable Property

This section applies solely to the transfer of immovable property. It does not extend to agreements for the transfer of movable property, even if supported by consideration. The defence of Part Performance is not available in relation to the possession of movable property **in the case of Hameed v. Jayabharat Credit & Investment Co. Ltd and Ors.**

Transfer for Consideration

The requirement for the application of Section 53-A is a written contract that involves the transfer of immovable property in exchange for consideration. The written contract, which serves as the basis for the possession of the property, must clearly indicate the intention to transfer the property. If the document is vague or unclear, Section 53-A cannot be applied. It is crucial that the terms of the written contract can be determined with reasonable certainty in the case of **Hamida v. Humer and Ors**[20].

Possession in Furtherance of Contract

In order to invoke Section 53-A, the transferee must have taken possession of the property or continued to possess it as part performance of the contract. Alternatively, the transferee must have undertaken some action that advances the execution of the contract in the case of **A.M.A Sultan (deceased by LRs) and Ors. v. Seydu Zohra Beevi**[21]**.**

Some Act in Furtherance of the Contract

Taking possession alone is not the only method of part performance. If the transferee is already in possession of the property, they must perform some additional act in furtherance of the contract after its execution **Nathulal v. Phoolchand** cited in the case **of C.V. Narayan Reddy vs Katanguru Raghava Reddy And Anr. on 10 April, AIR1980AP89**[22]**.**

[20] *AIR 1992 ALLAHABAD 346*

21AIR 1990 KERALA 186
22 AIR 1980 ANDHRA PRADESH 89

The Willingness of Transferee to Perform their Part of the Contract

Section 53-A is rooted in the principle of equity, which states that one who seeks equity must do equity. Therefore, for a person to claim the protection of their possession under Section 53-A, their own conduct must be fair and just. It is an essential requirement for the applicability of this section that the transferee demonstrates a willingness to fulfill their obligations under the contract in the case of **Sardar Govindrao Mahadik and Anr. vs. Devi Sahai and Ors Govind[23].**

Scope of Doctrine of Part Performance

The Doctrine of Part Performance applies solely to written and valid contracts. It does not extend to oral or void agreements. The contract must be in writing and signed by the transferor. The transferee must have taken possession of the property as part performance of the contract and they must be prepared and willing to fulfill their obligations.

This section is applicable not only to contracts of sale but also to any contracts involving the transfer of property for consideration. It has been established in the case of **Jacobs Private Limited vs. Thomas Jacob[24]** that the doctrine is intended to be used as a defensive measure rather than an offensive one.

The Exception to Doctrine of Part Performance

The proviso to Section 53-A of Transfer of Property Act includes an exception in favour of a transferee for consideration who has no knowledge of the contract or its part performance. This implies that a transferee who acquires the property for consideration without any knowledge of the contract or its execution is not affected by this rule.

Any rights the transferee may have against the transferor under this section would not be enforceable against a bona fide transferee for value who has no knowledge of the previous transaction.

In the case of **Hemraj v. Rustomji[25]**, the Supreme Court held that the proviso to the section protects the rights of a transferee for consideration. In other words, any rights that the transferee may have based on the unregistered document and the part performance of the contract would not be enforceable against a bona fide transferee for value who had no knowledge of the prior transaction. The burden of proof lies on the person claiming the benefits of part performance to demonstrate that the subsequent transferee had knowledge of the previous transaction.

The Supreme Court has ruled that the right under Section 53-A is not defeated by the fact that the time for filing a suit for specific performance of the agreement of sale has expired or that the claim of acquiring title through adverse possession has been rejected, which renders the possession illegal.

The principle established in the case of **Walsh v. Lonsdale** states that Section 53-A incorporates three principles of equity:
(i) One who seeks equity must act equitably.
(ii) Equity considers the intention rather than the form.

[23] *AIR 1982 SUPREME COURT 989.*
[24] *AIR 1995 KERALA 249*
[25] *AIR 1953 SUPREME COURT 503*

(iii) Equity treats as completed what should have been completed.

➤ **Mohammad Musa v. Aghore Kumar Ganguli, (1915)17BOMLR420** — Privy Council This case involved an unregistered compromise deed the family had quietly lived by for roughly forty years before anyone thought to challenge it. Forty years. The Privy Council held that the doctrine of part-performance applied in India on grounds of fairness, equity, and good conscience, and refused to let four decades of real conduct get erased over a missing stamp. This is the founding authority for the whole doctrine in Indian law — everything below builds on it.Here's the catch, though, and it's a big one for what we're trying to do with it. Section 53A has always worked as a shield, never a sword — every property law student in India has heard that phrase a hundred times, and for once it actually says exactly what it means.

➤ **Probodh Kumar Das v. Dantra Tea Co. Ltd[26].**

— Privy Council This nailed the shield-not-sword principle down early: the section lets you defend possession you've already got, it does not let you go on the attack and force somebody to complete a transfer they never finished. Directly relevant here — even in the best possible reading, an IPR licensee sitting on nothing but an unregistered handshake deal couldn't use Section 53A to make a proper license materialize out of nowhere. Best case, it just keeps the licensor from throwing them out mid-deal.

Then 2001 Came Along and Made It Worse

This is really where things fall apart if you're hoping to lean on this doctrine for anything intellectual-property-related. Before 2001, an unregistered document could still support a Section 53A defence — registration wasn't a strict requirement. Then the Registration and Other Related Laws (Amendment) Act, 2001 rewrote the section and quietly deleted the exact phrase that had let unregistered contracts qualify. At the same time, it tightened Section 17 of the Registration Act to make registration compulsory for exactly this kind of agreement.

➤ **Arun Kumar Tandon v. M/s Akash Telecom Private Ltd., (2010)** — Supreme Court of India Courts have read the 2001 changes together ever since, and this case says it outright: an unregistered agreement generally cannot invoke Section 53A protection at all, once you factor in how Section 17(1A) of the Registration Act now works alongside it. This is the single most important case for this article's argument — it's the one that closes the door on informal, unregistered IPR licenses relying on part-performance protection.

Which puts our manufacturer right back where they started? Even being generous and assuming IPR licenses could somehow squeeze into Section 53A's protection to begin with — which is already a stretch, since the section talks about “immoveable property” and a license over something intangible doesn't sit naturally inside that phrase, much like the mortgage problem from Section IV — the 2001 amendment shuts that door anyway. An unregistered trademark license, which describes a huge number of real relationships between small vendors and big brand owners across India, gets nothing. Zero

[26] *(1939) (1940)42BOMLR1*

protection. Not because the underlying fairness of it doesn't make sense, but because the law now demands formal registration up front, and informal IPR deals almost never come with that.

So Where Does That Leave Licensees, Really?

To be fair to the courts, they haven't wielded the registration requirement like some blunt hammer that ends a case the second it comes up.

➤Shrimant Shamrao Suryavanshi v. Pralhad Bhairoba Suryavanshi (D) by LRs, (2002) — Supreme Court of India .

This case clarified that where a Section 53A defence does apply, it doesn't just expire because time's gone by — it's not something limitation law can quietly kill off. Facts here involved a sale agreement for agricultural land where the transferee had taken possession and later had to sue after the transferor tried negotiating a sale with someone else entirely.

And judges have generally resisted the temptation to throw a case out at the earliest possible stage purely because a document wasn't registered, without actually looking at what happened on the ground first. So the doctrine hasn't gone completely toothless. It's just become a lot less useful for exactly the kind of loose, paperwork-light licensing that so much of Indian IPR actually runs on, particularly among smaller players who never thought to formalize anything.

The Bigger Point

And that, really, is the pattern this whole article keeps bumping into. The TPA's protective doctrines were shaped around land, where registration has been the norm since 1908, and the whole Act just assumes anyone serious about a deal would've gone through that process. IPR licensing never grew up that way, though. So much of it still runs on trust, on a relationship, on someone's word being good enough at the time. And the TPA, when you get down to it, just doesn't have anything to say about that. Section VI picks up a related thread next — not licenses someone's already sitting with, but future and contingent rights, like a patent that hasn't been granted yet, and whether Section 130's actionable claims framework has anything useful to offer for a right that doesn't fully exist as property just yet.

Actionable Claims and Future IPR Rights

Say a startup files a patent application. It's sitting there, pending, nothing granted yet — could take two years, could take five, who knows. Meanwhile the founders need cash now, and a lender's willing to advance money against that future patent, betting it eventually gets approved. But can you even assign something that doesn't legally exist yet? That's basically the puzzle this section sits with.

Section 130[27] :

Transfer of actionable claim. —

(1). The transfer of an actionable claim whether with or without consideration shall be effected only by the execution of an instrument in writing signed by the transferor or his duly authorised agent, shall be complete and effectual upon the execution of such instruments, and thereupon all the rights and remedies of the transferor, whether by way of damages or otherwise, shall vest in the transferee, whether such notice of the transfer as is hereinafter provided be given or not: Provided that every dealing with the debt or other actionable claim by the debtor or other person from or against whom the transferor would, but for such instrument of transfer as aforesaid, have been entitled to recover or enforce such debt or other actionable claim, shall (save where the debtor or other person is a party to the transfer or has received express notice thereof as hereinafter provided) be valid as against such transfer.

(2). The transferee of an actionable claim may, upon the execution of such instrument of transfer as aforesaid, sue or institute proceedings for the same in his own name without obtaining the transferor's consent to such suit or proceeding and without making him a party thereto.(Exception)—Nothing in this section applies to the transfer of a marine or fire policy of insurance or affects the provisions of section 38 of the Insurance Act, 1938 (4 of 1938).

Illustrations:

1. A owes money to B, who transfers the debt to C. B then demands the debt from A, who, not having received notice of the transfer, as prescribed in section 131, pays B. The payment is valid, and C cannot sue A for the debt.
2. A effects a policy on his own life with an Insurance Company and assigns it to a Bank for securing the payment of an existing or future debt. If A dies, the Bank is entitled to receive the amount of the policy and to sue on it without the concurrence of A's executor, subject to the proviso in sub-section (1) of section 130 and to provisions of section 132.

Does a Pending Patent Even Count?

Here's where things get genuinely interesting, for once, instead of just genuinely frustrating like the last two sections turned out to be. Unlike "immoveable property" under Section 58, which flat-out excludes IPR, "actionable claim" is a much stretchier idea. It was more or less built to describe this exact sort of intangible, contingent, not-quite-there-yet entitlement.

➤ Sunrise Associates v. Government of NCT of Delhi, (2006) 5 SCC 603 — Supreme Court of India (Constitution Bench)

This one had nothing to do with patents. It was about lottery tickets, actually, and whether they counted as "goods" for sales tax. But the reasoning behind it matters a lot here. The Court said a lottery ticket doesn't have any value sitting by itself — what it really represents is a chance, a conditional right to

[27] The Transfer of Property Act, 1882, s. 130.

something better down the line, and that conditional right is exactly what Section 3 means by an actionable claim, not a sale of goods at all. The Court was pretty clear that a beneficial interest can be contingent and still qualify as an actionable claim — you do not need some fully matured, locked-in right for Section 130 to potentially kick in.That reasoning maps onto a pending patent surprisingly well. Like a lottery ticket, a pending patent application is really just a chance — a conditional shot at something more valuable later on (the granted patent), rather than a fully-formed piece of property sitting there today. If a lottery ticket's contingent right can count as an actionable claim, there's a genuinely solid argument that a pending patent application, or the future royalty stream off an unregistered copyright, could get treated the same way. Honestly, this might be the single most promising opening this whole article has found — a spot where the TPA's language, read with a bit of purpose instead of rigidly, might actually stretch far enough to include IPR instead of shutting it out.

The Catch: Notice, and Making It Stick

Section 131 throws in a procedural wrinkle worth mentioning. It requires giving notice of the transfer to whoever the claim is actually against — the debtor, the insurer, or in our case, arguably the Patent Office or whoever's licensing the right. Skip that notice and you're asking for trouble — competing claims, priority disputes, the works. There's also older case law, going back to the mid-1950s, from the Supreme Court insisting Section 130 transfers need a written instrument, nothing informal or oral. That's not much of a burden for patents, since assignments already have to be written and registered under the Patents Act anyway. It's more of an issue for something like an unregistered copyright's future royalties, where there's often no formal registry to even send that notice through — which, again, is the same registration mismatch that kept coming up in Sections III and IV.

There's also a smaller but genuinely useful line of cases distinguishing an absolute assignment, where ownership fully changes hands, from a security assignment, where the right reverts once the debt's paid off — basically the same structure as that insurance-policy illustration sitting right there in Section 130. That distinction actually matters a lot for IPR financing specifically, because most lenders do not want to end up owning a patent outright. They want security that reverts, not permanent ownership. And Section 130's own illustrations already picture exactly that kind of arrangement.

Why This Section Actually Matters

Put it all together and Section 130 is the first real bit of daylight this article's managed to find in the TPA. Sections IV and V both hit a wall — “immoveable property” flatly shuts out IPR, and the 2001 amendment gutted Section 53A for anything that wasn't registered. Section 130 is different. Its language was never tied to land to begin with, and **Sunrise Associates** shows the Supreme Court's genuinely willing to read “actionable claim” broadly enough to cover rights that are still contingent, still not fully realized. That doesn't make the whole doctrinal case airtight — the notice requirement and the writing mandate still create real friction, and no court's actually applied Section 130 directly to a patent or a copyright yet. But it's the strongest textual foothold IPR has anywhere in this Act, and it sets up exactly the comparative question Section VII turns to next — how other countries, the US especially under UCC Article 9, handle this same problem of securitizing future, not-yet-certain IPR rights.

Comparative Perspective —

UCC Article 9, the UK Regime, and a Quick Word on the EU

Every wall this article's run into so far — the immoveable-property problem back in Section 58, the registration trap that swallowed Section 53A whole, even the notice headache under Section 130 — starts feeling a lot less like some uniquely Indian mess once you look elsewhere. Other countries have wrestled with this exact same question. How do you let someone pledge a patent, or a trademark, the same way they'd pledge a warehouse full of stock sitting in a yard somewhere? And a few of them have actually figured it out cleaner than India has, worth seeing how?

The US: Article 9 of the UCC[28]

The American answer is, honestly, almost annoyingly simple once you see it laid out. Article 9 doesn't bother splitting collateral into tangible and intangible buckets the way Indian law more or less does by accident. It just throws everything intangible — patents, trademarks, copyrights, the whole lot — into one wide category called “general intangibles “and calls it a day. A lender wanting security over IPR files a financing statement with the relevant state authority, and that's more or less the entire perfection process. Courts have said this outright, too — that perfecting a security interest in a trademark runs through Article 9, not the Lanham Act, and PTO filings aren't even required for perfection in most cases. One filing, One rulebook. Doesn't matter if you're securing a delivery van or a piece of software someone patented last year.

Which is basically India's problem? Here, Section 58 shuts IPR out just by how it's worded, so lenders end up cobbling together bits of the Contract Act, banking regulation, and company-law charge registration — three things that were never built to talk to each other. The US just never created that fork in the road to begin with. A security interest is a security interest, whatever happens to be sitting underneath it.

The UK: A Bit Messier, But It Still Gets the Job Done

Britain lands somewhere between clean and chaotic, honestly, Security over IPR usually needs registering twice — once at the relevant IP registry, say the UK IPR Office, and again at the general security-interests registry over at Companies House, Double filing. Sounds like a hassle, and it kind of is one, but at least both registries actually exist and lenders know exactly where to go looking.

What's actually interesting is how differently the UK treats registered rights versus unregistered ones, and it lines up almost exactly with the copyright asymmetry this article kept tripping over back in Section III. Patents and trademarks give you clear title once they're registered, which is exactly why taking security over them is such common practice — while unregistered trademark rights, tied up in goodwill instead, only really get protected through the common law tort of passing-off, which makes them a much shakier thing to lend against. Copyright follows that same pattern, actually — protection

[28] Uniform Commercial Code, Act. 9 (USA)

kicks in the second something's created, no registration needed at all — so a lender taking copyright as security in the UK is, in a way, flying just as blind on title as they would be in India. So no, the UK hasn't solved the registration-asymmetry problem either. What it has done is build something lenders and courts both understand, even if it takes two steps instead of one. And that alone puts it ahead of where Indian practitioners currently stand, stitching together three unrelated statutes with basically no coordination between them.

And Briefly, the EU

The European Union doesn't really have anything close to an Article 9 of its own, mostly because secured transactions law has stayed a member-state matter rather than something harmonized bloc-wide. What the EU built instead was a unified registration system for the underlying rights themselves — the EU trademark system, the EU design system — which at least gives lenders one place to check title across every member state, even if the actual security-interest rules sitting on top of that still change depending on which country you're in. A partial fix, really. Cleaner title-tracing, but nothing like Article 9's single-filing model at the EU level.

So What Does This Actually Tell Us

Line all three up and India's gap becomes pretty obvious. The US built its whole system around a functional idea, general intangibles, instead of a physical one like “immoveable property,” and out came one clean filing system. The UK never really cracked the underlying registration-asymmetry issue, but it built two registries that at least talk to each other, so people know where to look. And the EU shows that even just unifying title-registration, without touching the security-interest rules at all, still knocks out a huge chunk of the uncertainty lenders deal with.

India, right now, has none of that. No functional catch-all like general intangibles. No purpose-built dual registry. No EU-style unified title registry either. What India has is Section 58 shutting IPR out entirely, Section 53A gutted for anything unregistered since 2001, and Section 130 offering a genuinely promising, if completely untested, opening. Which is really the question this whole article's been circling since the start — does India fix this by having judges read the existing provisions a bit more generously, or does it actually need something built fresh, closer to what the US did with Article 9. That's where the conclusion picks up next.

Conclusion and Recommendations

So where does all this leave us?

Every section of this article has really been asking the same question in a different way. Does IPR actually fit inside the TPA Act? Or is India just pretending it does, and needs to build something new instead? By now the pattern's pretty clear. Some parts of the Act stretch further than you had think. Section 130's actionable claims idea, as Section VI showed, has real room in it for a pending patent, or the future royalties on an unregistered copyright. Other parts do not bend at all. Section 58 shuts IPR out of mortgage by definition. And the 2001 amendment to Section 53A closed the door on unregistered licenses almost completely. So the honest answer is not a clean yes or a clean no. It's a patchwork. And patchworks make bad foundations, especially when an entire lending market is trying to build on top of one.

Could Judges Just Fix These Themselves?

There's a decent argument for it. Courts have already shown they're willing to read old language generously when the purpose behind it calls for that. Sunrise Associates is the clearest example here — the Supreme Court read “actionable claim” broadly enough to cover a lottery ticket's contingent right, and that reasoning matters more than the facts of the case ever did. If a court applied that same generous reading to Section 130 in a real IPR dispute, that alone could open up space for patent and copyright securitization. No new law needed. And courts move faster than Parliament. One good judgment can shift how lawyers work almost overnight.

But this only goes so far. Judges can't read around language that's just too explicit. Nothing about Section 58's “immoveable property” leaves room for a different meaning, however generously you squint at it. Reinterpretation is also reactive by nature — it needs an actual dispute, actual people willing to litigate it, and usually years of appeals before anything solid come out the other end. Canara Bank is the warning sign here. Instead of clearing things up, it left banks more nervous than before, because the court read the existing law narrowly instead of generously. Reinterpretation cuts both ways. There's no guarantee it cuts the way you had want.

Why a New Law Is the Better Fix

The more lasting solution, and the one this article leans toward, is a proper statutory framework built for IPR as collateral. Something closer to what the US did with Article 9, rather than hoping Indian courts slowly stretch a nineteenth-century property law to fit today's assets.

A framework like that needs to do a few things well. First, one single way to register and perfect security interests in IPR — not the current mess spread across the Patents Act, the Trade Marks Act, the Registration Act, and company charge rules, none of which were ever built to talk to each other. Second, it needs to fix the registration gap that keeps showing up throughout this article. Patents and trademarks require registration on transfer. Copyright requires none. Any real fix has to either bring copyright into a similar system, or build a separate way to track who owns what. Third, it needs clear rules that tell security assignments apart from full transfers, the way Section 130's own insurance illustration already hints at, so a lender taking security doesn't accidentally end up owning the patent outright.

A Few Smaller Steps That Could Happen Sooner

Some things do not need to wait for a full new law. The RBI could put out clearer guidance on how to value IPR and lend against it, the same way it's done for other newer forms of collateral. That alone would give banks and NBFCs more confidence to act. The Patents Act and Trade Marks Act could be amended to talk about secured lending directly, instead of leaving lawyers to stretch assignment provisions that were never written with lending in mind. And a working group, maybe pulling in the

Ministry of Corporate Affairs, the RBI, and the patent and trademark offices, could start drafting a proper framework, using UCC Article 9 as a reference point rather than something to copy word for word, since India's banking and registration setup just works differently.

None of this is small. But IPR is already being used to raise money in India, well ahead of the law's ability to back it up safely. Every year this drags on just pushes more of that risk onto lenders, and onto the exact businesses this kind of financing is supposed to help. The TPA Act gave India solid ground for lending against land back in 1882. It's about time IPR got something just as solid of its own.

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