

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed Edition :

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

IJLRA

EDITORIAL TEAM

EDITORS



Megha Middha

Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar

Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain



Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

NON-FUNGIBLE TOKENS AND PROPERTY LAW: THE LEGAL CONUNDRUM IMPOSED BY THE CUTTING-EDGE PROPRIETARY PARADIGM

AUTHORED BY: - TANMAY AVINASH DESHMUKH

COLLEGE: - ABACL, MUMBAI.

EMAIL: - tanmaydeshmukh9802@gmail.com

ABSTRACT

The rise of Non-Fungible Tokens (NFT's) has captivated the digital sphere, generating widespread attention and substantial financial investments akin to the fervor surrounding cryptocurrencies. At the core of these digital revolutions lies blockchain technology, a decentralized system of distributed public ledgers¹. NFT's, as unique digital assets, present novel concerns, particularly pertaining to property transfers. By leveraging blockchain technology, NFT's authenticate ownership and ensure the genuineness of items such as artwork, music, and even tweets, enabling their buying, selling, and trading akin to physical assets.

Currently, the global NFT market stands at approximately \$40 billion, with India estimated to possess an NFT business worth \$3.3 billion. With a cumulative average growth rate of 61.6 percent, this industry is expected to expand to \$27 billion by 2028². Such immense potential emphasizes the necessity for robust laws and regulations governing these assets. The legal questions surrounding NFT's, particularly in relation to property laws, are intricate and multifaceted. The inherently ambiguous nature of NFT's initially complicates their classification as properties and raises uncertainties regarding their governance under existing property laws. This paper seeks to address some of these questions by constructing archetypes and drawing connections to other related assets, while examining the applicable laws governing them. Given the scarcity of specific legal precedents or orders related to NFT's, much of this paper's analysis will be derived and hypothetical in nature. It is essential to recognize that the legislative system's

¹ Poorvi Sachar, NFT's: How India Can Emerge as a Frontrunner, ABP Live, available at <https://news.abplive.com/india-at-2047/nft-india-frontrunner-user-market-popularity-bored-ape-bayc-cryptopunk-azuki-tezos-blockchain-poorvi-sachar-1546840>

² Abhay Aggarwal, NFT's in the Indian Market: How Investable are Digital Tokens, Entrepreneur India, available at <https://www.entrepreneur.com/en-in/technology/NFT's-in-the-indian-market-how-investable-are-digital/436812>

lack of empirical evidence on NFT's should not be construed as ignorance, but rather as a delay in comprehending and exploring these novel digital assets. Through a comprehensive exploration of various facets of NFT's, this paper aims to shed light on their potential applications within the context of existing property laws.

LEGAL IMPLICATIONS BOUNDING NFT's

NFT's, which are distinctive digital assets underpinned by blockchain technology, possess a remarkable characteristic their intricate working system coupled with robust encryption. This feature grants them a significant advantage, yet it also renders the task of deciphering their inner workings highly challenging. Similar to cryptocurrencies, each NFT is endowed with a unique digital signature and operates within the intricate framework of blockchain technology³. The utilization of blockchain as the underlying infrastructure for NFT's empowers individuals to securely possess and transfer their assets at their discretion. While NFT's have gained widespread recognition for their ability to serve as vehicles for artistic expression, such as innovative art and graphics, their scope extends beyond that and can encompass a diverse array of digital or tangible objects.

Property, in its essence, grants individuals an exclusive and sovereign control over tangible or intangible assets⁴. The objects that can be subject to possession and ownership encompass a diverse range and are subject to distinct treatment under various legal frameworks⁵. NFT's, as tokens, possess their own unique set of data that serves as a validation and authentication of ownership. The intricate blockchain technology on which NFT's are built ensures the viability of their transfer from one owner to another. With the establishment of a concrete and authentic ownership system, one may question the rationale behind not classifying NFT's as property and consequently subjecting them to governance under existing property laws. To explore the status of NFT's under India's property laws, it is crucial to analyze the existing legal framework, as there are currently no specific laws directly addressing the classification of NFT's as properties. In the absence of explicit provisions, a prudent approach is to derive the meaning of property from other applicable laws. By examining these laws, one can reasonably argue that NFT's can be categorized

³ akshat Kolhatkar, What is an NFT and how does it work? Understand the technology behind NFT's, BQ Prime, available at <https://www.bqprime.com/business/what-is-an-nft-and-how-does-it-work-understand-the-technology-behind-NFT's>

⁴ Thomas Merrill & Henry Smith, Property: Principles and Policies, Thomson Reuters, 2nd Edition (2012).

⁵ A.P Singh & Ashish Kumar Srivastava, Property Laws, LexisNexis.

as corporeal property, as they possess a materialistic nature and represent something tangible.⁶

Section 22 of the Indian Penal Code aptly defines movable property as any corporeal property, excluding land and its attachments⁷. NFT's undeniably fit within this definition, as they can be bought, sold, and traded, much like physical assets or real estate. Moreover, they serve as a means to establish ownership and transfer rights over digital assets such as art, music, and videos, thereby aligning with the traditional understanding of property. Furthermore, legal provisions such as Order XXI of the Code of Civil Procedure, 1908⁸, which address attachment, custody, and recovery of movable properties, can be utilized to craft comprehensive and robust laws pertaining to NFT's. These laws provide a strong foundation for the governance of NFT's under standard property laws applicable to immovable property. However, it is important to note that the treatment of NFT's under Indian law will heavily rely on the specific circumstances and facts of each case, as well as the nature of the underlying assets and the rights associated with them. Additionally, the legal landscape may evolve in response to new technologies and changing market conditions, warranting possible changes in the treatment of NFT's within the Indian legal system.

THE INCLUSION OF NFT'S WITHIN PROPERTY LAW: CHALLENGES AND IMPLICATIONS

The emergence of NFT's not only promises to revolutionize various industries, particularly the art world, but also gives rise to a host of legal and ethical considerations. These include issues related to intellectual property ownership, the taxation of NFT sales, and the environmental implications stemming from the energy-intensive process involved in creating and verifying NFT's on the blockchain. NFT's, as unique digital assets, rely on blockchain technology to establish and certify ownership and authenticity. This groundbreaking innovation has the potential to reshape property law by introducing new forms of property that are purely digital and can be effortlessly bought, sold, and traded. This paradigm shift challenges conventional notions of property ownership, especially in terms of ownership transfers and the safeguarding of property rights within a digital context. The widespread adoption of NFT's also brings about legal complexities surrounding the ownership of digital assets and the enforcement of property rights within a decentralized

⁶ Wex Definitions Team, Cornell Law School, available at https://www.law.cornell.edu/wex/corporeal_ownership

⁷ The Indian Penal Code, 1860, §22.

⁸ Code of Civil Procedure, 1908, Order XXI.

environment⁹. As NFT's continue to gain traction and permeate various sectors, it becomes imperative for property law to evolve in order to address these novel challenges and offer clarity to NFT owners and the broader digital ecosystem. By adapting to the changing landscape, property law can effectively navigate the intricacies posed by NFT's and provide a solid legal framework that protects the interests of stakeholders in the digital realm.

The allure of sensational narratives may captivate public attention momentarily, but the lasting impact of any technological revolution hinges on the seamless integration of legislation. Non-Fungible Tokens (NFT's) present an array of intricate questions that intertwine with India's conventional property laws, giving rise to noteworthy considerations:

1. Recognition in the legal realm: NFT's represent a relatively novel concept, lacking a dedicated legal framework for their recognition in India at present.
2. Ownership and transfer complexities: While NFT's can be freely bought, sold, and traded on blockchain networks, the legal ramifications surrounding these transactions remain nebulous.
3. Ambiguity in Intellectual Property Rights: Determining ownership of intellectual property rights associated with NFT's can be enigmatic, as existing laws may not furnish sufficient protection or clarity in this context.
4. Taxation dilemmas: The taxation of NFT's and their transactions is a subject of ongoing debate, with existing tax laws struggling to provide unequivocal guidance on how NFT's should be taxed.
5. Regulating the decentralized landscape: NFT's operate in a decentralized manner, thereby presenting a formidable challenge when contemplating how to effectively regulate them within the Indian legal framework.

These multifaceted concerns necessitate a comprehensive restructuring of traditional property laws to accommodate the unique characteristics and implications of NFT's. By proactively addressing these challenges, India can forge a harmonious synergy between NFT's and established legal structures, fostering a conducive environment for their growth and development.

⁹ Prashant Kataria, NFT's in India: Legal Implications, Business Line, available at <https://www.thehindubusinessline.com/business-laws/NFT's-in-india-legal-implications/article65636218.ece>

ADVANCEMENTS IN RECOGNIZING NFT'S WITHIN THE CURRENT LEGAL LANDSCAPE

The unique nature of Non-Fungible Tokens (NFT's) has resulted in the absence of a distinct and comprehensive regulatory framework governing their transactions. As a consequence, much of the regulatory landscape surrounding these innovative digital assets is either derived from existing laws or based on assumptions. NFT's are designed to facilitate decentralization, track ownership, and serve as a means of storing value. Additionally, they aim to establish verifiable proof of ownership for original works,¹⁰ offering creators a form of "digital bragging rights" and legal recourse in case of unauthorized duplication. These tokens strive to provide tangible evidence of ownership, granting individuals the ability to validate their rightful claim over a digital asset.

While the Indian courts have not specifically addressed the trading of NFT's, we can draw insights from the legal treatment of cryptocurrencies, which share similarities in terms of online trading using blockchain technology. For instance, the Supreme Court of India, in the case of *Internet and Mobile Association of India vs. Reserve Bank of India*,¹¹ ruled that the trading of cryptocurrencies like Bitcoin was legal and invalidated the guidelines issued by the Reserve Bank of India that restricted banks from dealing in virtual currencies.¹²

By extrapolating from the legal framework surrounding cryptocurrencies, which encompasses securities laws, income tax regulations, copyright laws, and more, we can derive the current state of NFT's within the Indian context. However, the critical aspect that requires attention is that of Property Law. Although it has been theoretically established that NFT's can be considered valid forms of property, there is a lack of specific legal precedents in India to substantiate this claim. To understand the current relationship between property law and NFT's, we can examine the Supreme Court's approach to analogous elements such as cryptocurrencies and observe the trends in their rulings. International jurisprudence serves as a valuable reference in this regard. For instance, the High Court of Singapore has recognized NFT's as property, citing their fulfillment of the necessary legal requirements¹³. Furthermore, there have been unreported cases in English

¹⁰ Prashant Kataria, Non-Fungible Tokens in India: 6 Legal Implications buyers must consider, Mondaq, available at <https://www.mondaq.com/india/fin-tech/1198948/non-fungible-tokens-in-india-6-legal-implications-buyers-must-consider>

¹¹ Internet and Mobile Association of India vs. Reserve Bank of India, MANU/SC/O264/2020.

¹² Id.

¹³ Jamie Crawley, NFT's can be considered property, according to Singapore High Court Ruling, CoinDesk, available at https://brill.com/view/journals/ilrc/5/1/article_p17_17.xml?language=en#ref_FN000015

courts where NFT's were declared as properties and treated accordingly within the legal framework.¹⁴ It is important to note that while there is a dearth of empirical evidence within the Indian legal system, the judiciary has shown a willingness to consider rulings from other jurisdictions and adapt them to similar circumstances. As the legal landscape evolves, it is crucial to monitor international developments and draw insights from other courts' recognition of NFT's as properties to shape the legal understanding and treatment of NFT's within India.

CONCLUSION

NFT's, the cutting-edge digital assets propelled by the robust infrastructure of blockchain technology, have recently witnessed remarkable feats, exemplified by the sale of "The First 5000 Days" for a staggering sum of over 69 million dollars. This notable event highlights the undeniable value and significance of NFT's as a groundbreaking digital phenomenon.¹⁵ However, within the Indian legal system, there appears to be a conspicuous lack of regulation surrounding these assets, reflecting a concerning disregard for their governance within the realm of property law. Throughout this discourse, we have explored the legal landscape surrounding NFT's, attempting to establish their classification as properties under the Indian legal framework and advocate for their regulation through existing property laws. However, it is essential to acknowledge that these arguments remain derivative and assumed, based on the prevailing legal disposition. To truly solidify the position of NFT's within the legal domain, it becomes imperative for the courts to recognize their existence and proactively formulate definitive regulations encompassing not only property laws but also other pertinent legal aspects. India can draw inspiration from countries like Singapore, China, Japan, and Switzerland, which have already established reasonable, legitimate, and administrative frameworks to govern NFT's.¹⁶

In the absence of specific regulations, the Indian legal system could turn to existing laws and international best practices as a guiding compass to address the unique challenges posed by NFT's. For instance, NFT's may be deemed a form of digital property, subject to the principles of contract law governing their ownership and transfer. Likewise, the creation and distribution of NFT's could

¹⁴ Sean Murphy, Are NFT's a type of property under English Law, Inside Tech Law, available at <https://www.insidetechlaw.com/blog/are-NFT's-a-type-of-property-under-english-law>.

¹⁵ The most expensive NFT ever sold, Crypto.com, available at <https://crypto.com/university/most-expensive-NFT's#:~:text=1.,Merge%20US%2491.8M&text=Digital%20artist%20Pak's%20creation%20Merge,sold%20by%20a%20living%20artist>

¹⁶ Abhilasha D., Rule of Law: A comparative Analysis of India and Pakistan, International Journal of law management and humanities, Vol. 5 Issue 1; 451.

be addressed within the framework of copyright law. Considering the rapid evolution of NFT's and their potential for substantial economic impact, it is only a matter of time before the Indian legal system develops a comprehensive regulatory framework tailored specifically for NFT's. It is imperative that a comprehensive evaluation of NFT's takes place, leading to the pragmatic construction of a robust regulatory framework. We stand at a crossroads where we can either continue to overlook the rapid modernization ushered in by this futuristic technology or embrace its transformative potential and build a brighter tomorrow by harnessing its capabilities.

In conclusion, the recognition of NFT's within the legal realm is not just a necessity but an opportunity for India to position itself at the forefront of technological innovation. By embracing this new frontier and developing a progressive regulatory framework, India can foster an environment conducive to the flourishing of NFT's and shape a future where digital assets are seamlessly integrated into our legal system, thereby unlocking limitless possibilities for creativity, ownership, and economic growth.

