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## Theories Justifying Protection of Intellectual Property

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### ABSTRACT

Intellectual property rights (IPR) have become increasingly diverse in terms of their use cases in modern society, and advancements in technology have drastically changed the processes involved in filing for and recognizing the protection of IPR. These changes have had a series of positive effects, including further technological advancements and an explosion of creativity in society. However, with the need for dynamic laws and the possibility of absolute globalization, it is important for IPR to be globally monitored and recognized to increase competition and promote innovation.

In recent years, companies have been filing more and more patents to secure maximum benefits from their innovations. While not illegal, the concept of IPR has shifted from safeguarding unique skills to securing the highest bid and keeping it solely in the possession of the purchaser. This capitalistic ideology may ultimately benefit society if applied on a global scale.

Keywords:

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### 1. Introduction

The basic purpose of having an intellectual property right is to prevent the leakage of innovation and to safeguard the sanctity of a basic character of human beings- rationale, creative thinking. Therefore, before safeguarding any of the intellectual property rights, it is extremely important to safeguard this character of human beings that ensures a continuous flow of creativity within the society. Intellectual property rights, therefore, are a step towards safeguarding this character that human beings have.

The purpose of it is to ensure the sanctity of every element of creativity, as long as it does not affect the rights of another. In other words, having a strong system that holds together the integrity of innovations brought in by an individual for social a social good is what makes intellectual property rights important in today's society.

The authority over an intellectual property attributed towards an individual is derived from a few basic characteristics:

- Novelty
- Recognition
- Implementation

These terms, strictly speaking, have a few important areas to cover. Novelty shall include the absence of similar technology, concept, or art at the time of registration. Authorities in India and abroad may use a principle that works to the effect of the "distinctively" of a potential registration. This distinctive nature of a product ensures that the new registration has sufficient advancement, which can prove much more auspicious than a mere workshop improvement<sup>1</sup>. The importance of having a more advanced use case over what exists already is what has been highlighted by courts on an international level<sup>2</sup>.

Recognition of registration is a gradual process and is taken care of by experts in the said field. This process involves an extensive study of all aspects of the subject matter to come up with finality in innovation and its effect on society. The effect being mentioned here will be on an already existing patent in the market, which, if not verified, could violate the rights of the already registered entity. Therefore, recognition is a gradual process that may continue to exist even post granting the rights in many cases.

A few other rights do exist while speaking of intellectual properties and related theories.

- The natural rights theory
  - The utilitarian theory
  - The deterrence theory
  - The ethic and reward theory
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- The Personhood theory

The paper will deal with each one of these rights and theories in detail.

### ***1.1. Statement of Problem***

The presence of multiple theories surrounding intellectual property rights has forced different countries to make unilateral decisions on the manner in which they proceed with intellectual property rights within their territory. The enhanced effect of this practice has led to the absence of uniformity internationally which is a rising concern as the number of multinational companies in this world is on a staggering rise over a period of time.

Therefore, it becomes imperative to highlight the need for uniformity on an international level and proposes the presence of a treaty with signatories consenting to common regulations to eradicate problems pertaining to registration and recognition on an international level.

### ***1.2. Relevance of the Study***

This study stands promising in forcing the countries to come to a common ground regarding the understanding that various theories have presented before them for their interpretations. The presence of multiple theories has proven to be a boon and a bane in terms of the ambiguities on the international front, tagged along with the rise of multinational companies worldwide. The necessity of reducing the litigations in this field, majorly because of the complexity involved in the same leading to extended resolution period and possibilities of long periods of inaction, leads to lower performance and reduced efficacy in the long run.

The study, therefore, intends to shed light on the impact of multiple theories on the ideologies being followed by various nations. The ultimate impact on society and hurdles created due to these complexities is an implied result that is intended to be complemented through the briefs presented in this study.

### ***1.3. Literature Review***

References must be listed at the end of the paper. For the purpose of this paper, extensive reliance was endowed upon the reports, studies, and papers already presented through journals and paper presentations. A list of them has been provided herein:

- "Justification of Intellectual Property Rights: A Game Theory Perspective" by Padmanabha Ramanujam sheds light on some of the outdated and exhaustively used rationales for justifying intellectual property rights. It also considers the existing rationales to attempt to understand the underlying principles for justifying intellectual property rights through using the game theory. <sup>3</sup>
- "Intellectual Property: General Theories" by Peter S. Menell sheds light on the theoretical landscape of intellectual property. The paper speaks highly of the utilitarian ideologies within intellectual property rights and also perceives the same as a source to foster innovation in society.<sup>4</sup>
- "Happy IP: Replacing the Law and Economics Justification for Intellectual Property Rights With a Well-Being Approach" by Estelle Derclaye criticizes utilitarian principles and calls them flawed and ideological. The paper states that basing the protection solely on the economic aspect of utility, that is, income, has been challenged multiple times in the past few years and, therefore, is not a sustainable method over the long term. <sup>5</sup>

### ***1.4. Objective of the Study***

The theories of intellectual property have proven to be vivid in their nature, leading to various interpretations and understandings. This paper intends to satisfy the following objectives:

- To bring forth the necessity of having a uniform understanding of laws about intellectual property at a global level.
- Having clarity about the rationale behind various theories behind Intellectual properties worldwide.

### ***1.5. Hypothesis***

The international market has a higher scope of going through a litigation process about infringement of their intellectual property rights due to a difference in ideologies and laws in various countries safeguarding their property. It is, therefore, important for the nations to club together to come to a common set of rules and regulations for all intellectual property regulations, followed by developing a uniform portal for all registrations.

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## 1.6. Research Questions

This paper intends to uphold the prescribed hypothesis and intends to answer the following questions enroute to proving the same:

- Whether the present theories sufficiently answer the contemporary issues and increasing demand for intellectual property?
- Whether intellectual property rights can sustain on international forums and venues with uniform laws in the form of treaties?

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## 2. Existing Theories

### 2.1. Natural Rights Theory- Lockean Theory

The natural rights theory speaks about the fundamental rights that a person has in possession. The natural rights theory works through an assumption that everyone has a natural property right to their own ideas. This theory is what laid the foundation for the concept of intellectual property rights. In the modern world, this theory is what forms the backbone of the rise of economic rights over intellectual property. With capitalistic tendencies increasing daily, the enforcement of intellectual property rights has become purely economic. The result of such ownership is punishments in case of infringements and penal activities in case of unauthorized uses. This theory stands tall in terms of forming the concept of intellectual property, but further interpretations on the same may tend to incline society toward capitalistic virtue. The theory of natural rights sounds more like a boolean where an event's happening or not happening determines the validity or invalidity of a right. This makes the theory simple to perceive but easy to manipulate. A few of the criticisms this theory has piled up have used this characteristic of the natural rights theory.

- John Locke's theory is restricted in that it prohibits a creator from owning an abstract notion that, by virtue of its existence, might affect subsequent inventors. As a result, if a person has the right to ownership in the idea of making lemon juice, other inventors will be barred from applying comparable ideas.
- According to Lockean theory, ownership of tangible goods is not limited by time. In general, intellectual property rights are restricted by nature in that after a set period of time, the protected item or production becomes available in the public domain, where it can be freely accessed by everyone. However, Locke's idea is not entirely disregarded when it comes to trade secret regulations. This is because trade secret protection lasts throughout a creator's life unless he or she maintains the ability to divulge confidential knowledge to the public.
- According to natural rights theory, an appropriator cannot pleasure in all of the world's available natural resources. If a creator is given ownership of his or her concept for generating milk from soybeans, the remainder of the market for soymilk manufacturing will be dominated by the inventor. To summarise, the natural rights approach fosters individual creativity while restricting others from doing the same when it comes to an idea.

### 2.2. The Utilitarian Theory

The utilitarian theory is another one of the most appraised theories in the intellectual property regime. The incentive-based theory has been supported by multiple scholars and has also been called the consequentialist theory. In the modern world, a lot of intellectual property, perhaps all of them, make use of the incentive theory to safeguard their properties. In other words, the consequence of a breach of such theory will be payment of a set amount, making the concept majorly economical. The common line between the natural rights theory and the utilitarian theory is, therefore, the presence of a highly celebrated economic benefit for either one of the parties involved.

The utilitarian philosophy follows in the footsteps of Jeremy Bentham and John Stuart Mill, both of whom were concerned with the "greatest benefit for the greatest number." While the word "utilitarian" refers to "social welfare," the theory is fundamentally founded on the concept that industrial development and cultural goods, when combined, may have a positive and substantial economic influence on society and the people at large. When it comes to intellectual property rights, the idea suggests that there is a need to promote innovation and invention. This need can be met by providing basic proof that the product of such development would be superior compared to the costs invested for the relevant product. This idea clearly bans trade secrets from being deemed intellectual property since a trade secret, in the act of safeguarding knowledge that is proprietary to an individual or organization, prevents the general public from benefiting from it. As a result, the hypothesis functions as a deterrent. The utilitarian theory is also known as the incentive theory because it supports society's obligation to respect the innovator's claim to ownership over his or her product, which is a source of benefit not just for the inventor but also for society as a whole. The utilitarian hypothesis has received criticism, just like the prior theory. The fundamental objection to this notion is that the utility gains from the inspiration of a distinctive work are offset by the costs associated with exclusive ownership of the creation. Therefore, the question of whether or not the advantages of intellectual property rights can be balanced against the casualties arises.

### 2.3. The Ethic and Reward Theory

The exclusive rights granted by intellectual property rights to the creator of innovation, as the term implies, are justified by the ethic and incentive theory. These exclusive rights are viewed as a way to thank the author for the enormous contribution that his or her work has made to society. While the word "reward" denotes "approval of the efforts given in a certain thing," the word "ethic" denotes "fairness." Simply put, the ethics and reward theory clarify that in order for the ethics of intellectual property rights to be achieved, a creator must be compensated for their work. It is to be noted that the question as to whether the reward is given to creators and inventors to benefit the entire society truly deserves the same or not remains associated with the ethic

and reward theory. While on the one hand, the theory presumes that inventors deserve to be rewarded, on the other, the theory makes it obvious that the inventors do not deserve it twice. Many consider that the creators are already remunerated, taking into account the exclusive right he/she possesses over his/her work. That will be further used as a source of profit for the creator as well. Thus, it is quite evident that the exclusive right that the creator has over his or her creation is excessive.

#### 2.4. The Personhood Theory

According to the personhood hypothesis, a person's personality is a part of their creator's creation, making it clear that a person's property rights include their personality. The argument has its origins in Hegel's philosophy, which holds that protecting intellectual property rights also protects personality development that extends beyond material possessions.

Accordingly, the theory said that an unauthorized user who offers someone else's creation to the broader public without that person's authorization would be seen as a thief. The notion has its detractors, who are rooted in the fundamental idea that personality and creativity are related. This reasoning is inherently flawed because personality cannot be related to the results of someone's creation.

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### 3. The Rationale for Intellectual Property Rights

Equations and formulae should be typed in Mathtype, and numbered consecutively with Arabic numerals in parentheses on the right-hand side of the page (if referred to explicitly in the text). They should also be separated from the surrounding text by one space. IPR justifications can be broadly categorized into two groups for study and analysis:

- Pragmatic Approach
- Philosophical Approach.

The pragmatic approach is essentially the criticism of the Philosophical approach. It was propounded by Jeremy Bentham, Adam Smith, Jean Baptiste Say, John Stuart Mill, and John Bates Clark. Their idea speaks mostly about the prospects of awards that intellectual property rights present. They believe that it is this prospect of the award that encourages society to be more creative and bring technological advancements into society. Looking at it from this viewpoint, it is clear that the patent system may have in itself been incorporated to suffice the primary purpose of enabling the inventors to charge higher than their invention costs in the name of the creativity being incorporated by them. Because of this, investors and inventors invest a lot of money in developing new inventions.

The justification behind this is that conducting research and development and bringing an idea to market may be a time-consuming and expensive process with no assurance of success. When success is attained, "free-riders" who did not make any such investments may occasionally copy the labor-intensive innovation and take its value for themselves.<sup>6</sup> Such behavior tends to scare off potential investors and inventors, which lowers innovation.<sup>7</sup> Numerous empirical studies have demonstrated the beneficial effects of patents on the economy. Additionally, it has been demonstrated that obtaining a patent accelerates innovation in fields like pharmaceuticals and chemicals, which heavily rely on patents to safeguard their intellectual property.<sup>8</sup> The philosophical approach, on the other hand, is a very well-established tradition since the British philosopher John Locke, Thomas Hobbes, and Georg Wilhelm Friedrich Hegel. The most illustrious proponent of property as a right is John Locke. According to Locke, the right to own property, like all other rights, derives from natural law. According to the natural law concept, God created humankind. Since God gave the globe to all humanity in common, how can one individual acquire an exclusive property right in a worldly subject? Undoubtedly, Locke's answer was good, and it introduced us to the idea of private property rights. By making a contrast between the common property bestowed upon humankind by the creator and the individual's acquisition of that property, Locke is able to make his point. It is commonly known about the two Lockean tradition-based views.

According to one interpretation, we literally mix our labor and, by extension, our property with the unowned objects on which we work, so acquiring a property interest in those goods. According to a different interpretation, we acquire a property right in unowned objects that we improve through our labor because our labor creates value that did not previously exist in the world. Since we did not previously own the objects we improved through our labor, it follows that we have a right to them as long as no one else has an antecedent claim to them. In terms of private property rights, the Lockean theory has been the most laudable, and as a result, it has been the focus of numerous academic publications. Itai Sened, a fervent supporter of positive theory, adopts a critical stance and contends that we should pay closer attention to how social contracts—through which governments safeguard the civil liberties of their citizens—emerge and change over time. Technology inventions are primarily a social creation of collective, cumulative, and interconnected work to which we all contribute, and as a result, no one person or company should be able to claim the property, according to a fundamental argument against IPRs in the context of natural rights and moral justifications.

Apart from these two theories, scholars have also come up with another theory called the game theory. This method focuses on the realities of what activities an IPR induces or encourages among a group of rational, strategic participants when they interact when analyzing the justification of IPRs. This section gives a hypothetical justification model that shows how intellectual property rights might influence people's behavior and how states are pushed toward a system that offers effective IPR enforcement.

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The acts used to build this argument demonstrate how interaction can result in a presumption about the significance of IPRs. The game makes the usual assumptions about players, such that they are rational, behave in their own best interests, and are aware of the incentives offered by IPRs. For the purposes of this study, the example below is taken into account. In this scenario, a set of pharmaceutical companies operating in a closed economy with comparable market sizes and research capacity are the group taken into consideration for the study.

Companies in this category are worried about things like how many product lines to invest in, how much to charge for a drug, and how much to invest in R&D. Assuming that each company's success in R&D depends on the other company's investment in R&D. The interaction occurs because the drug's original creator stands to gain the greatest money (due to the associated patent). Investments in research and development are therefore smart and sensible because they have a big impact on maximizing profits for a firm through the development of a new drug. Understanding the dominant strategy for the participants within a particular system and how these dominant strategies shape the strengthening of laws to defend these individual players' market rights are both made possible by the analysis of strategic behavior. Susan Sell showcased how corporate interests rather than governments are increasingly wielding power in international affairs.

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#### 4. Conclusion

Intellectual property rights have been diversified in terms of the use cases they have in modern society. With the advancement in technology, the princesses, starting from filing for an IPR all the way to the recognition of the same, have seen drastic changes. These changes have had a series of positive effects inasmuch as they brought in further advancements and technological developments, never to forget the creative explosion in society for various reasons. The purpose of IPR has been fully served ever since its conceptualization. However, as time passed further, it has now been found that with absolute globalization looking like a possibility added by the need for the law to be dynamic, it is important for intellectual property to be globally controlled and monitored with the equal effect of recognition. This will help in increasing the competition among the players and hence, a higher level of innovation over a period of time.

Companies, in the past few years, have constantly been filing more and more patents to ensure that they get the maximum benefit out of these innovations. Though not illegal, the concept of intellectual property has somehow turned from safeguarding skills and uniqueness to securing the highest bid and keeping it in the only possession of the purchaser of the said bid. This ideology, though capitalistic, may benefit society once the concept is put to global use on the same scale.

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