

# Unwinding juristic concept of Intellectual Property Rights via Indian Jurisprudence

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## 1. Introduction

In popular sense, property is understood as any physical or virtual entity that is owned by any individual or jointly by a group of individuals. The legal relation that develops between the property and the owner is called ownership right. It is highly impossible to think about human life without juristic right of property. It has socio-political, economic, legal and sometimes religious implications. The basic postulate of the idea is the exclusive control of an individual over some 'thing'. In this paper, the researcher will establish the concept of property in western jurisprudence and Indian jurisprudence and analyse them. The researcher will also demonstrate the jurisprudential foundation of intellectual property rights in both western and Indian jurisprudence. Various kinds of Intellectual Property Rights and law relating to them will also be discussed. Section 2(c) of the Benami Transactions (Prohibition) Act, 1988 defines property as: "Property" means property of any kind, whether movable or immovable, tangible or intangible, and includes any right or interest in such property. *There are some Traditional principles related to property rights which includes include:* control over the use of the property; right to take any benefit from the property; right to transfer or sell the property; right to exclude others from the property.

## 2. Tracing proprietary rights

### 2.1 Understanding right to property in western jurisprudence

The concept of *Property* triggering human intellect may be traced back to the Darwinian evolution. Ranging from the Jurists, Sociologists, Philosophers, Legislators to the bare laymen, numerous theories and dictums have come up encompassing the notion of property. Supporters of Natural Law Theory like Grotius, Blackstone and Locke hold that the very perception of property is derived from human reason or natural reason. Grotius says that no specific person was the original owner of any property and everything was acquired by any mode due to natural instinct of people. According to him all property was originally free from ownership and hence in legal sense they became 'property' only after having been acquired. John Locke professes man's right to preserve his property i.e., life, liberty and estate. Proponents of labour theory also called positive theory hold that for a person to claim rights over a thing (*res*), it is essential that he must have produced it or bring it into existence. Kant and Hegel are the chief proponents of metaphysical property. Beyond the actual physical control and possession over a thing, they emphasize on human will to exclude others over a thing and control it as his own to call it his property. Sir Henry Maine, the propounder of Historical theory asserts that the growth of individual property was steady and slow. In his popular fashion he states that property was a result of collective and joint will of people and essentially possessed by a family or tribe or kingdom and thence by the state and gradually broke down in the hands of individual. Bentham, the proponent of psychological theory gives significance to the element of desire and acquisitive tendencies of human mind that manifests in the form of physical possession over a thing to term it as property. Exponents of Sociological theory like Duguit and Marx hold that property as a social fact that has social functions to secure maximum of interests and satisfy maximum of wants. They do not give much relevance to private rights over property. Theory of State as propounded by Rousseau proclaims that as law and state gradually took form, the right of property took shape. They say that law and property were born together and would die together.

## 2.2 Understanding right to property in Indian Jurisprudence

Various Indian philosophies have concentrated on the concept of mind and matter and relation between them. Particularly, teachings in Hinduism, Jainism and Buddhism have focused on spiritual aspect of human nature regarding existentialism and karma. Before proceeding further, certain Indian philosophical and spiritual concepts must be understood contextually. In Indian Jurisprudence, *Parigraha* is the underlying philosophy of entire gamut of property. *Parigraha* means the need, greed, wants, desires of people to amass wealth or things of any kind. Many religions like Hinduism, Jainism and Buddhism emphasizes on *aparigraha* as an important virtue for the ones on the path of salvation. *Aparigraha* is an ancient philosophy of abstaining from all kinds of desire or wants to gather any thing and to live without any means without the feeling of 'I', 'mine', 'me' or self. Basically, that symbolises an ascetic life. Jain sages following ancient shramanic traditions live naked with austerity, do not use any convenience for travel and eat the food offered by *sravakas* or bare followers. Another concept of Indian philosophy is '*vasana*'. It denotes pattern or behavioural inclination or tendency to obtain material, sexual or other gratification. *Vasana* may be said to correspond to 'id' of Sigmund Freud. Scientifically, no new born can be devoid of it with varied intensity. With the help of genome sequencing, many physiological and psychological traits of a new born could be known. *Sanatan* and *Shramanic* philosophy hold *Karma* and *Prarabdha* responsible for the original 'id' or '*vasana*'. Across Indian philosophies, re-birth is conclusive fact. Each moment, out of perceptions from all five senses *karmic* imprints are inscribed in the mind that fuels and channelises habits. *Prarabdha* is the stockpile of select-few strongest karmic imprints that get carried forward to the new birth and thus responsible for primitive 'id' or '*vasana*'. Antithesis of *vasana* is *sanyam*. *Sanyam* basically means abstinence and balance. It corresponds to Freud's 'ego' and is mandatory for any person on the path of spirituality. Another similar philosophy of the sense of life and survival is *aasakti*. *Aasakti* basically means craving. It is strong desire to achieve something having materialistic value. The desire is coupled with depression in moods and overall state of mind in the event of failure to achieve such thing. Antithesis of *aasakti* is *an-aasakti* i.e., a state of mind where equanimity pervades over all the ecstasy and depressions that arise in case of happening of desired or aversive event. It is essential for a person to be *an-aasakt* to proceed on the path of spirituality. Another concept of *su-sankhara* in Pali and corresponding *su-samskara* in Sanskrit refers to moral principles, values and ethics whether contemporary or conventional that are inculcated in children during tender ages between 2-5 years. They correspond to Freud's 'superego'. They counterbalance 'id', '*vasana*', '*aasakti*' or '*parigraha*'.

## 3. Analysing Indian and Western jurisprudence on Right to Property

The above-mentioned Indian concepts point out subtle, spiritual and lot more profound and fundamental understanding about jurisprudence of property. Every person, due to *prarabdha*, *sankhara* or *samskara* and *vasana* develops cravings towards pleasure and aversion towards pain. With repetitions of these karmic deeds, a person becomes *aasakt*. This is the spiritual foundation of the metaphysical and psychological theory as propounded by Kant and Bentham. Hence it can be derived that each person from very birth, even at the time of being conceived is inherently *aasakt* due to *prarabdha* and thereby other karmic concepts intensifies the *aasakti* upon birth and further conditionings. *Aasakti* can now be said to be spiritual foundation of Freud's 'Id'. The *aasakti* is the primitive foundation of one's personality. Every sense organ has an *aasakti* attached to it. The permutations and combinations of each type of *aasakti* and their intensities determines the panorama of cravings and aversions of a person. Thus, it answers the spiritual base of hedonistic calculus as propounded by Bentham. *Aasakti* is thus physically manifested in personality and that's the way the concept of gross 'self', 'I' and 'me' arises. Practically, a person out of his *aasakti* now enters into *parigraha* i.e., accumulation of property. *Parigraha* now can be said to be spiritual foundation of Freud's 'ego'. Property as we know can be derived in original out of *res nullius* or can be acquired by labour, inheritance or adverse possession. Hence right to property is akin to right to life because life cannot exist without personality and personality can only be manifested by property. That makes property the most valuable and fundamental right that needs to be protected by any legal system.

#### 4. Evolution and conceptualization of Intellectual Property Rights

The Intellectual Property (IP) is a term referred to work or inventions that are a result of some individual's original creativity. It basically, means the legal rights arising out of an intellectual activity in any field like literary, industrial and artistic or industrial etc. It includes the results that are the creations of one's creative mind. Prior to the General Agreement on Tariffs and Trade (GATT), the Intellectual Property and its related rights were not a subject, to any international trade negotiations. There's a long history of the Intellectual Property, which is way complex but, also fascinating. It is traced all the way to 500 BCE, when Sybaris, a Greek State made it possible for the citizens of their state, to obtain a patent for one year, for "any new refinement in luxury". Since, then we can conclude that Patent, Copyright and Trademark laws have become more complicated over the centuries but, the intent remains the same.

The laws and legislation procedures relating to the IPR have their roots in Europe. The trend of Patents started in the 14th Century; they were technologically less advanced than England. However, the first ever known Copyrights appeared to be in Italy where, Venice was considered the cradle of Intellectual Property systems. While, the Patents are about 150 years old concept, as first introduction was based on, the British Patent System. To foster creativity and to ensure the possibility for the inventor to make benefits of their creativity.

##### 4.1 Intellectual Property Rights in Indian Jurisprudence

As we discussed above, *aasakti* is the underlying concept of personality and thus *parigraha*. Each sense organ has an *aasakti* for it to facilitate craving the perception of pleasure. All the senses help the brain to perceive, analyse, think, create and innovate. This is called intellect. A person has a sixth *aasakti* towards anything that is originated through intellect in his mind and jotted down, drawn upon or manifested in some trade, merchandise, art, music or any scientific creation. As discussed, life is a gross manifestation of *aasakti* and property is physical manifestation of *aasakti*. Hence, person's *aasakti* towards his creation of intellect makes intellectual property worth legal recognition and protection. It can be said that the sixth *aasakti* towards mind is the spiritual jurisprudence of intellectual property rights.

#### 5. Statutory Provisions and Legislations

The Rights to Intellectual property are inserted in the United Nations Declaration for the Right of Indigenous People (UNDRIP). Particularly, the Article 27 of the UNDRIP states that everyone has the right to protect the material and moral interests, that are the results of any scientific, artistic or literary production of an author. The Convention Establishing the World Intellectual Property Organization (WIPO Convention) (1967), concluded in Stockholm provides, under its Article 2 (viii) that the IP shall include rights relating to fields like scientific discoveries, industrial designs, literary and artistic works etc.

There are a few international platforms and forums that work for protection and promotion of the Intellectual Property Rights, such as the World Trade Organisation and World Intellectual Property Organisation (WIPO). Furthermore, they do make new laws on IPR and analyse the ways of how these laws can guarantee the protection within the ambit of Human Rights. The Article 2 of WIPO states that IP should include the rights related to the commercial names, literary and artistic works, trademarks and designs against the unfair competition. The importance of the Intellectual Property was first recognised by the Paris Convention for the Protection of Intellectual property (1883) and the Berne Convention for the Protection of Literary and Artistic Works (1886). Both these treaties were originally administered by WIPO.

In India, other laws protecting and promoting Intellectual Property Rights are recognised under the legislative statute, such as: – The Geographical Indications of Goods (Registration & Protection) Act, 1999, The Patents Act (1970), The Trade and Merchandise Marks Act, 1958, The Designs Act, 2000, The Copyright Act, 1957.

### 6. Conclusion

Right to property has been the crux of Indian jurisprudence way before western philosophers began deliberating upon it. And concept of intellectual property being the facet of property as evidenced by the definition of property itself that it includes both tangible and intangible property was unambiguously written in Indian scriptures, though in form of religious texts. The only bottleneck of Indian jurisprudence is that its spiritual and not formal unlike western jurisprudence. Therefore, it has to be deciphered and unwound in order to utilise it in analysing and formalising juristic principles. However, the spiritual foundation ought to be the real jurisprudence in order to know and devise what law is and what is ought to be. The researcher intends to continue his research in Indian jurisprudence with respect to proprietary rights with deeper analysis and insight.

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