



Intellectual Property

KEYWORDS

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ABSTRACT *The term property is subject to diverse interpretations. Property, in the legal sense, is essentially a bundle of rights flowing from the concepts of ownership and possession. While most of them have material existence, the value of property depends on the knowledge of use associated with it. Legal regimes of Intellectual Property are based on various philosophical foundations and theories. Most of these theories are rooted in the realm of tangible property. Intellectual Property is in some ways fundamentally different from other forms of property. In this article enquire has been made to underline the basic features of property, the unique aspects of Intellectual Property, the Constitutional Aspects of Intellectual Property and philosophical foundations behind the protection of Intellectual Property.*

General

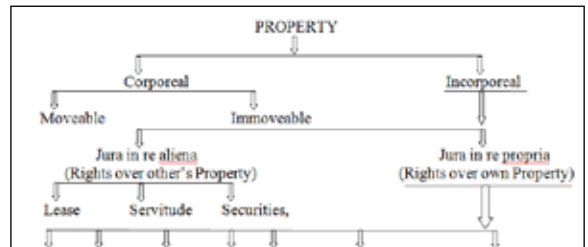
Property means which have some economic value, so the concept of property and ownerships are very closely related to each other, property and ownership are mutually interdependent and correlative. There can be no property without ownership and ownership without property. In modern times under the jurisprudential approach property includes:-

- All legal rights.
- Proprietary rights.
- Proprietary right-in-rem.

In its widest sense it includes all legal rights which a person has Such person's life, liberty, reputation and all other claims, which he might have been against other persons in his property. The term property is used also to denote the proprietary rights of a man as opposed to his personal rights. In this sense it means a person's land, house, and his shares in business, etc. It is used in a third sense also, that is, to mean proprietary rights in rem. (Rights against whole world). This does not include all proprietary rights, but only those which are both proprietary and rem. The law of property is the law of proprietary rights in rem the law of proprietary rights in personal being distinguished from it as the law of obligations. Example: A freehold in land, a patent, a copy right, etc, is treated as property. But a debt or the benefit of a contract is not treated as property. Another example, like "diamond's as property can be seen at different levels. At one level it has stone value. But in an age where the techniques of diamond cutting and shaping have been developed and it is also treasured as a very precious jewel stone, its value increases manifold. Diamond also has its use in the tool cutting industry because of its sharpness, increasing its industrial utility and value. Thus the element of "knowledge of use" complicates the conception of property, since it is a vague, ever changing concept with changing value.

Classification of Property

According to SALMOND simplified the classification of property in the following table:



Copyright Patent Trademarks GI/TK Design Integrated Circuit Confidential Information

Rights in ordinary sense mean "the standard of permitted action within a certain sphere". As a legal term it means "the standards of permitted action by law. Ihering defines rights as "legally protected interests. So, Intellectual property is a legal right. This type property is a product of the intellectual labour.

According to Salmond, the right to property is a right to the aggregate of use of things. As per this definition, ownership is in general, permanent and inheritable. These rights may relate to tangible or intangible things. Rights over tangible things like land and chattels are called corporeal property. Rights over intangible things like ideas, works of art and literature, etc, are called incorporeal property. Examples of such incorporeal rights are patents, copyrights, trademarks, and etc. "Property" in common parlance refers to the material object, in a strictly legal sense and it refers to the interests over property, which is protected by law. All property rights are limited by the rights of others. In practice, each property right is delineated and defined in order to balance it with other property rights. For example, a patent holder's ownership rights is balance with the right of access to the public at large, by compulsory licenses, limited term, exhaustion of rights, parallel import etc.

Property law as it operates always has tried to incorporate some element of distributive justice into it. There appears to be conflict between the state and the individual fundamental rights to property, which existed under the Indian Constitution (until Article 31 was repealed,). It was basically a conflict between two different conceptions or theorization about property law. One conception would regard the role of the state and that of property law as protection of existing prop-

erty relations. The other conception would give property law a major role in shaping property rules to ensure widespread access the system.

The essential point is that most disputes involving property relate to the conflict between two property rights or between one property right and some other right. The role of the state and of law becomes important in such a scenario and would involve balancing various policy considerations.

What is Intellectual Property?

Intellectual Property is the property created by the intellect of human mind. Unlike other forms of property, Intellectual Property is a non-physical property which stems from, or is identified as, and whose value is based upon some idea(s). Intellectual Property encompasses the protection offered by the legal regimes of various types like Patent, Copyright, Trademark, Designs, and Trade Secrets. It would also include allied and similar legal regimes like protection of plant varieties and protection of databases.

Intellectual Property insists on some amount of novelty/originality to gain protection. The degree of newness, be it novelty or originality differs from one system to another. The Intellectual Property system is duration specific. It does not provide any perpetual and absolute monopoly over the property. But there are exceptions for the limited duration in certain branches of Intellectual Property Rights.

What is protected with respect to Intellectual Property is the use or value of ideas/expressed. However, it is to be noted that the bundle of rights constituting Intellectual Property is not over abstract ideas, but rather over physical, concert or tangible manifestations of these ideas. For example, right under Patent law includes the right to manufacture, distribute, etc. While rights under Copyright law extend to the right of publication, distribution, etc., all of which deal with concrete embodiments of ideas and not the abstract ideas in themselves.

Intellectual Property differs from other forms of property because of uncertainties regarding its value and how it can be used. Intellectual Property, cannot be kept in a safe deposit vault or be deposited in a bank or locked up in a house. The said property, whether in the form of a Copyright, Trade mark or a Trade Name, or in any other form, is easily and readily available to the general public and is, therefore, more easy to steal. Having the right of Intellectual Property registered is no guarantee of its safety from being stolen.

Constitutional Aspects of Intellectual Property

The Constitution places an important role in helping the courts and legislature arrive at the justified a balance between conflicting rights. The Constitution of India under entry 49 of the Union list of matters falling within the Union Government for purpose of legislation mentions about Patents, Inventions and Designs, Copyright, Trade Marks and Merchandise. It makes no specific mention of Intellectual Property. Property, in the Constitution generally means tangible property. However, Intellectual Property as a form of property can be put under Article 300A dealing with property and be entitled to a legal right.

Unlike the Indian Constitution, the United States Constitution specifically protects the Intellectual Property (Article 1(8) of the U.S. Constitutions which provides "To promote the progress of science and useful arts, by securing for limited times

to authors and inventers the exclusive right to their respective writings and discoveries")

However, there is no such Intellectual Property clause in the Indian Constitution. While this means that Intellectual Property does not have special Constitutional status, it also means that there are no Constitutional restrictions on the power to make laws on Intellectual Property.

Article 31A protected the legislations providing for acquisition of estate or any right therein or their modification on the ground that it took away or abridged any of the rights conferred by Part III of the Constitution. Article 31B restricted the scope for challenge on the plea of violation of fundamental rights.

Intellectual Property, in its literal sense, means the things which emanate from the exercise of the human brain. It is the product emerging out of the Intellectual labour of a human being. It involves the visible expression of a mental conception, the work of both brain and hand. The two chief items are the writings of authors, and inventions made by the inventors. In its broadest sense, the term "Intellectual Property" includes, on one level, ideas, concepts know-how, and other creative abstractions, and on a second level, the literary, artistic, or mechanical expressions that embody such abstractions.

The basic difference between this form of property and other forms is that, in Intellectual Property the focus is on the produce of the mind, and not on the product itself. For example, in literary property (copy right) it is not the book which is termed property, but the intellectual creation, which comprises ideas, conceptions, sentiments, thought etc, fixed in a particular form that is considered property for protection.

Traditionally only a few items were included in the category of Intellectual Property. At present, generally copyright, designs, patents, and trade mark are classified as Intellectual Property. But by the development of arts, science and technology, many new items have been included in this category. The signed Uruguay Round of Multilateral Trade Negotiations (GATT) has included "Trade Related Aspects of Intellectual Property Rights" (TRIPS) in the final Act. Many new items have been including in the Trade Related Aspects of Intellectual Property Rights agreement. It is clearly stated in the preamble of the agreement that Intellectual Property must be recognized as private rights. The inclusion of Trade Related Aspects of Intellectual Property Rights in the GATT Final Act with new items calls for a re-evaluation of the basic philosophy under which the concept of Intellectual Property originated and developed.

Conclusion:

The concept of Intellectual Property follows the concept of physical property, which is inalienably linked to the concept of ownership of an article and means the right to possess, use, and dispose of the article (property). Intellectual Property is the creation of human intellect and is intangible (incorporeal) whereas the physical property is tangible (corporeal) Property means a bundle of rights in relation to the object owned. They concern ownership and possession; use and enjoyment of the fruits of application of the property; and the exclusion of others from such use and enjoyment, and the transfer of rights in the property.

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