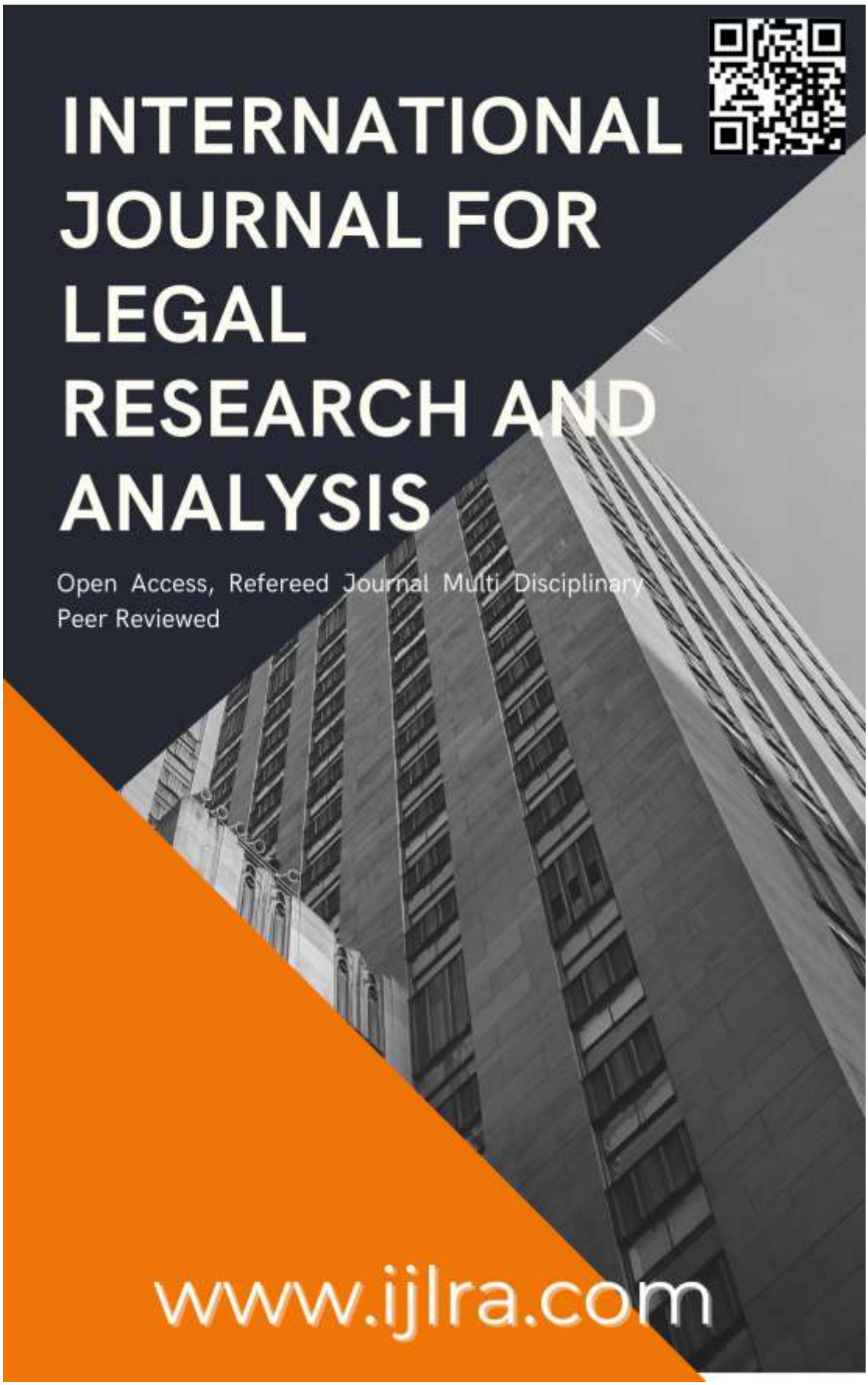

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RESEARCH ARTICLE

Human Creativity Versus Artificial Intelligence: Developing A Legal Test For Human Contribution In Ai-Assisted Works

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ABSTRACT

Generative artificial intelligence has unsettled the traditional understanding of authorship in copyright law. A person may now produce a literary, musical or artistic output by entering a short instruction, refining a series of prompts, selecting among generated alternatives, or substantially editing the result. These activities do not involve the same degree of creative participation, yet the legal consequences are often discussed as though every AI-assisted work presents a single question. This paper examines whether Indian copyright law can identify the human author, if any, of works produced with generative AI. It focuses on section 2(d)(vi) of the Copyright Act, 1957, which identifies as the author of a computer-generated literary, dramatic, musical or artistic work the person who causes the work to be created. Read with sections 13 and 14 and the originality standard explained by the Supreme Court in Eastern Book Company v D.B. Modak, the provision offers a starting point but does not clearly resolve how causation should be assessed when a generative system determines expressive details. A comparative analysis of United States, United Kingdom and European Union approaches reveals different statutory and doctrinal routes, but a common concern with identifiable human intellectual creation. The paper proposes a Human Creative Contribution Test based on creative control, intellectual judgment, expressive contribution and meaningful modification or arrangement. It argues that this test should operate as a flexible evidentiary framework, not a mechanical checklist, and should protect only the human-authored elements where contributions are separable.

Keywords: Artificial Intelligence; Generative AI; Copyright; Authorship; Originality; Human Creativity; India; Computer-Generated Works.

1. INTRODUCTION

Copyright law has historically treated authorship as a relationship between a human creator and an original expression. Technological developments have repeatedly altered the tools through which expression is produced, from photography and sound recording to digital editing software. Generative artificial intelligence presents a more difficult question because it may produce expressive material rather than merely record, transmit or assist a person's expression. A user can request a poem, illustration, musical composition or computer code and receive an output whose detailed form was generated through model processes that are not fully visible to the user.

The central legal issue is not whether artificial intelligence is useful or whether its outputs are aesthetically valuable. It is whether a person has contributed sufficient original expression to qualify as an author under the applicable copyright law. A person who writes a detailed prompt, repeatedly adjusts instructions, selects one result from hundreds, edits the output and arranges it within a larger work may have made materially different contributions from a person who enters a generic instruction and accepts the first result. Treating these situations identically risks either granting protection without human authorship or denying protection to genuine human creativity merely because a new tool was used.

The Indian position is particularly significant. Section 2(d)(vi) of the Copyright Act, 1957 expressly refers to computer-generated works and identifies the author as the person who causes the work to be created. The provision predates modern generative AI and does not define the degree or character of causation required. This paper argues that the phrase should not be read as automatically making every user of an AI system the author. Causation must be connected to legally relevant human creative contribution and must be assessed alongside originality under section 13.

The paper proceeds in six stages. It explains the conceptual distinction between AI-assisted and AI-generated expression; analyses the Indian statutory framework and originality jurisprudence; compares selected foreign approaches; identifies the shortcomings of a simple prompt-based rule; and proposes a structured Human Creative Contribution Test (HCCT). The paper is doctrinal and comparative. It does not claim that the proposed test is already part of Indian law; rather, it offers a framework for judicial interpretation and possible legislative clarification.

2. RESEARCH PROBLEM, QUESTIONS AND METHODOLOGY

2.1 Research problem

The principal problem is uncertainty about the legal meaning of 'the person who causes the work to be created' in section 2(d)(vi). In conventional computer-generated contexts, a human may have configured a program to produce a result. Generative AI complicates this relationship because the user may control the subject or broad direction while the system supplies much of the final expressive form. The statute does not specify whether causation means factual initiation, technical operation, creative direction, or a combination of these factors.

2.2 Research questions

The study asks: (i) whether the Copyright Act, 1957 adequately determines authorship in AI-assisted works; (ii) whether the act of supplying prompts is sufficient to establish authorship; (iii) how Indian originality principles apply to human selection, editing and arrangement of AI outputs; (iv) what can be learned from the United States, United Kingdom and European Union; and (v) what legal test could provide clarity without excluding genuine human-AI collaboration.

2.3 Objectives and hypothesis

The objectives are to interpret sections 2(d)(vi), 13, 14 and 17 of the 1957 Act; examine the relationship between authorship and originality; compare selected international approaches; distinguish human-authored expression from machine-generated material; and formulate a workable test. The hypothesis is that Indian law contains a statutory basis for addressing computer-generated works but lacks sufficiently clear criteria for measuring human creative contribution in modern generative AI workflows. A flexible, contribution-based test would improve predictability while preserving the principle that copyright protects original expression rather than effort, investment or mere causal involvement.

2.4 Methodology

The paper adopts doctrinal legal research, using legislation, judicial decisions, official policy documents and academic commentary. The comparative method is limited to jurisdictions with relevant statutory or institutional developments. The analysis is qualitative and normative: it evaluates legal principles and proposes a framework rather than collecting empirical data. The law and official materials have been considered as available up to November 2026; authors should re-check the journal's current submission requirements and any subsequent legal developments before filing.

3. CONCEPTUAL FRAMEWORK: AI-ASSISTED AND AI-GENERATED WORKS

The expression ‘AI-assisted work’ should be used carefully. It may describe at least three situations. First, AI may function as an ordinary tool: a human writes a text or creates an image and uses software for grammar correction, colour adjustment or technical refinement. Secondly, AI may generate substantial material under sustained human direction, after which the human selects, edits, rearranges or combines it. Thirdly, the system may generate the expressive content with little meaningful human intervention, leaving the user with no more than a broad instruction or a decision to accept the result.

These categories are not rigid. A single project may contain human-authored and AI-generated elements. For example, a graphic designer may write the concept, generate several background images, discard most outputs, draw original figures, alter composition and integrate the final result into a poster. The background may contain little human-authored expression, while the original drawings, selection and arrangement may qualify for protection if they satisfy the applicable originality threshold. Copyright analysis should therefore focus on the particular expression claimed, not simply on whether AI was used.

A distinction must also be maintained between authorship, ownership and infringement. Authorship asks who created the protectable expression. Ownership concerns who initially holds or later acquires the rights under the statute or contract. Infringement concerns unauthorised exercise of exclusive rights in protected material. A user’s ownership of an AI subscription, payment for a generated output or contractual entitlement from a platform does not by itself establish statutory authorship. Similarly, whether a model was trained on copyrighted material raises important questions, but it is analytically distinct from whether a particular output contains protectable human expression.

4. INDIAN LEGAL FRAMEWORK

4.1 Copyright Act, 1957

Section 13 provides for copyright in original literary, dramatic, musical and artistic works, cinematograph films and sound recordings, subject to the Act. Section 14 defines the bundle of exclusive rights associated with copyright. Section 17 identifies the first owner of copyright, subject to statutory exceptions and agreements. These provisions operate together: a claimant must identify a work within the statutory categories, establish the required originality and determine the person entitled to the relevant rights. [1]

Section 2(d)(vi) is the central provision for computer-generated works. It states that, in relation to a literary, dramatic, musical or artistic work which is computer-generated, the author is ‘the person who causes the work to be created’. This wording is important because it does not expressly require the person to perform every physical or technical act of creation. At the same time, it does not say that the owner of the computer, software or account automatically becomes the author. The statutory phrase requires interpretation in the context of the Act’s originality and ownership provisions. [9]

The phrase ‘computer-generated’ was introduced before the present wave of generative AI. It may be argued that the provision is technologically neutral and can cover modern systems. However, technological neutrality does not answer the attribution question. In a conventional automated process, the person who sets the process in motion may exercise substantial control over the output. In a generative model, the user may not determine the specific words, pixels, notes or other expressive features produced. The difference between causing a process to run and creating the expression is therefore central.

4.2 Originality and Eastern Book Company v D.B. Modak

The Supreme Court’s decision in Eastern Book Company v D.B. Modak is particularly relevant. The Court rejected a purely ‘sweat of the brow’ approach and required the exercise of skill and judgment with a flavour of creativity. It recognised that originality does not require novelty or inventive thought, but the

work must originate from the author and involve more than trivial or commonplace effort. In the context of compilations, selection, coordination or arrangement may contribute to originality where they produce a work with distinguishable features. [3, 11]

This approach can assist in assessing human contributions to AI-assisted works. A user's time spent entering prompts, generating alternatives or paying for a service is not necessarily equivalent to original expression. By contrast, a person's independent selection, coordination, arrangement or substantive editing may contribute protectable expression. The analogy must not be overstated: Eastern Book Company concerned copyright in edited law reports and compilations, not machine-generated expression. Its value lies in the general emphasis on independent skill and judgment and on a non-trivial creative contribution.

4.3 Authorship, ownership and the unresolved question

The interaction between section 2(d)(vi) and section 17 remains unsettled in the context of modern generative AI. Even if a user is treated as the person who caused a work to be created, the scope of the copyright must still be identified. The better approach is to separate the question of statutory attribution from the question of what expression is original and protectable. A claimant should not receive exclusive rights over machine-generated elements merely because the claimant initiated the process. Equally, AI use should not extinguish copyright in a human-authored contribution that can be identified and assessed.

There appears to be no authoritative Indian appellate decision squarely determining the authorship of a work created through a contemporary generative AI model. The absence of a directly controlling decision makes it especially important not to present the proposed HCCT as settled law. It is a suggested interpretive framework designed to give practical content to the statutory language while remaining consistent with section 13 and the originality standard.

5. COMPARATIVE INTERNATIONAL APPROACHES

5.1 United States

United States copyright law protects 'original works of authorship' under section 102(a) of the Copyright Act, 1976. The statute does not expressly define authorship as human, but the courts and the Copyright Office have treated human authorship as a basic requirement. In Thaler v Perlmutter, the United States Court of Appeals for the District of Columbia Circuit affirmed the refusal to register an artwork identified as autonomously generated by an AI system, holding that the Copyright Act requires an author to be a human being. The court did not decide the broader question of whether a person who creates or operates an AI system may qualify as the author of a work produced with it, because the relevant argument had not been preserved.

The U.S. Copyright Office's January 2025 report, Copyright and Artificial Intelligence: Part 2—Copyrightability, states that existing copyright principles are capable of addressing AI-assisted works. It distinguishes mere prompting from circumstances in which human-authored material is perceptible in the output or a human makes creative arrangements or modifications. The Office's position is that prompts alone, in the circumstances it examined, generally do not provide sufficient control over the expressive elements of the output. This approach is useful because it focuses on the human's actual expressive contribution rather than the label attached to the technology. [5]

The U.S. model offers a clear human-authorship baseline and practical guidance on registration, but it is not identical to India's statutory scheme. India expressly includes a computer-generated-work provision in section 2(d)(vi), whereas the U.S. approach derives from the text and structure of its statute and judicial interpretation. Indian courts should therefore use U.S. materials comparatively, not import them as binding rules.

5.2 United Kingdom

Section 9(3) of the Copyright, Designs and Patents Act 1988 provides that, in the case of a literary, dramatic, musical or artistic work which is computer-generated, the author is taken to be the person by whom the arrangements necessary for the creation of the work are undertaken. Section 178 defines a computer-generated work as one generated by computer in circumstances such that there is no human author of the work. The provision is therefore a close statutory comparator to section 2(d)(vi) of the Indian Act. [6, 14]

The British provision places emphasis on the arrangements necessary for creation. This may include the organisation of the process, but it does not necessarily resolve how the rule should apply to generative AI where the user's arrangements may be broad and the system determines detailed expression. The statutory text also raises questions about the duration and practical justification of protection for works without a conventional human author. The United Kingdom's model is valuable as a comparator, but it should not be treated as proof that every user prompt establishes authorship.

5.3 European Union

EU copyright doctrine generally links originality to the author's own intellectual creation. In Infopaq International A/S v Danske Dagblades Forening, the Court of Justice recognised that parts of a work may be protected where they contain elements expressing the author's intellectual creation. In Painer v Standard VerlagsGmbH, the Court explained that originality may arise from free and creative choices through which an author stamps the work with a personal touch. These decisions were not AI cases, but they provide a framework for identifying human creative choices.

The EU approach is particularly useful for the proposed test because it focuses on expressive choices rather than effort alone. It also highlights the difficulty of identifying the author's free and creative choices where a model supplies the final form. A user may choose a topic or mood, but those choices may not determine the expression. Conversely, a user who makes detailed creative decisions, edits generated content and arranges it into an original whole may contribute protectable expression. EU principles are persuasive comparative material, not a direct substitute for Indian statutory interpretation.

6. CRITICAL ANALYSIS: WHY PROMPTS ALONE ARE NOT ENOUGH

A prompt is an instruction to a system, not necessarily an expression of the final work. A short request such as 'create a landscape at sunset' communicates an idea, subject and perhaps mood. Copyright generally does not protect ideas as such; it protects original expression. If the AI system independently determines composition, lighting, colour, perspective and other expressive details, the user's instruction may not establish authorship of those details. Granting copyright over the entire output in such a case could give the user control over expression that the user did not create.

However, a categorical rule that prompts can never contribute to authorship would also be too rigid. A sequence of detailed instructions may constrain the system's choices and reflect a user's creative plan. The user may iteratively reject outputs, specify precise compositional relationships, direct changes to individual elements and combine results. Whether this amounts to authorship should depend on the evidence and on the extent to which the human's choices determine protectable expression. The number or length of prompts is not decisive.

A second difficulty concerns selection. Choosing one image from many may be a creative decision, but selection alone should not automatically confer copyright in the selected image. It may support copyright in an original collection or arrangement if the selection and arrangement themselves meet the originality threshold. A third difficulty concerns editing. Substantial human modification may produce protectable

expression even if the underlying AI-generated material is not protected. The scope of protection should be limited to the original human additions and any original arrangement.

A further problem is evidentiary. The final output may not reveal how it was made. Relevant evidence may include prompts, successive outputs, editing histories, drafts, layers, project files and records showing which decisions were made by the human. Such evidence should be proportionate. A claimant should not be required to disclose confidential information unrelated to the authorship issue, and a court should not presume that the absence of a prompt log proves that no human contribution occurred.

7. PROPOSED HUMAN CREATIVE CONTRIBUTION TEST (HCCT)

This paper proposes a Human Creative Contribution Test to guide the interpretation of section 2(d)(vi) read with section 13. The HCCT is not a statement of existing Indian law. It is a structured framework for evaluating whether a person's involvement in an AI-assisted work is sufficiently creative and connected to the expression claimed. The four factors should be assessed holistically, with no single factor automatically decisive.

7.1 Creative control

The first factor asks whether the human exercised meaningful control over expressive features of the final work. Control may be demonstrated through detailed direction, constraints, iterative refinement or deliberate decisions about composition, structure, sequence, language, rhythm or visual elements. Merely choosing a broad topic, genre or general purpose is unlikely to be enough where the system independently supplies the expression. The inquiry is practical: which expressive features were determined by the human, and which were left to the system?

7.2 Intellectual judgment and independent decision-making

The second factor considers whether the person made independent intellectual choices rather than merely accepting an automatic result. Evidence may include reasoned rejection of alternatives, deliberate comparison, selection based on a creative plan and decisions about how elements should work together. Time, effort, expense or technical skill may provide context, but they cannot replace the requirement of original expression. This factor reflects the emphasis on skill and judgment in Eastern Book Company.

7.3 Identifiable expressive contribution

The third factor requires an identifiable connection between the human's decisions and the expression for which protection is claimed. The contribution may consist of original text, drawings, musical passages, editing, arrangement or other expressive features. A general idea or instruction is not enough unless it is embodied in protectable expression. The claimant should identify the human-authored elements with reasonable specificity. This prevents a claim to the whole output where only a limited portion reflects human creativity.

7.4 Meaningful modification or arrangement

The fourth factor examines whether the human materially modified, coordinated or arranged the generated material. Substantive rewriting, redrawing, editing, sequencing or combining may create an original human contribution. Trivial changes, routine formatting or mechanical corrections should not ordinarily satisfy this factor. An original selection or arrangement may itself be protected even where individual components are not, but protection should extend only to the original selection or arrangement and not to unprotected underlying material.

7.5 Applying the test

Consider three examples. In the first, a user enters ‘write a short poem about rain’ and publishes the first output unchanged. The user initiated the process, but the expressive choices are largely supplied by the system; the HCCT would ordinarily indicate weak evidence of human authorship in the poem’s wording. In the second, a user develops a detailed structure, repeatedly directs line-level changes, rejects alternatives and rewrites substantial passages. The user may qualify as author of the human-authored expression, depending on the final text and evidence. In the third, a designer generates background material but independently draws figures, changes the composition and arranges the elements into a poster. Copyright may subsist in the original drawings and arrangement even if the generated background is not independently protected.

The test should not be converted into a numerical score. A checklist could create false precision and invite strategic prompt inflation. Courts should identify the work and the precise expression claimed, evaluate the four factors in context, and state the scope of any protection. Where multiple people contribute, the court should separately examine each person’s contribution and apply the Act’s rules on joint authorship and first ownership where relevant.

8. LEGAL AND POLICY RECOMMENDATIONS

First, Parliament or the Copyright Office should clarify the application of section 2(d)(vi) to generative AI. Clarification should explain that ‘causes the work to be created’ does not automatically mean the person who enters a prompt, owns the software or pays for the service. The provision should be interpreted consistently with the requirement that copyright subsists only in original works and with the need to identify human expression.

Secondly, Indian law should expressly accommodate partial protection. Where a work contains both AI-generated and human-authored elements, the presence of machine-generated material should not disqualify the entire work. Protection should extend to the identifiable human-authored material and original arrangement, without granting a monopoly over unprotected generated elements. This approach supports creators while preserving the public domain.

Thirdly, the Copyright Office should consider practical guidance for applicants. Applicants could be asked to identify the material generated by AI and describe the human contribution claimed. The requirement should be proportionate and should not demand disclosure of every prompt in routine cases. In disputed cases, version histories and editing records may assist the fact-finder.

Fourthly, judicial guidance should emphasise that authorship, originality and ownership are distinct inquiries. A finding that a person caused a system to generate an output should not end the analysis. Courts should identify the expression, determine whether it is original, assess the human contribution and define the scope of protection. Finally, contracts between AI platforms and users should not be allowed to misstate the statutory position. Contractual allocation may govern rights that exist, but it cannot create copyright in material that fails the statutory requirements.

9. FINDINGS AND DISCUSSION

The analysis supports four findings. First, India has a statutory provision directly addressing computer-generated works, but its language was not drafted with modern generative systems in mind. Secondly, section 2(d)(vi) must be read with section 13: causation alone should not be treated as a substitute for originality. Thirdly, comparative approaches show that human authorship and identifiable expressive contribution remain central, even where national statutes differ. Fourthly, a contribution-based framework can distinguish simple prompting from meaningful creative control, editing and arrangement.

The HCCT attempts to reconcile two competing concerns. Over-protection may allow a user to monopolise machine-generated expression without contributing to it. Under-protection may deny copyright to human creators who use AI as one tool within a genuinely creative process. A flexible test, focused on the claimed expression and supported by proportionate evidence, is preferable to either extreme. It also offers a principled basis for partial protection, reducing the temptation to treat an AI-assisted work as wholly protected or wholly unprotectable.

10. CONCLUSION

Generative AI challenges the traditional relationship between the human author and the final form of a work, but it does not make the principles of copyright law irrelevant. Indian law already recognises computer-generated works through section 2(d)(vi) of the Copyright Act, 1957. The difficulty is determining who truly causes the creation of a protectable work when a generative system supplies expressive details. The answer should not depend solely on who typed the prompt, owns the software or initiated the process.

Read with section 13 and the originality standard in Eastern Book Company v D.B. Modak, section 2(d)(vi) should require a meaningful connection between the human's creative decisions and the expression claimed. The proposed HCCT offers four relevant factors: creative control, intellectual judgment, identifiable expressive contribution, and meaningful modification or arrangement. It is designed as a flexible analytical framework, not a rigid statutory formula. Its central principle is that copyright should protect human creativity where it exists, while avoiding an unwarranted monopoly over expression generated autonomously by a machine.

The future of copyright need not be framed as a contest in which either humans or machines must prevail. The more useful legal question is how to identify and protect the human contribution within collaborative creative processes. A clear, contribution-based approach would promote legal certainty, reward genuine creativity and preserve the balance between private rights and public access.

FOOTNOTES

1. Copyright Act, 1957, No. 14 of 1957, §§ 2(d)(vi), 13, 14, 17 (India).

2. Copyright Act, 1976, 17 U.S.C. § 102(a) (United States).

3. Eastern Book Company v. D.B. Modak, (2008) 1 SCC 1 (India) (decided 12 December 2007).

4. Thaler v. Perlmutter, No. 23-5233, slip op. (D.C. Cir. Mar. 18, 2025).

5. U.S. Copyright Office, Copyright and Artificial Intelligence, Part 2: Copyrightability (Jan. 29, 2025).

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9. Copyright Act, 1957, § 2(d)(vi) (India).

10. Copyright Act, 1957, §§ 13–14 (India).

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12. U.S. Copyright Office, Copyright Registration Guidance: Works Containing Material Generated by Artificial Intelligence, 88 Fed. Reg. 16,190 (Mar. 16, 2023).

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