

Intellectual Property Rights and Cyber Law

Introduction:

Rights:

Legal, Social and Ethical principles of freedom

OR

Moral or legal entitlement to have or do something

Types of Rights

Natural Rights:

Natural rights are rights that believe it is important for all humans and animals to have out of natural law. These rights are often viewed as inalienable, meaning they can almost never be taken away. The concept of what are natural rights has varied throughout history.

The idea first came up in ancient times but was discussed most famously by English philosopher John Locke in the sixteen hundreds. Locke said that the most important natural rights are "Life, Liberty, and Property". In the United States Declaration of Independence, the natural rights mentioned are "Life, Liberty, and the Pursuit of Happiness". The idea was also found in the Declaration of the Rights of Man. It is viewed by Locke, [Jefferson](#), and others that the purpose of government is to protect peoples' natural rights through a social contract (an implicit agreement among the members of a society to cooperate for social benefits). There have been many times in history that natural rights have been breached by both governments and singular people.

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Natural law is the idea that there are forms of law that exist by themselves. Unlike other forms of law (called *positive laws*) that have been agreed on by society, such laws would be given to all, and would not be possible to do without. Such rights are called natural. In modern times, human rights are often seen as coming from natural law, but the idea goes back to Ancient Greece.

Natural law is often founded on the following:

- God, who created natural law with creating the world
- Logos, an idea from philosophy; this is interpreted to be divine law
- Part of natural law inside human beings (called Self-knowledge, sometimes conscience)
- Certain laws that can be deduced from the natural sciences

- Nature itself
- Reason

Important philosophers who developed natural law include Aristotle, Plato, Seneca the Younger, Thomas Aquinas, and Immanuel Kant. People who criticized this approach include Jeremy Bentham and Hans Kelsen.

Law is a set of rules decided by a particular state meant for the purpose of keeping the peace and security of society

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Fundamental Rights:

The constitution guarantees certain basic rights to the citizens of a state known as the Fundamental Rights, which are justifiable.

In India, the Fundamental Rights has been classified under the six categories-

- Right to Equality
- Right to Freedom
- Right against Exploitation
- Right to Freedom of Religion
- Cultural and Educational rights
- Right to constitutional remedies

Legal Rights:

The standard of permitted action within a certain sphere is called rights. In other words, a right is any action of a person which law permits. Legal rights is different from a moral or natural right in the sense that it is recognized & protected by law, whereas the latter may/may not be recognized & protected by law.

UNIT - 1

Definition of Property:

“In general, Ownership is permanent and inheritable”.

The concept of Property:

- Property is subject to diverse interpretation
- From the legal concept of ownership and possession – **Bundle of rights**
- The value of property depends on the **knowledge of use** associated with it
- A matter becomes a “resource” only when there is an idea/technology to use the matter in such a way that it can satisfy a human need.
- Resource – Material resource and Intellectual or technological resource
- Material resource and Intellectual or technological resource come together with respect to a substance, it becomes property

Rights over Property:

- Possession/Acquire
- Ownership
- Application
- Enjoyment
- Control
- Alienation/Sale
- Usage
- Right to exclude Non-owners
- Power of transfer

These rights may relate to tangible or intangible things

- Rights over tangible things like land and chattels – Corporeal Property
- Rights over intangible things like ideas, works of art and literature, etc – Incorporeal Property
- Eg., of Incorporeal Property – Patents, Copyrights and Trade Marks etc.

In general, Property refers to the interest over property, which is protected by law.

- The property law always has tried to incorporate some element of distributive justice
- Distributive justice is concerned with the fair allocation of resources among diverse members of a community. Fair allocation typically takes into account the total amount of goods to be distributed, the distributing procedure, and the pattern of distribution that results.

- Conflict between the fundamental right to property (Indian Constitution – Art. 31)

What is Intellectual Property?

“Property created by the intellect of human mind”

e.g., patent, copyright, trademark, designs and trade secrets

- Novelty/originality
- Duration specific
- Does not provide absolute monopoly
- The bundle of rights constituting IP is not over abstract ideas
 - **Eg, Rights under Patent law** – Right to manufacture, distribute, etc & **Rights under copyright law** – Right of publication, distribution, etc all are deals with concrete embodiments of ideas and not the abstract ideas in themselves.

Importance of IPR with respect to present scenario/modern world:

Intellectual property (IP) contributes enormously to our national and state economies. Dozens of industries across our economy rely on the adequate enforcement of their patents, trademarks, and copyrights, while consumers use IP to ensure they are purchasing safe, guaranteed products. We believe IP rights are worth protecting, both domestically and abroad. This is why:

- Intellectual Property Creates and Supports High-Paying Jobs
- Intellectual Property Drives Economic Growth and Competitiveness
- Strong and Enforced Intellectual Property Rights Protect Consumers and Families
- Intellectual Property Helps Generate Breakthrough Solutions to Global Challenges
- Intellectual Property Rights Encourage Innovation and Reward Entrepreneurs

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Labour Justification of Property:

- One of the most popular justifications put forward for the protection of property is to justify a reward for the labour put in to create/generate it
- Proponents of this theory was **John Locke**
- starts with the presumption that ‘Every man has a property in his own person’
- This leads to claim that an individual’s labour also belongs to that individual

- The origin of property is stated by him as “Whatsoever then he removes out of the state that nature hath provided, and left it in, he has mixed his labour with, and joined to it something that is his own, and thereby makes his property”.
- According to this theory, labour adds value to goods. Goods are converted from the “commons” by exerting labour.
- In the case of intellectual property, it can be said that ideas are taken from a common pool through mental and/or physical exertion.
- One view of this theory is that labour is an unpleasant activity for which people should be rewarded or should be motivated to perform by securing benefits in return.

The Personality Justification of Property:

- Property provides a mechanism for personal expression, dignity and recognition of the individual person
- Proponents of this theory was **Hegel**
- According to Hegel, “property is the embodiment of personality”.
- With respect to intellectual property, ideas are a manifestation of the creator’s personality or self and hence need to be protected
- The personality justification is especially applicable to the arts and artistic creations
- However there are also a number of forms of intellectual property, which reflect little or no personality of their creators such as patents, engineering designs and secrets

Need for Holistic approach:

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Constitutional Aspects of Intellectual Property:

- Intellectual property legislation takes place in India after TRIPs (Trade Related Intellectual Property Rights) agreement to protect IPs.
- USA Constitution specifically protects the Intellectual Property
 - Art. 1(8) of the US constitution which provides “**To promote and progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries**”
- There is no class in Indian Constitution related to IPs, but Parliament has the power to make legislation on IPs
- At the time of enactment of Indian constitution, Individual had property rights under Art. 19(1)(f) and Art. 31(1)

- Art. 19(1)(f) – A citizen had the freedom to acquire, hold and dispose of property, which were subject to the reasonable restrictions laid down in Art. 19(5)
- Art. 31(1) – protected the citizens from the deprivation of property without authority of law
- Art. 31(2) – Property could be possessed or acquired for public purpose only by law, and only on payment of compensation. The law had fix the amount of compensation or had to lay down the guidelines to assess the compensation to be paid. Such law made by the state had to obtain the assent of the President to get validity

Basic Principles of Patent Law:

- Patent system conferred monopoly rights on the inventor for a limited period of time
- These acts as incentives or reward to encourage the stimulation of ideas thereby leading to further advances
- The conferment of right in the form of patent is justified from the perspective of both the inventor and the general public
 - Inventor – Incentive to invest
 - Public – useful products

Evolution of the Patent system:

- Had its roots in Venetian system, British system, American system
- Development of Venetian system influenced the development of the British and the French system
- In the early 14th century, certain special privileges were requested by a section of **water millers** who had a unique set for the purpose of using it before mining
- The grant of special privileges to **water millers** can be taken as marking the birth of patent system
- Later in 1323, a German engineer was granted the first known privilege for the construction of a model Grain mill, which would cater the storage needs of entire Venice.
- Venetian Senate Act of 1474 is the first patent statute
- Statute of Mineraria in 1488

United Kingdom:

- Patent system evolved in the form of letters patent
- It was the royal prerogative to issue these sealed letters containing certain privileges to the inventors
- Most of the letters were trading monopoly rather than for new inventions
- To enrich their technology by providing certain privileges to foreign inventors
- They provide monopoly for new technology brought into England with a condition that they should settle in England and teach the local people
- Privileges also given to the importers of technology
- To promote development and growth of Industry in England
- This form of state patronage was effectively adopted by **Queen Elizabeth**, but came to misused during regime of **James I**.
- In 1602, in the famous **case of monopolies**, a monopoly was granted to a merchant exclusively to import, manufacture and sell playing card. The King's bench struck down the monopoly right and held that monopoly was illegal at common law
- Industrial growth being the fundamental reason for granting monopoly rights, the English system did not insist on the disclosure of the invention to the public
- The protection of intellectual labour of the inventor was not their concern
- **Henry IV** introduced a statute in 1399, which provided to produce a description of the invention for the grant of the patent. But the patentee never disclosed the details of his invention.
- In 1611 the disclosure of the invention was strictly insisted upon
- In 1624 with respect to the case of Monopolies, the English Parliament passed the statute of Monopolies to cope up with situation. The statute, which prohibited monopolies for the sole buying, selling, making, working or using or anything with in England, was enacted in response to the Crown's generous grant of monopolies to court favourites. Monopolies per se were excluded unless they came within the exception of Section 6. Section 6 of this statute can be regarded as laying the foundation of modern patent law
- According to Section 6, the granting power of monopoly to inventions by the Crown was restricted to a period of 14 years. It laid down the condition that monopoly can be granted only for "any manners of new manufacture" to the "the true and first

inventor” (The concept of ‘truth of inventor’ was interpreted as ‘the true and 1st founder or institutor of the manufacture).

- This statute hallmarked the concept of novelty for the first time and also found a balance between the interests of the inventor and the state

United States:

- The foundation of American Patent law is embodied in Art. 1, Section 8, Clause 8 of US Constitution
- This provision empowers the congress to promote the progress of science and technology by securing exclusive right for limited times to the authors and inventors with respect to their respective writings and discoveries.

India:

- In 1856 the first Indian patent statute was passed to the recommendations of the Committee appointed to revise and update the laws to serve the society’s changing needs
- This provide privileges to the inventors of new inventions for a period of 14 years
- This act was modified in 1859 – provides privileges to make, use and sell the inventions for a period of 14 years
- This act was repealed by the Inventions & Designs act in 1888 again repealed by the Indian Patents and Design acts in 1911
- A patent enquiry committee was appointed by the Govt of India under Dr Tek Chand in 1948 to review the working of patent laws in India
- This committee submitted its final report in 1953
- Based on the report of the committee a Patent bill based on the UK Patents act 1949 was introduced in LokSabha in 1953, but the lapsed due to the dissolution of LokSabha
- In 1957, the Govt of India appointed a Committee under Justice Rajagopala Ayyangar to suggest necessary changes and revise the patent law in India taking into consideration the social needs of the people of India.
- This committee submitted its report on September 1959
- Based on the committee report, a Patents bill was introduced in LokSabha in 1965 with additional changes
- The bill was studied by joint committee and presented in LokSabha in 1966, lapsed due to dissolution of Loksabha

- The bill was introduced and passed in 1970 and came into force in 1972
- India as a member of TRIPS, Indian Patents Acts 1972 was amended in 1999, 2002 & 2005

Basis for protection (IP):

- From the historical background, we came to know that patent is originated purely for promoting industrial innovations.
- Patents are given only when idea is come up with the tangible property
- For a period of 20 years
- It is not an automatic right, only statutory conferred, available through the proper procedure
- It is form of Industrial property conferring monopoly for production/process for specific period that is reward given by the state to inventor with useful to public
- It provides an incentives to the inventor to invest in Research and Developments
- After getting patent right, inventor has to disclose his invention and it is available to public after the term.
- Patents provides the ground for technological innovations-enhancing the Industry-Economic growth of the Society

Invention:

- Find out / discover something not found by anyone before
- The patent act 1977 of UK does not define invention, Section 1 of 1977 act a patent may be granted only for an invention, which is new and capable of industrial applications
- US code under section 100(a) gives the definition for invention as Discovery. Section 101 states new and useful improvement
- Under sections of 2(1)(j) of patent act of 1972(amended in 2002) new product or process useful for industrial application
- Patent act of 2005 defines new invention means any invention/technology had not used in the world before the date of filing complete patent application

Criteria of Patentability

1. Novelty
2. Utility
3. Inventive step/nonobviousness

Novelty:

- 'Bed rock or heart of the patent system'
- New at the time of invention by inventor
- No system grants valid patents for innovations that are already known. For an invention of something in the public domain, which will be detrimental to the interests of the Society.
- Both prior use and prior publication are obstacles for granting patents
- Prior use – knowledge or use in public
- Prior publication – publication in earlier patent specifications or any other material that is available to public use
- **Novelty under UK law:**
 - Section 1(1) and section 2 of the patent act, 1977.
- **Novelty under US law**
 - Section 102 of US code
- **Novelty under Indian law**
 - Patents Act, 2002

Utility:

- Usefulness
- Industrial applications – positive benefit to Society
- **Utility under UK law:**
 - Section 1(1) C of the patent act, 1977.
- **Utility under US law**
 - Section 101 of US code
- **Utility under Indian law**
 - Patent law does not contain any information. Section 2(1)(j)

Inventive Step/Non-obviousness:

- Adequate technical advancement i.e., advancement of science
- **Non-obviousness under UK law:**
 - Section 1(1) b of the patent act, 1977.
- **Non-obviousness under US law**
 - Section 103 of US code
- **Non-obviousness under Indian law**