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An analysis of Property Right using the Public Private Law Divide

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ABSTRACT

In previous years, the ambit of "Intellectual Property Rights" has broadened & increased to a point that it now has a significant part into the growth of the world commerce. A number of wealthy nations have by themselves reinforced the legislative structures in this direction since the early 1990s. Many more were on the verge of doing the same. The successful conclusion of the international talks is also important. The "World Trade Organization's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) IPR Protection and Enforcement" have been elevated to an extent of a worldwide commitment. The newly emerged world order pertaining to protection of intellectual property rights has advantages and disadvantages. Intellectual Property is a wide field. Its embodiment as "Copyright, Patent, Trademark, and Design" as "Intellectual Property Rights" is quite famous & has been recognized for a long time. Some of the new forms of protection are also coming together, fueled in part by new advances in technology and science related pursuits. This study session gives students a thorough understanding of the numerous types of intellectual property rights, their importance, and commercial implications in today's evolving global public and private laws. Aside from that, the students will be familiarized with the most important international intellectual property instruments and its relation with the public and private laws.

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INTRODUCTION

In March 2016, a prominent group of researchers and practitioners convened for the first conference of its type on "Private Law and Intellectual Property." "The Project on the Foundations of Private Law at Harvard Law School sponsored the event. It wasn't sure what would emerge from looking at private law and intellectual property (IP) together, as the & in the title suggests, but we thought it might be intriguing."[1]

As the following publications indicate, thinking about these topics together can yield a lot of benefits. It's also worth noting that the traffic isn't all going in the same direction. Property issues are important in determining entitlements, contract law is important in licensing, and private law remedies are important in intellectual property. Examining intellectual property concerns through the lens of private law is instructive, even if the lens may be distorting in the eyes of some. "Attempts to understand just what the relationship between intellectual property and private law is will help to recognize that intellectual property is more public and administrative than traditional areas of private law. It is also true in the opposite direction. The nature of private law, whether it has one or not, and whether it exists at all, is one of the most contentious issues in the legal school."[2] Thinking at intellectual property issues through the lens of private law is a good way to think about private law.

"The law governing rights and obligations in regard to mental inventions is known as intellectual property law. Industrial property, which includes patents, trademarks, industrial designs, and geographical indications, and copyright and related rights are the two basic types of IP."[3] "Private international law", often called as "Conflict of Laws" in some countries, is the law that governs private relationships that span national borders or involve a foreign element. PIL addresses three major issues: a court's jurisdiction to hear the matter (international jurisdiction), the appropriate law, and the recognition and execution of foreign judgements. PIL also covers administrative and judicial cooperation in relation to these issues. In IP issues, states give civil, criminal, and administrative remedies. "Criminal and administrative actions are often not included in PIL because it exclusively deals with private relationships (i.e., between people, firms, corporations, and other

[1] The Project on the Foundations of Private Law present Jason Neyers on 3/9/16, Harvard Law School, Available at https://hls.harvard.edu/the-project-on-the-foundations-of-private-law-present-jason-neyers-on-3916-from-12-1-p-m/
[2] Ibid.
[3] INTELLECTUAL PROPERTY RIGHTS-LAWS AND PRACTICES, Professional Course Study Material, ICSI, 2020.

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legal organisations). In some jurisdictions, however, civil or commercial claims may be brought as part of criminal proceedings, and the criminal court may be required to rule on the civil or commercial problems while the criminal case is pending. The criminal court should use PIL to determine on civil or commercial claims in such circumstances. Different dispute resolution options are available to parties, including court adjudication, IP administrative procedures, and ADR procedures like as arbitration, mediation, and conciliation."[4]

CHAPTER OVERVIEW

This dissertation titled as "AN ANALYSIS OF PROPERTY RIGHTS USING THE PUBLIC PRIVATE LAW DIVIDE" has 6 chapters. Firstly, chapter one titled as "Public Law" under which public law is explained with the help of its history, types and remedies available. Secondly, chapter two titled as "Private Law" under which private law has been explained with how sanction is done in private law and how it governs the business and financial transactions. Thirdly, chapter three titled as "Public and Private Law" under which the relationship between public and private law has been discussed along with some supporting theories. Fourthly, chapter four titled as "Nexus between IPR and Public Private Law" under which important nexus have been drawn between intellectual Property rights and public private law. Lastly, chapter six titled as "Conclusion" under which the entire research has been summarised as public interest is a major consideration for Indian policymakers when it comes to IPR, there must be a sense of balance between the interests of property holders and those of the general public.

[4] Public interest litigation:- Its origin and meaning, Legal Service India, Available at https://www.legalserviceindia.com/article/l273-Public-Interest-Litigation.html

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RESEARCH QUESTIONS

1. What is Public Law and Private Law?
2. What is the nexus between Public and Private Law?
3. What is the nexus between Intellectual Property Rights and Public Private Law?

CHAPTER I

PUBLIC LAW

In the words of Loughlin, "public law is a type of political jurisprudence that excludes transcendental or metaphysical notions of justice and goodness, focusing instead on the perceptions of ways that have emerged through political practice to maintain the public realm's autonomy." Simply put, public law regulates the interaction among the agencies and its subjects, as well as among individuals who are directly affected by society. It addresses social issues in a wide sense and covers laws like constitutional law, administrative law, and criminal law, among others. These public-law-governed relationships are ambiguous and uneven. However, under the "rule of law" concept, agencies are allowed to act under the confines of law, and government is compelled to do so. The purpose of public law is to keep the interaction between people under control. Although all counties' public law is dependent on the concept of law as a check on the arbitrary exercise of authority, there is a contrast among the civil law and common law countries' public law.

HISTORY

Ulpian, a Roman lawyer, was the first to differentiate among private and public law. He claimed that public law complements the Roman commonwealth's organization, and he defined public law as that which deals with religious matters, the priesthood, and state positions[5]. In Roman law, the ties between individuals, goods,

[5] https://www.jstor.org/stable/24869482?refreqid=excelsior%3Af11ba3dbe99050c974a9edf03fdc9b15

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and people and the state were conceived as public law[6]. It was, nonetheless, extremely important in Teutonic culture.

"Unlike continental Europe, England has not adopted the concept of res publica; instead, the English and Scottish legal systems are based on common law, which has evolved through precedent."[7] They argued that the rule of law established by courts tends to preserve private interests and, as a result, is diametrically opposed to what public law entails. Its legal system is founded on statutes such as the following:

• "Magna Carta, a 13th-century charter of liberties";

• "The Petition of Rights";

• "The Bill of Rights"

• "The Settlement Act of 1700"

• "The Acts of Parliament of 1911 and 1949"

Public law governs public institutions and groups that act in the public interest. If it was approved as a public entity by an Act of Parliament or if it serves as a public body, public law principles would apply in general. If any public bodies participate in a private capability act, that act would be governed by private law rather than public law.

TYPES OF PUBLIC LAW

Constitutional law is one of the most well-known public laws in practically every country. The main goal of such legislation is that it can establish the politics incluenced centre of attraction in every state, thus making law supreme in every government. India is a "sovereign, socialist, secular, democratic republic" with a quasi-federation-based structure and a form of government influenced by the parliament in the Centre and states, according to its constitutions. It also establishes the government's structure, methods, powers, and responsibilities, as well as stipulating core human rights in the form of rights which are fundamental to every individual & state policy. It establishes restrictions, often put into procedural aspect of the same, on the

[6] https://legaldesire.com/law-and-justice-public-law/
[7] THE COMMON LAW AND CIVIL LAW TRADITIONS, Barkely Law, Available at https://www.law.berkeley.edu/wp-content/uploads/2017/11/CommonLawCivilLawTraditions.pdf, Viewed on 12/12/2021.

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exercise of controlling authority, as well as determining the state's political organisation and power. Constitutional law, according to Salmond, comprises of legal concepts that establish the vital and fundamental aspects of the state's organisation. It also includes the application of fundamental legal concepts based on the document, according to the Supreme Court.

Administrative law is another well-known type of public law, which can be defined as the exercise of political powers within the confines of the constitution as the State's complete substantial and ever-changing action in specific circumstances as the functions, or activity, of the sovereign authority. According to Holland, the constitution specifies the method in which the various organs of the Sovereign Power carry out their functions.

"It can fairly be said to include the making and proliferation of laws; the government's action in guiding the state's foreign relations; the administration of justice; the administration of the state's property and business transactions; and the detailed operation, through the use of assistants entrusted with a certain amount of discretion, of the complex machinery by which the state provides for both its own existence and the general welfare. It deals with revenue collection, statistics collecting, international trade, manufacturing, pollution, taxation, and other topics. Because it deals with directives and public institutions, it is sometimes seen as a sub-category of Civil Law and other times as Public Law. Administrative laws are enacted by the executive branch of government, not the judicial or legislative branches (if they are different in that particular jurisdiction). Administrative law, according to Vago Steven, is a corpus of legislation created by administrative authorities in the form of rules, directives, and decisions."[8]

"The most important role of the state is to serve as a sentinel of order, preventing and punishing all grievances against it and all noncompliance with the norms it has established for the general good. When it comes to defining the scope of its rights in this area, the State frequently starts with a list of the activities that violate them, followed by a suggestion of the penalty that will be imposed on anyone who violates them. The branch of law that contains the regulations governing this subject is known as criminal law. Criminal law refers to wrongdoings against the state, the community, and the general public. The corpus of regulations by which the Courts' machinery is set in motion for the punishment of criminals is known as adjectival criminal law, penal procedure, and instruction criminology. Criminal law deals with the concept of crime, as well as the prosecution and punishment of criminals. Despite the fact that a criminal conduct may hurt an individual,

[8]https://nios.ac.in/media/documents/SrSec338New/338_Introduction_To_Law_Eng/338_Introduction_To_Law_Eng_L12.pdf

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crimes are considered acts against the state or the people. A public wrong, as opposed to a individual or private wrong, is referred to as a crime."[9] The State, not the victim, is the one who takes action against the criminal.

Public law is particularly significant because it provides safeguards so because government and citizens remain to have an unbalanced relationship of rule. This branch of a law means the government doesn't really violate any laws over people and that it is exercised properly and appropriately.

REMEDIES OF PUBLIC LAW

Many individuals are impacted by public law arrangements at a point in their daily life. Individuals can contest the legitimacy of decisions made by governmental entities using certain methods[10] -

• Judicial Review

• Complaints procedures, such as the complaints procedure for social services

• Ombudsman initiatives such as the Parliamentary Commissioner for Administration and the Local Government Ombudsman.

[9] JUSTICE K S PUTTASWAMY (RETD.), AND ANR. V. UNION OF INDIA & ORS. WRIT PETITION (CIVIL) NO 494 OF 2012
[10] https://legaldesire.com/law-and-justice-public-law/

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CHAPTER II

PRIVATE LAW

Private law is the body of law which rules relations among private people. “Contractual arrangements, property, equity and trusts, torts, and family law” are some of the primary subjects addressed by this corpus of law. A substantial number of essential norms of this law are derived from the common law created by judges, and it also evolves when legislative enactments expand or re-establish the common law. Private law governs the business and financial transactions that arise from them.

If we consider private law, the role of state is limited to becoming acquainted with & enforcing applicable legislation, as well as adjudicating disputes between them through its judicial institutions. This corpus of legislation, according to Holland, might be substantive, identifying individual rights, or it can be adjectival, describing the mechanism through the means where privileges are imposed or safeguards. In other words, private law refers to rules that govern people’s interactions with one another.

Private law, often known as civil law, is concerned with the duties and responsibilities of private individuals toward one another. Private parties have the freedom to enter into a legal relationship with one another while also having the ability to jointly sway the contents of their legal relationship, allowing each party entering into a relationship in private capacities to propose or disagree on what the other party might suggest. As a result, in a number of areas of the respective law, the parties are afforded equal chance.

As a legislator, the state establishes the legal framework, including the legal concepts and norms that govern private relationships between individuals. In developing such private connections, the concepts of private law are developed by obligatory and elective criteria. The non-binding principles of this body of legislation allow the parties to choose the rules that will govern their partnership. Within the normative imperative established by law, the parties, on the other hand, have the freedom to construct their contract on conditions that are suitable to them.

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SANCTION IN PRIVATE LAW

In private law, the aggrieved person who claims to have been wronged might seek remedies where the law attempts to deliver justice to the injured party rather than imposing a punishment or disciplinary action. The majority of the remedies in this law are monetary in character, and the person who has violated the legal provision should compensate or bear the penalty in favour of the aggrieved party, not to the state, as assessed by the courts.

• Restitution: The party who broke the law is responsible for restoring any matter to the state it was in before the law was broken.

• Damages- an amount established by the court must be given to the other to compensate for the actual harm or loss of profit suffered by the damaged.

• Unjust enrichment- when a party who has broken the law has gained unfairly from it, this is referred to as "returning enrichment." The amount of compensation to be paid for unjust enrichment will be established by the court[11].

A variety of sources of private/civil law can be discovered throughout history. Various evidence suggests that in the past, a variety of civil rules were employed to administer people's private relationships. The Code of Hammurabi in the Roman Corpus Juris Civilis is one such example. Spiritual and individual laws, too, have played a role in establishing the principles that control people's private relationships in various sectors of life, such as governing family, marriage, property, trade, and so on. In civil law jurisdictions, attempts have been made to codify and bring a single legislation that covers multiple sectors of private law[12].

[11] "Private Law." UNSW Law. Accessed August 23, 2016.

[12] Lucy, William. *Philosophy of Private Law*. Oxford: Oxford University Press, 2007.

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CHAPTER III: PUBLIC LAW AND PRIVATE LAW

Several theories have emerged, none of which are exhaustive, mutually exclusive, or distinct from one another, such as:

1. Interest Theory, created by the Roman jurist Ulpian: "publicu ius est, quod ad statum rei romanae spectat, privatum quod ad singulorm utilitatem." In other words, public law is concerned with the Roman state, but private law is concerned with the interests of citizens. The flaw in this theory is that some private law issues also affect the public good.

2. Subjection theory focuses on explaining the gap by highlighting the state's subjugation of private individuals. This argument falls short in areas that are typically thought of as private law but nevertheless require subordination, such as employment law.

3. Subject theory focuses on the legal subject's position in the legal interaction at hand. It is subject to public law if it finds itself in a certain circumstance as a public person; otherwise, it is subject to private law[13].

The subjection theory and the subject theory, when combined, produce a debatable distinction. It concerns a subject of law known as public law, in which one actor is a public authority with the ability to act unilaterally and who employs that imperium in a specific relationship.

[13] "Peter Cane, Public law in the concept of law, oxford university press, 2013."

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CHAPTER IV

INTRODUCTION TO INTELLECTUAL PROPERTY RIGHTS

"In the wake of globalization, it is critical to remain ahead of the curve in terms of innovation and creativity in order to succeed in the harsh contests of technology and trade. India, despite its intellectual prowess in disciplines such as software engineering, missile technology, and other fields, lags behind in terms of IPR assets such as registered patents, industrial designs, and trademarks."[14] "According to a recent assessment by the US Chamber of Commerce, India ranked 29th out of 30 countries in the global IP index, which is a concerning situation for policymakers and the country as a whole. IPR and its regulatory framework have a direct impact on any society's development."[15]

Intellectual Property refers to creations that are the result of an individual's mental labour. This includes literary works, technological inventions, performances, and traditional traditions, among other things. It can be divided into two broad categories:

1. Patents, trademarks, and other forms of intellectual property are used to protect industrial inventions.

2. Intellectual property, such as copyright and associated rights, is utilised to safeguard literary interests.

"In simple terms, intellectual property refers to the use of the human brain for creation and creativity. To invent or produce something new, efforts in terms of personnel, time, energy, skills, money, and so on are required. The intangible property of the individual who laboured for the invention or creation is the decisive idea by which it was developed or created."[16]

"Legal rights or monopoly rights are granted to creators or innovators by legislation in order for them to profit economically from their inventions or creations. A person who creates a literary work or invents an industrial technology is granted specific rights, including a restricted right to the literature or invention, as well as the

[14] "ET Bureau: India ranked second last in Intellectual Property Index, http://articles.economictimes.indiatimes.com/2015-02-04/news/58795926_1_ip-environment-gipc-intellectualproperty-index (accessed on 4 February 2015)."
[15] Jajpura L, Microfinance and Microentrepreneurship: A Paradigm Shift for Socital Development (Edited by Dr. Surender Mor, Vista International Publication House, Delhi), First Edition, 2015, 263-271.
[16] Ibid.

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right to advance monetary profits from such intellectual property."[17] Intellectual property privileges are the rights that a person obtains as a result of the invention of intellectual property. They can be owned by a person or a business. In general, literary works are owned by individuals, while industrial inventions are owned by businesses. "These are territorial rights that allow the owner to sell, buy, or licence his intellectual property in the same way that he can sell, buy, or licence his physical property".[18] "To claim benefits, one must register IPR with a legal authority in a presentable or tangible manner. Each sort of IPR confers special rights to its inventor or creator in order to preserve and harvest economic rewards, hence stimulating skills and social growth."[19]

WIPO

"These are territorial rights that allow the owner to sell, buy, or licence his intellectual property in the same way that he can sell, buy, or licence his physical property."[20] To claim benefits, one must register IPR with a legal authority in a presentable or tangible manner. Each sort of IPR confers special privileges to the ones looking forward to invest in order to preserve & fetch out financial rewards, hence stimulating skills and social growth.

TYPES OF IPR

• **Patents—**These are the privileges given to a person for the genesis of a product or a technique that provides a novel solution to a problem or method of accomplishing something.

"The key criterion for granting a patent is novelty. It is awarded for a set amount of time and adds to the technology that already exists in the field of his invention. Patents are the most valuable form of intellectual property, and rightly so.[21] According to Section 3 of the "Patent Act of 1970", "frivolous inventions,

[17] Narayanan S, Intellectual property rights economy vs. science and technology, International Journal of Intellectual Property Rights, 1(1) (2010) 6-10.
[18] Cuts International Jaipur, Intellectual property rights, biodiversity and traditional knowledge, Monographs on Globalisation and Indian-Myths and Realities, 13 (2007) 20-22.

[19] WIPO Manual: What is Intellectual Property? http://www.wipo.int/edocs/pubdocs/en/intproperty/450/wipo_pu b_450.pdf.

[20] *ibid*
[21] "www.wipo.int/ipstats/en/statistics/patents/wipo_pub_931.html"

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inventions that violate natural laws, and inventions that are harmful to human, animal, and plant life, as well as the environment, are prohibited contrary to public order or morality, discovery of any lving thing or non-living thing occurring in nature."[22]

• **Trademark-** "A trademark is a distinguishing mark that identifies a manufacturer, producer, or service provider as distinct from others. These can be represented by a logo, a sign, or a written name. According to current trends, packaging methods can also be patented. A trademark enables the consumer to identify a given standard of value with his items, which the consumer can easily rely on when shopping in an open market. A trademark is granted for a specific length of time. Unlike patents, however, a trademark can be renewed for as long as the owner desires by paying renewal costs to the relevant authorities. Trademarks can be used by individuals as well as businesses. The Trademarks Act, 1999 governs the grant of trademarks in India."[23]

• **Industrial Design—** The visual aspects of a product that aren't covered by a patent are referred to as industrial design. A 2-D or 3-D design is possible. It ought to be quasi in nature, i.e., rather than being utilitarian, it should be absolutely beautiful. Industrial Design can protect products from a wide range of categories, including technical tools, medical devices, clothes, and ornaments. To be qualified for protection, the Industrial Design must be novel, that is, there must be no other designs like it on the market.

• **Copyright-** The rights provided to creators of creative works are known as copyright. Copyright laws protect works such as literary works (literature, poetry, and nonfiction) and creative works (paintings, music). Copyright rules also protect newspapers, as well as architectural designs. It also safeguards the rights that arise from such creative works. Related Rights are what they're called. These are rights that have accrued as a result of the copyrighted content's availability. Some instances of similar rights are an artist's right to their performances, a music producer's right to the digital rendition of their music, and so on. Individuals and businesses can both own copyrights. Unlike other types of intellectual property, Copyright holders own their creations for the rest of their lives. Copyright continues to remain for 50-60 years after a person's death, depending on the jurisdiction. In this situation, the Copyright holder exercises authority over the Copyright.

[22] Section 3 Patent Act 1970
[23] "WIPO Manual: What is Intellectual Property? http://www.wipo.int/edocs/pubdocs/en/intproperty/450/wipo_pu b_450.pdf."

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For a long time, intellectual property has been a burgeoning field. And it's only going to get bigger in the near future. With the economy constantly developing and enlarging, it is furthermore crucial than ever for a person to understand and safeguard his intellectual property rights.

CHAPTER V

NEXUS BETWEEN IPR AND PUBLIC PRIVATE LAW

There should be a balance in the intellectual property system in terms of protecting and enforcing intellectual property rights, taking into account both public and private interests. Section 7 of the TRIPS agreement recognizes this balance, stating that "the protection and enforcement of IPR should contribute to the promotion of technological innovation and the transfer and dissemination of technology, to the mutual benefit of producers and users of technological knowledge, and in a manner conducive to social and economic welfare, and to a balance of rights and obligations."

The safeguards and flexibilities included into the TRIPS agreement give avenues for WTO members to achieve public interest goals within the TRIPS legal framework. Since 2017, members of the WTO TRIPS Council have debated the link between intellectual property rights and public interest.

Property issues are important in defining entitlements, law pertaining to contractual arrangements is a part of licensing, and private law remedies play a big role in intellectual property. “Even though the lens is distorted, looking at IPR concerns via a private law lens is instructive. Because IPR is more public and administrative than traditional areas of private law, attempts to understand the relationship between IPR and private law, and vice versa, might be more valuable. Few subjects in the legal academia are more debated than the nature of private law, whether it really has one, and whether it even exists at all. Considering such concerns via the lens of private law is an effective way to ration private law itself.”[24]

[24] Ibid.

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"Private law is a social institution, not a collection of rules. Many of its beliefs are based on the adversarial system of litigation, which pits plaintiffs against defendants."[25]

"In terms of when convention will be considered as a law and how the law will treat it, this corpus of law has an adjacent and awkward relationship with convention. In terms of entitlement definition, Christopher Newan examines what exactly an IP licence is and demonstrates how copyright meets the expense of some rights, such as distribution and display rights, which are incompatible with use privileges in personal property, while providing other rights, such as the right to perform and produce copyrighted works, which are not. It excludes situations involving the state as a litigant or party, but the state does set the tone and many of the guidelines for private relationships governed by private law."[26]

DIFFERENT TYPE OF IPR AND PRIVATE LAW

LICENSING

"Licensing is something that lies at the centre of private law, intellectual property, and IP problems."[27] "Jonathan Barnett" demonstrates how licencing is critical to particular commercialization plans & discusses whether, since licencing is a core goal of IP, resentment of licencing tends to erode "intellectual property law's effectiveness". "Greg Vetter examined a number of methods to licencing for free and open source software, as well as evidence that licences based on copyright principles can help in dealing with the problem of opportunism in a field where participant influence on projects is difficult to compartmentalize."[28]

STANDARDS

It's among the most passionately debated and discussed issues in patent law right now. Private parties form an agreement or set of contracts that look to just be enforceable contracts in everyday situations. As a condition

[25] See, e.g., ERNEST J. WEINRIB, THE IDEA OF PRIVATE LAW 38–55 (1995) (making coherence in the bipolar relation between plaintiff and defendant a central criterion for theories of private law); John Gardner, What Is Tort Law
[26] Ibid.
[27] China National Intellectual Property Administration (CNIPA), WIPO, Available at https://www.wipo.int/edocs/pubdocs/en/wipo_pub_1056.pdf
[28] Rich Stim, Measuring Fair Use: The Four Factors, Stanford Liabraries, 2014, Available at https://fairuse.stanford.edu/overview/fair-use/four-factors/.

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of partaking in standardisation, rights holders commonly portray to the court system that they might licence leading technologies on sensible and unprejudiced terms, and that there are regard to the issue about the extent that these characterizations are enforceable in a court. Participants' standards choices frequently link business world and have a significant impact on vast groups of people, having the rules look more 'public' then 'private.'

"When deciding infringement cases, Indian courts consider the public interest while applying IP law, and have tended toward protecting socio-economic principles such as access to education and public health. Issues such as access to knowledge and the lack of affordable medicines are concerns that affect millions of people in a country like India, and they must be considered when evaluating how much restriction should be placed on private rights such as intellectual property rights."[29]

[29] Review of the Intellectual Property Rights Regime in India, 161st Report, DEPARTMENT RELATED PARLIAMENTARY STANDING COMMITTEE ON COMMERCE, Rajya Sabha, Parliament of India, 2021, Available at https://rajyasabha.nic.in/rsnew/Committee_site/Committee_File/ReportFile/13/141/161_2021_7_15.pdf.

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CHAPTER VI

CONCLUSION

If the question is about possible parallels and the causes for them, it is worth limiting what IPR informs us about private and public law. "The method used by certain authors to examine private law is primarily explanatory and firmly internal. According to this viewpoint, private law is neither explained nor justified by reference to something unrelated to it, such as efficiency, fairness, or even concerns of justice. Private law is a kind of reasoning in the interest of justice between parties that is understood within the legal system. In contrast, since its inception, the mainstream view of IPR in the United States has been essentially utilitarian."[30] "To advance the Progress of Science and useful Arts, declares the Exclusive Rights Clause, which gives Congress constitutional authority to establish laws on copyright and patents. A more parenthood-oriented approach to copyright legislation is particularly widespread in European countries such as France. Even if we consider utilitarianism as an IP theory from the inside, the exterior question of how well IP supports social goals of fostering and circulating inventions would surely arise. Is this a dysfunctional or adversarial relationship between private law and intellectual property? Without a doubt not. To begin with, the internal perspective of private law is hardly the only game in town."[31]

Many types of philosophical analysis testify to a lengthy history of studying private law via the lens of external domains like law and economics. Furthermore, concentrating on legal structure problems that emphasise law as a whole system or a collection of separate laws is less important than examining legislation merely in terms of its effects. As a consequence, it's indeed possible to evaluate whether the division of private courts into discrete doctrinal domains and similar theories is operationally justified in terms of simplifying the system and stimulating constructive advancement. And what's the point of using items such as pieces of land in a circumstance where the property is partially isolated from its surroundings?

"Also, we can get through the compartmentalization of private law if we consider how its diverse components could function together to achieve social goals. The nature of intangible rights can help us polish the concept

[30] "Probably the strongest statement of this position is Weinrib's famous aphorisms that "the purpose of private law is to be private law," and that "private law is just like love" in being its own end. ERNEST J. WEINRIB"
[31] . "U.S. CONST. art. I, § 8, cl. 8."

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of a thing, which is then too easily taken for granted in the law of tangible property. With respect to the problem of whether property rights must resemble to some degree tangible — a question over which property philosophers and legal systems differ — the nature of intangible rights can help us polish the concept of a thing, which is then too easily taken for granted in the law of tangible property."[32]

As a result, property rights adjacent to tangible things can serve as a contractual stage; attempting to explain these clusters of legal ties stick by stick would be too pricey. Is licencing well-defined as the transfer of a stick from the bundle or the formation of a new relationship with a current holder? This seemingly benign question has far-reaching ramifications for how we view intellectual property licencing. Is it feasible to create an ownership command that works against the others through requiring a licence to obtain access and acquiring power "against" the world one user at a time? Is this an excessive amount of authority for an IP owner to bring to bear? It is possible to respond within a reasonable amount of time.

"When India issued its first forced licence for an anti-cancer medicine, Nexavar, in 2012, it was believed that this would open the floodgates for the indiscriminate granting of future compulsory licences. It is worth noting that the Indian Patents Act's compulsory licence provision establishes very strong grounds for granting a compulsory licence on patented discoveries. Nonetheless, compulsory licence applications filed after 2012 have been subjected to a thorough examination of the grounds set forth in the Patents Act, and it can be argued that imposing stringent standards for the use of the compulsory licence provision has prevented abuse."[33] A clear rule governing the educational exception copyright law would go a far toward toward preventing abuse.

Because the court allowed it to the state to limit this academic exemption, authorities must take a proactive role to explain the range of the right to reproduce and prevent India from being a lookalike of a country with lax intellectual property enforcement. One alternative is to enable similar methods to that used by UK's Copyright Licensing Body, which permits the reproduction of works for academic reasons only if they are being used to demonstrate a point in a quasi manner and are backed by adequate acknowledgement. "While

[32] See Henry E. Smith, Emergent Property, in PHILOSOPHICAL FOUNDATIONS OF PROPERTY LAW 320 (James Penner & Henry E. Smith eds., 2013).
[33] MARICEL ESTAVILLO, India Grants First Compulsory Licence, For Bayer Cancer Drug, Published on 12/03/2012, Intellectual Property Watch.

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public interest is a major consideration for Indian policymakers when it comes to IPR, there must be a sense of balance between the interests of property holders and those of the general public."[34]

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