



PHILOSOPHICAL FOUNDATION OF INTELLECTUAL PROPERTY

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“Man, by nature is a Social Animal”
-Aristotle

Abstract

Society plays a pivotal role in the life of an individual. Living with dignity and respect has been recognized as one of the fundamental rights in many countries. Basic elements of living are very well recognized which are food, cloths and shelter. But, in today's world there has been a significant rise in the living standards, and which has brought forward a bit underrated factor of past which directly or indirectly affect our life i.e. Property. A thing which must be taken into account while understanding the concept of property is that, Property in some or the other manner connected to the pecuniary value, in simple words property is something which can be created by monetary means and also be reduced to it. Recent development in the mindset of human being all around the world has attracted the attention towards the use and value of owning a property. We can even notice this trend of emphasizing on the acquiring a property in our elders. It is general idea that owing a house in today's rapidly evolving world is a momentous achievement of one's life. However, evolution has resulted in the extreme change in the view of people towards the life. Money is one thing which has been important for every person even in past but today money has become the ultimate driving force behind almost every action of men. It is very clear that property directly relates to

money. So, money is also a factor in the spike of importance the property holds in life of a modern man. For a long time, property has been kept under the purview of something which can be touched and felt i.e. which is tangible but soon people realized that property is something which a person owns, and such things can be intangible as well. This gave rise to emergence of Intellectual Property and simply put together rights of an owner over this property are called Intellectual Property rights. For the protection of these rights Intellectual Property laws were evolved. Intellectual property is something which is the creation of one's own mind and has a cogent potential of generating pecuniary benefits. Some major Ip laws are Copyright law, Trademark law and Patent Law. These laws protect the innovative and distinct ideas, invention and business tactics of an individual. In this article, we analyze the philosophy behind the foundation of Intellectual Property Laws.

History of Intellectual Property Rights

Intellectual Property Laws have a very rich and prosperous history. It can be traced back to Greek and Roman empire. We all are familiar with astounding architecture and eye widening sculptures made by the Greeks and the Romans. Hard work and creativity of the artists can very well be observed in these monuments. However, Romans had no laws protecting such rights, but they recognized the principle of ownership of the property e.g. ownership of a sculpture, ownership of the base by which sculpture is supported. These are some or the other way linked to the intellectual property rights.

Foundation of almost entire system of intellectual property laws is based on the



English system which started upon enactment of Statute of Monopolies (1624) and Statute of Anne (1710). These statutes granted the authors monopolistic rights over their own creations. These statutes also laid the foundation of American Institution of Intellectual Property Protection.

Paris Convention (1883)¹ and Berne Convention (1886)² were the boon for authors as these conventions including famous Madrid agreement curtailed the protection to almost every form of literary work e.g. songs, drawings, etc. Today, almost half a million patents are filled annually in the United States of America making it the nation with most wide scope of Intellectual Property Laws for the Creators as well as Attorneys.

In modern world, Intellectual Property Rights has created a distinct platform for itself. In recent times we have witnessed a rapid evolution in science and technology. All this evolution is for making day to day life of a person easy and healthy. Medical sector has witnessed a remarkable improvement which has led to increase in the average life expectancy of a person. So, to control these developments and majorly to protect the interest of inventors World Intellectual Property Organization (WIPO) was established in the year 1967³.

Philosophies behind Intellectual Property

- **Locke's Theory of Property**

John Locke began describing the property by stating in his book⁴ that Man is a creation of the God and he is free to do whatever he wants without need of seeking permission from anyone. According to him Man is free and equal. In his book Locke pointed out that Men is bound to obey the laws of nature. As stated in chapter – V of his book Locke introduced the general principle that since everyone is equal and independent no one should harm other's liberty and his possession to maintain harmony in the society. Therefore, it can be said that, Locke in Chapter- V of his book⁵ two treaties of government mainly focused on teaching that, no one should harm a person in possession of something. This laid the basis of drawing inference about intellectual property for the followers of Locke.

At the time when Locke gave his theory on property, he briefly stated that, a person acquire property by his own labor and gave labor a very wide scope. When Locke gave his interpretation about the property, he initially didn't consider the concept of intellectual property all his connection was with physical property and not the abstract form of it. As per the idea of Locke this earth has been given to us by the God and every advantage (fruits) derived from this earth belongs to every man equally. He considered that every man is political equal. But the main issue that persisted with Locke stand on property was that he couldn't explain how naturally available things become an object of private ownership of an individual thereby

¹ World Intellectual Property Organisation, *Summary of Paris Convention*, 08-07-20

² World Intellectual Property Organisation, *Summary of Berne Convention*, 08-07-20

³World Intellectual Property Organisation, *What is WIPO?*, 08-07-20

⁴ JOHN LOCKE, *TWO TREATIES OF GOVERNMENT*, p.12

⁵ JOHN LOCKE, *TWO TREATIES OF GOVERNMENT*, p.32



excluding every other man from using it. Locke addressed this issue by characterizing property into something which is owned by a person and no other person can have claim over it. He further defined property of boarder aspect bringing the fruits of earth and earth itself under the purview of his definition of property. Locke's attempt to bring the property under the natural laws was quite appreciated in nineteenth century.

However, Locke's theory of property is not a flawless piece of Legal History. One reason being that it was quite difficult to interpret his theory of property. Although these criticisms were put to end as Locke was a Liberal Philosopher.

- **Hegel's view on Property⁶**

Hegel started his discussion on property in his personality theory by stating that property is merely a physical acquisition of a person. According to him property is something much more than just a metaphysical right. Property grants an individual right to claim something against other people. Property is "embodiment of personality" says Hegel. Establishment of these rights occurs upon forming of a contract which ensures the mutual respect for the rights of one another. This somewhat hints towards abstract concept linked to property. Concept of Individual rights which every common person gives his assent is an abstract concept. Hegel states that Mutual recognition of rights is the foundation of morality and morality is the subjective aspect of these reciprocal promises stated in the contract and market. So, it can be inferred Private property is the

basis of abstract rights and morality is the positive driving force for freedom and interest of an individual.

Through his theory Hegel further made it clear that Intellectual Property and Rights against such property must be recognized by the State. Moreover, it shall be duty of state to protect these rights from the people who don't consider intellectual property as a real property. As per Hegel intellectual property protection must be given on a much-extended grounds than general property i.e. protection to the moral rights of a creator. However, it is pertinent to note that, abstract right only creates the personality but the linkage of personality to content of abstract property is done by more complex interrelationships between people at higher levels of morality and life.

It is very unfortunate that most of the time theory of Hegel on personality is wrongly interpreted by authors. However, it's not just about wrong interpretations but theory of Hegel has been proved to be incorrect by various jurists. Profoundly, Hegel stated that State must recognize the intellectual property rights but did not provide any procedure for forming of these rights or the recognition of it by the State. Connection of property to natural rights can't be found anywhere in Hegel's theory. He nowhere stated that intellectual property or property in general helps a person to flourish in his life. Hegel did not say anything on the society and Intellectual Property Rights and whether society should accept these rights as positive law or not. These are some significant

⁶ PETER DRAHOS, PHILOSOPHY OF INTELLECTUAL PROPERTY RIGHTS 89, (Peter Drahos eds., 2016)



criticism Hegel's Theory of personality received over the time.

- **Utilitarian Theory of Intellectual Property**⁷

Philosopher of Utilitarian theory came closest to giving the world what we can call as the Modern Intellectual Property. But why only utilitarian philosophers were able to describe the concept of Intellectual property in a proper manner. Although, their theory too was not flawless, but it incorporated most of the principles of intellectual property being followed today.

For utilitarian philosophers a thing or a right was justified till the extent it promoted some good value or happiness among people. Therefore, intellectual property was justified for them as it helped in flourishing of inventor or creator.

Another, important aspect provided by the Utilitarian Philosophers was that, Intellectual Property must not function on a rigid platform but must be flexible enough to incorporate the changes that Industries and world as a whole witnessed with the gradual evolution.

Utilitarian theory of Intellectual Property received criticism as it was not able to provide for the incorporation to the full extent of the property practices existed in that time. This theory also failed to account for practices like trade secrets and authorial attribution practices. The utilitarian justification cannot serve as a firm

foundation for intellectual property rights because of the uncertainty inherent in this epistemological project.

- **Pluralism Theory of Intellectual Property**⁸

Upon failure of the classical arguments and theories modern philosophers came up with a pluralistic approach towards the Intellectual Property. This theory identified that, in modern world people will hail from various backgrounds and will have different values at stake if the intellectual rights were not executed properly. So, it was suggested by Resnik that this pluralistic theory would help to resolve the complexities occurring because of different backgrounds by maintaining the balance between utility, autonomy and justice- in the light of the circumstances of the facts of the case. This theory was well appreciated by the modern jurist and laid a full-fledged philosophical foundation of Intellectual Property.

Modern Intellectual Property Rights

In modern world, Intellectual Property is well recognized by states and are protected by a cluster of rights. This cluster consist of rights operational against people with adverse interest within a nation as well as against people internationally. Some Prominent Intellectual Property Laws in modern world are:

⁷ Michael A. Kanning, *A Philosophical Analysis of Intellectual Property: In Defense of Instrumentalism*, Scholars Commons University of Florida, 08-12-20, at Page-16,"

⁸ Michael A. Kanning, *A Philosophical Analysis of Intellectual Property: In Defense of Instrumentalism*, Scholars Commons University of Florida, 08-12-20, at Page-17-18,



- **Copyright Laws⁹**

Copyright protects original expression which is fixed in a Tangible medium which is creation of Authorship. Donaldson v. Beckett (1774)¹⁰ is the origin of copyright laws. It must be kept in mind that copyright provides protection to the expression of Idea and not the Idea itself. Therefore, ideas are excluded from copyright protection. Other things excluded from copyright protection are- Inventions and Brands, these are areas Patent Laws and Trademark Laws respectively.

Unlike other intellectual property protections, one is not required to file an application for obtaining copyright protection, but it is automatically assigned to the person when their work becomes eligible for getting protection under copyright law. Requirements for copyright¹¹ are that, it must be an original work, must be an expression of idea, shall be on a fixed tangible medium and lastly should be work of authorship.

Also, to infringe a copyright does not mean merely copying the work but the work must be copied in a specific manner as to reflect the considerable amount of creation of original author.

- **Trademark Laws¹²**

Trademark is something which distinguishes a company from other player in the market. However, it is not necessary to register a trademark but registering it has many benefits for business. Trademark helps the customers to link a specific product to a particular company or brand this helps company in acquiring a loyal customer base

for the services and products. Now one may get confused and interpret that trademark, service mark and Certifications are one of the same things. But these are entirely different. For instance, a service mark is assigned to a service provider while the certification mark only indicate that certain product has acquired a specific certification. For example- Microsoft is a Trademark, services provided by Microsoft at their service centers are subject matter of Service mark and Products of Microsoft such as laptops are eco-friendly, and recyclable is a kind of Certification mark granted.

Trademarks are generally of two types. In USA they are called as State Mark and Federal Marks. It is very simple to distinguish between these two marks. A state mark is operation within the territorial limits of the state granting it while a Federal mark is operational in entire country. Federal Mark is considered to be "Holy Grail" for the Brands.

However, Trademarks which are deceptive in nature cannot be registered as the state wants to ensure that people are buying that very product which they think or believe they are buying or else it will become a fraud. Similarly, something which is generic in nature such as a name or noun which is common for the operation of business as it would be an injustice to other players in the market e.g. registering trademark over the word "restaurant".

It must be noted that Trademarks never expire which make it extremely difficult for

⁹ World Intellectual Property Organisation, *What is Copyright law*, 08-08-20

¹⁰ Donaldson v. Becket (1774) Hansard, 1st ser., 17 (1774): 953-1003,"

¹¹ Vijay Pal Dalmia, *Copyright Law in India- Everything You Must Know*, 08-08-20,"

¹² United States Patent and Trademark Office, *Basics of Trademark Law*, 08-09-20



registering one. In order to get your trademark registered one must ensure that their trademark is unique and try to invest in a market with few trademarks. In a case where trademark is deceptive it is essential for the trademark to have acquired a secondary meaning contrary to that of deception.

- **Patent Laws**¹³

Patent is an exclusive right granted to the inventor in the exchange of disclosure of invention by the Sovereign. These are incorporeal rights. For obtaining a patent one has to file a formal application with the appropriate department. Patents are generally granted for a period of 20 years. There are three kinds of Patent:

- Utility Patent: It protects inventions regarding new process which is quite useful.
- Design Patent: It protect an original and new design for the product.
- Plant Patent: It protects anyone who discover or produces a new plant for reproduction.

Filing for patent and maintaining it can be a very expensive procedure. Which results in most of the patents being abandoned before the expiry because of non- payment of maintenance fees of about 1000\$ or less in endorsement period. Procedure of application can be a complex task and thus it is highly recommended to hire a patent attorney to do the needful. An inventor is supposed to explain his invention in such details that it can be used by others for artistic work. Before filing a patent one must check with the local department if any other similar patent has been filed or not.

Requirements to be met in order to obtain a patent are¹⁴:

- Fully Described: Patent application must describe the patent claim broadly
- Novelty- Invention must be new and should not be disclosed to public in past one year.
- Usefulness- Invention must have practical, operational and Beneficial Utility.
- Non-Obviousness- Invention must not be obvious to a person with relevant skill over the subject matter of invention.

Basic Idea Behind granting rights under patent law is to encourage the inventors to contribute their work for the betterment of the humankind. Patent is not only profitable for a company but also helps in enhancing the goodwill and the influence of company over the market by showing off its capabilities to innovate.

Conclusion

Possession of property has been regarded as the birth right of a person. There is not doubt that property is something which can accrue income in terms of money or produce. Also, Property is not just a physical object but can also be creation of one's own mind. Though, the theories of jurist in past were not very accurately applicable yet they played an eminent role in introducing the concept of Intellectual Property in the form of Abstract rights and Abstract Property.

It won't be wrong to say that property be it tangible or intellectual property both get their driving force from state. So, it is evident that if rights are not recognized by state then it will not be operable. It can be inferred that

¹³ World Intellectual Property Organisation, *What is Patent*, 08-08-20

¹⁴ World Intellectual Property Organisation, *Legal Requirements for Patentability*, 08-08-20



Property is creation of the labor of a person which is recognized by the state.

Property is a very important in life of every person as it is the significance of their achievements. Intellectual property though not being tangible still have the same significance as a physical property. Like any other property intellectual property also provides recognition to its owner or creator. Foundation of intellectual property and claims against such property with no doubt lies in the philosophy of establishment of rule of law i.e. law is supreme power. As it is the fear or the deterrent force of law which ensures that laws protecting the rights are duly followed in the country. Contribution of John Locke and Hegel in the formation of idea about abstract property is evident but were not enough to incorporate it in laws existed back then as neither Locke nor Hegel discussed the practical application of Intellectual Property Rights against people.

In modern times, Intellectual Property Laws has become broader than it was ever in the past. There have been various steps towards establishment of a uniform system of Intellectual Property in modern world like- Paris convention (1883), Patent Cooperation Treaty (1970), etc.

Therefore, it can be widely said that Intellectual Property has achieved the status it deprived in past. Now every state understands the importance of intellectual property and role it plays in the flourishing of human. Hence, today government has taken major steps to ensure the protection of the profits and recognition of the inventors and creator, now it's time to overcome the geographical and economical differences among us. We need to create and invent for

the good of all and should not have profits in our mind as money can lead to distracted focus of the inventor. Lastly, in modern world laws have assured that inventors and creators must bring forward their innovations and it will be law which will protect their genuine work from being misused for profits by anyone else.

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