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UNIVERSITY**

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FACULTY OF JURIDICAL SCIENCES

COURSE: BALLB/BBALLB/LLB

SEMESTER SUBJECT:

INTELLECTUAL PROPERTY RIGHTS

SUBJECT CODE:

BALLB808/BBALLB808/LLB 604

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Lecture-4



LECTURE 4: INTELLECTUAL PROPERTY RIGHTS: THEORIES

1. The Natural Rights Theory

The main justification behind this theory is that everyone has a right to consider his/ her ideas as natural property right by the reason that the creation originates from the effort, originality and inventiveness of the creator. The backbone of this theory is based on famous philosopher John Locke's idea that an author has a natural right over his creation applying his intellectual labour. In this sense there is no difference between intellectual property and the traditional tangible property and there is no difference between the rights of the owners of these two kinds of properties, such as right to enjoy the property, to restrict others from using the property and the right to transfer the ownership.

Criticism of the theory:

The primary criticisms of this theory are,

- This theory does not deal with temporal limitation of IPR. The usage of IPR is time bound, which means that after expiration a certain period of time, the IPR protected objects will be available in public domain. But the Lockean theory talks about unlimited term of ownership of tangible properties.
- The Lockean Proviso restrains an innovator from owning an abstract idea which can affect subsequent innovators. Example- if a person is given the right to ownership in the unique idea of preparing pulpy orange juice, then the remaining innovators are left with nominal scope of discovery in the same field and thus prevent them from inventing a new technique for extracting pulpy orange juice. This right of ownership will violate Lockean Principle of Equity and Creative Liberty.
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2. The Utilitarian Theory / Incentive Theory

The word "utilitarian" means 'social welfare' and this theory was championed by great economists Bentham and Mill with the objective of making every policy universal in the sense of attaining the greatest good for the greatest number.

The primary essence of this theory is that the industrial progress and cultural goods can create a

better and important economic impact on the society. Consequently, to fill the need of promoting the inventions and creations, there should be nominal certification that the outcome will be superior as compared to the expenses incurred for his work.

Likewise as the name suggests, the incentive theory validates the duty of society to respect the innovators and their right to ownership because it brings profit for the whole society.

Criticism of the theory

The main criticism of this theory is here the utility gains from the impetus of a unique innovation are neutralized against the losses incurred due to exclusive ownership. Thus the question arises if really the benefits of IPR can be weighed against the casualties or not.

3. The Personhood Theory/PERSONALITY THEORY

The greatest philosophers of all times, Kant and Hegel are the profounder of the theory which claims that intellectual rights permit and protect the development of the personality, extending to material things.

As per this theory, the personality of everyone frames itself up in the environment of work, innovation, ideas and creation. The augmentation of the personality is deep seated to our property rights.

Under this theory personality and property law are compared in the field of copyright (because the same way tangible assets are protected, the creative artistic works are also viewed as asset and get protected). After seeing the conflicting labour theory of Locke and Hegel's personality or spiritual theory may not seem to be the best approach, since Locke's theory approaches property as serving the personality, while Hegel's theory perceives property as the – apotheosis of personality.

Criticism of the theory

When the creation is done, the work is independent from its creator but dependent on the public domain. As a matter of fact, the creation or work gathers the importance because others adheres importance to it.

4. Moral Theory

According to Locke, "every man has a property in his own person", i.e. the fruit of one man's labour belongs to him only. The intellectual property rights also follow the same pattern because

the innovator deserves the right because of his intellectual and physical labour.

This theory compensates a worker's performance for his "effort, ability, persistence, industriousness, luck, time spent, the difficulty, danger of the work, leadership" etc. But this fails to give any absolute value of the work like, "inherent worth" of labour, or a "just price" for labour.

Criticism of the theory

Although Legget has pointed out that even if we grant an exclusive right to a specific idea, there is no process of being sure or assuming that someone else did not inculcate the same thought or idea. Thus these rights can only be vindicated if they are applied in the manner that the individual rights are protected without infringing other's right.