THE IP PRESS L. REV.
VOL. 1 ISSUE I1, JUNE 2023
ISSN: 2583-7702 (ONLINE)

APPROACHES TO INTELLECTUAL PROPERTY: A PLURALISTIC ACCOUNT

Abhay Raj Mishra [*], *Rishabh Shukla*[**]

ABSTRACT

The nature of Property Rights is such that it secures several individual interests ranging from securing housing to providing pet companionship. The idea of Property developed with time and with time the nature of such rights changed. It was realized that there were interests that were required to be protected that went beyond the intangible things. The 'Intellectual Property' refers to a loose cluster of legal doctrines that regulate the uses of different sorts of ideas and insignia. The philosophers studied such interests and gave their opinion and developed them. The idea of such a property which would protect the interest in intangible things (like written ideas), was expanded by great philosophers like Immanuel Kant, J.S Mill, Hagel, Marx, etc. The nature of the Intellectual is such that it cannot be justified by one approach. It is pluralistic. The paper aims to analyze the different Jurisprudential approaches to Intellectual Property. The authors aim to establish the relevance of the different approaches in the present times.

Keywords: Jurisprudence, Intellectual Property, Property Rights, Hegel, Justice.

[*] *Abhay Raj Mishra, Student, NLU Nagpur, abhaymishra@nlunagpur.ac.in*
[**]*Richabh Shukla, Student, NLU Nagpur*

1. INTRODUCTION

The role of Intellectual Property is de die in diem in our economy and society. The origin of Intellectual Property dates back to 500 BCE when the chefs of the ancient Greek colony of the Sybaris were granted a monopoly to exploit new recipes from the Chefs for one year.[1] Another instance that can relate to the origin of Intellectual property can be traced back to the first century C.E. when the Roman Jurists had discussed the various interests of owners about their Intellectual Work. A few centuries later in 1432, the Senate of Venice introduced a law providing monopolies to those inventing any machine or any process which could enhance the production of silk.[2] Therefore, inventions and ideas started acquiring protection under laws and the inventors acquired certain rights over their products.

During the times of European reformation in the sixteenth Century, the system of protecting the invention, ideas, art, and craft became stricter due to the advent of the printer's guild. Licenses were granted to these guild members who bought manuscripts from the authors for a one-time fee, and then all the sales profits went to the printers.[3]

With the rapidly developing world and globalization spreading its wings, there was a huge influx of readers and demand for literature put a strain on the current system of guilds and a new supply of writers arose. Now these authors did not only want the right of authorship, but they also demanded shares of profits from the sales. The increasing demand for literature also reared piracy, cheap reprints by those who didn't hold the authority to print. Such problems gathered immediate attention from lawmakers and philosophers and the process of development of Intellectual Property Laws started to promote the progress of science and arts.[4] But today, there are numerous disputes regarding the scope, implementation, and interpretation of Intellectual Property since its emergence.

Currently, Patent laws are protecting various new inventions and professional inventions whereas the Copyright Law is to safeguard certain forms of expression covering computer software, movies, novels, etc. Similarly, Trademark laws are to safeguard the words or symbols that are registered to identify a particular product or company. The right of Publicity is to safeguard a personality's right to their name, images, and other identities. The importance of such legal

[1] *Curtis Reid v. Clarice B. Covert*, [1957] 701 U.S. 351, 487.
[2] Elizabeth Verkey, *Law of Patents*, (1st edn, Eastern Book Company, Lucknow 2005) 2.
[3] Carla Hesse, *The Rise of Intellectual Property, 700 B.C.-A.D. 2000: An Idea in the Balance*, 26-45, Daedalus (131st ed. 2002).
[4] Ibid.

implications is rapidly increasing, and the fortunes of various occupations are heavily dependent on intellectual property laws.

In the last two decades, many conundrums have arisen regarding the patenting of animals, plants, computer screen displays, computer chips, recorded music, sports telecasting, and various other things. For a healthy discussion on Intellectual Property, as it can be noticed that IP laws are at their developing stage in many parts of the world, it is of vital importance to have a proper account of the jurisprudence and justification of the IP laws. The interpretation and justification of the IP laws and policies are mostly based upon two major approaches libertarianism and utilitarianism.[5] This article will at length discuss the application of these theories and then will also throw light upon certain approaches that help in interpreting IP laws.

2. UNDERSTANDING INTELLECTUAL PROPERTY

The idea of '*property*' is fundamentally ingrained in our standard life and articulation. Property in general is regarding ownership of things. Ownership sequentially is about our rights to possess or use things. Law and economic scholars, particularly, argue that property rules serve only to provide a background license that helps as a footing for future exchanges. So, with this perspective, it can be said that property is nothing but a series of personal legal obligations.[6]

Property typically carries some liberties (to use and possess), powers (to sell their property), claims (to prohibit others from trespass), and immunities. Property rights are important because they determine the use of resources. Property rights comprise a set of formal and informal rights to either use or transfer resources. One of the functions of the state is to describe, interpret and impose property rights. Although, Property rights contain the right to possession, it is not always the case. For instance, if government agents take possession of stolen government property from a thief who confesses to having stolen it, there will be no violation of property rights.[7] Also, various laws can prohibit the homeowner from unnatural use of his land.

The incentive of maintaining the value of property increases concerning the exclusiveness of property rights for an individual or a group. For example, in the case of land, the value of an asset can be increased by investment, but if the individual or group is cash-poor, the investment

[5]Peter S. Menell & B. Bouckaert & G. Geest, *Intellectual Property: General Theories*, (2003).
[6]Meredith Render, *The Concept of Property*, (University of Pittsburgh Law Review 2017) 78.
[7] Hugh E. Breakey, *Two Concept of Property*: *Ownership of Things and Property*, (The Philosophical Forum 42, 2011) 3, 239-65.

may not be sufficient to maintain its value. In this scenario, the ability to invest can be aided if the asset can be used as collateral to secure a loan.[8]

It is often accepted that the expression '*intellectual property*' signifies the right over an intangible object of a being whose mental efforts constructed it. After ideas were considered to be property, they became intellectual property. Since more than one person can have the same idea about a particular thing, so intellectual properties are non-exclusive. For instance, more than one person residing in different places can develop the same computer program, devise an identical machine, derive same business title or symbol etc. IP laws provide people with exclusive rights and control over things that are non-exclusive. There is a difference between entitlements that make up physical property ownership and one that make up intellectual property ownership. Therefore, it is required to guard the fallacies arising when we say physical property and intellectual property ownership as a non-identical species of the same genus. To analyse intellectual property ownership, we first need to realize what it involves.

Copyrights, trade secrets, trademarks, license, patents, rights of publicity are categorized under the heading of intellectual property as they comprise of valuable thoughts and creation of the mind. Copyright governs specific means of conveying feelings, thoughts, facts, etc. Trademarks prohibit the use of a particular symbol or title that signifies a relation between commercial products and services with their sources. However, trade secrets and patent laws, cover up for information.[9]

The patent protects an information on how to produce copies of an invention or protect a process that could produce a useful result, for example, techniques of Louis Pasteur for pasteurization or Alexander Graham's telephone. Trade secrecy laws also to some extent do similar thing and protect the same sort of information but it does so by protecting certain illegitimate disclosure or use of information from those who have acquired it illegally or have been let it on secret, a classic example of Coca- Cola, unlike patents which asks inventor to disclose the information and then forbidding illegal use of that particular information.[10]

The development in intellectual property in west to some extent influenced the evolution of intellectual property rights in India also. The Copyright Act of 1872 was extended to India by

[8] James E. Krier, *Evolutionary Theory and the Origin of Property Rights*, 95, 139 (Cornell L.R, U. of Michigan Law, and Economics, 2009).
[9]Arif Hossain, *Basic Concept of Intellectual property Rights (IPRs)*, 9 (Bangladesh Journal of Bioethics, 2018).
[10]W.R. Cornish, *Intellectual Property: Patents, Copyrights, Trademarks and Allied Rights*, (Universal Law Publishing Co. Pvt Ltd. Delhi, 1999).

East India Company. Indian Copyright Act of 1914 was a modification of British Copyright Act of 1911 which comprised of provisions such as rights of author came up as soon as he completes his work, it also said that protection will be given to the material form and not to the idea by which it was created and gave exclusiveness to the author for his lifetime and even after his death for 25 years.[11]

Apart from the above mentioned, other things can also be regarded as IP such as confidential, personal information, medical history and records, financial records etc. Many companies use this private information of individuals and with the desire of enhancing their marketing and advertising. So, if this information of an individual is considered as IP, then, he can use his rights and sue for theft, conversion etc.

Design is also an aspect which is treated as IP and Great Britain was the first country to do so. It was made with the hope of encouraging arts of design and printing linens, muslins, cotton etc. Till 1883, patents, trademarks and design remained separate but after 1905, patent and design law remain together.[12] Plagiarism can also be seen as theft as he has copied the idea and words of someone else without mentioning him and without proper citation. Some might argue that it involves copyright law, but it is not so. For instance, one can just not copy the work directly but can plagiarise all the ideas and thus they would not be guilty of the trademark but for plagiarism.

With the growth in society in the past few years concerning technology has blurred the boundaries between different types of intellectual property. The importance of these rules is rapidly increasing in both economic and cultural aspect. Also now, the fortunes of many large businesses depend on this cluster of rights said to be as IPR. There are different theories and approaches that should be taken into consideration for a better understanding IP and its evolution. These approaches can also provide with the most suitable methods and ideas in law-making and implementation.

3. THE UTILITARIAN SAGA

The Utilitarian approach generally lays its foundation upon "*the greatest happiness principle*" and it is very important to study the views of utilitarian thinkers like J. S. Mill and Jeremy Bentham to understand the application of utilitarian theory in IPR. The Utilitarian theory is by far the most dominant approach to intellectual property especially in Copyright and Patent

[11]T.G. Agitha, *Trademark Dilution: Indian Approach*, 50, 339-366 (Journal of Indian Law Institute, 2008).
[12]Cornish, *supra note* 10.

laws. As per the extended explanation of the Utilitarian theory, several good actions are done not for the profits of the world but for the benefits and moral rights of the individual[13] and along the same lines the justification of the copyright laws lies which provides exclusive rights to authors for a limited period to protect their work from duplicate and unauthorised use to promote original literary and artistic work. Similarly, the patent laws provide the investors with the right over the certain invention and valuable technology for a limited period. Such exclusive rights are provided to investors, authors, scientists, and inventors to promote original invention, art, technology, and literature work by maximizing the social utility.[14]

As J. S. Mill puts it, "*actions are right in proportion as they tend to promote happiness; wrong as they tend to promote reverse of happiness*" and laws that protect individual rights are important as they uphold greater good of the society.[15]

Utilitarian argument finds its place in the US constitution and is often justified as well by giving the power to Congress to "promote the progress of Science and the useful arts, by securing limited times to Authors and Inventors the exclusive right to their respective Writings and Discoveries."[16] This clause of the US Constitution is in conformity with the idea of the utilitarian theory. Following the principle of utilitarian, the copyright and patent laws grant rights to authors inventors for a limited scope and time. The logic behind the copyright and patent laws is to acknowledge the work of art, literature, and technology by providing certain individual rights to their authors and inventors thereby overall social good.

Moral theorists are categorised by act-utilitarianism and rule-utilitarianism. Act-utilitarianism proposes to perform such action which is likely to promote the maximum social welfare and utility. Rule-utilitarianism proposes to perform acts according to a set of moral rules which promote overall social utility.[17]Mill was a rule-utilitarian thinker according to whom actions that promote social utility are necessary but at the same time such actions must protects the individual's rights and liberties.[18] Mill was also of the opinion that it is unjust if a person is deprived of personal liberty, property, rights or anything else which by law belongs to him.[19]

[13] J S Mill, *Utilitarianism*, 1863, (Batoche Books, 2001) pp. 20-21.
[14] Jeanne Former, *Expressive Incentives in Intellectual Property*, 98 (Virginia Law Review, 2012).
[15] Supra at 13.
[16] U.S. CONST. Art 1, § 8, cl. 8.
[17] S Scheffler, *Consequentialism and Its Critics*; (ed.), (Oxford University Press, 1988) pp. 293.
[18] J S Mill, *Utilitarianism*, 1863, pp. 43 (Batoche Books 2001).
[19] Ibid.

The ideas of Mill can be rightly justified when it comes to application to IP rules, pursuant to utilitarianism, the copyright and trademark laws as it saves the rights of inventors and authors by balancing the good or bad consequences in the society. Such rights conferred by the patent copyright rules maximises the overall social utility and encourages the original art, literature, inventions etc.[20]

Another general argument that evolves from the utilitarian view and is also very closely related to Jeremy Bentham's perspective of utilitarianism *'greatest good for the greatest number'* advocate those legal rules and policies which are socially beneficial and also promote economic utility.[21] However, when it comes to application of this theory to intellectual property, the first and foremost question is to determine the most socially beneficial outcome between giving a monopoly (through legal rules, such as intellectual property) of certain product to its author/inventors which legally forbids others to utilize the benefit from it; and to not consider such property rights at the peril of discouraging art and innovation. The creation of artistic works, literature and technological innovations is manly for the advancement and benefits of the society at large, however, utilitarian justification of the intellectual property laws also advocates the idea of providing the appropriate rights and benefits to the creators for their efforts.

Despite of being widely accepted as a dominant theory of intellectual property laws, the utilitarian model has faced certain criticisms. The general question which is still under critical analysis of many jurists and legislators is - *whether the status quo laws of intellectual property are in their best form to protect the greatest good of the society or is there a scope to make the laws socially more beneficial*?

Another problem with the utilitarian perspective is that the theory does not provide a detailed account of the rights of individuals; the theory rather focuses on what is desirable or what the result that is beneficial for overall social utility. Also, moral rules are well defined and elaborated in this theory and it is generally contended that these moral rules are designed in a manner to protect individual rights and distributive justice.[22] However, the idea of utilitarianism rests upon desirable outcome and moral rights; it is not a theory of individual rights and distributive justice. The utilitarian theory is centralised to moral rules and these moral rules primarily focus upon net gain of the society rather than focusing upon distributive justice and the individual rights. On the contrary, intellectual property laws has its roots connected to the idea of individual rights

[20] S Scheffler, *Consequentialism and Its Critics*; (ed.), (Oxford University Press, 1988) pp. 293.
[21] Jeremy Bentham, *An Introduction to the Principles of Morals and Legislations*, (chapter V, 1988).
[22] Supra note at 20.

and distributive justice and at the basic of the intellectual property laws, it can be observed that the utilitarian view does not have a direct right.

Further, taking an example from the recent pandemic times, we see that many of pharmaceutical companies are developing a vaccine for SARS-CoV-2. Such a vaccine is a need of the world and what is required is that once it is developed, its production must be in such a manner that it reaches to most of the people in least of the time. But, once a vaccine is developed, it will be certainly governed by certain patent and pharmaceutical laws and such laws would limit the production of the vaccine to safeguard the rights of the developers. However, as per the utilitarian theory, it should be the interest of the people that should be given priority and the people's interest here lies in the rapid production of the vaccine and timely procurement of the same. Further, the patent laws would not only limit the production, but it will also delay the procurement of the vaccine. Therefore, in certain aspects like these, the Utilitarian theory fails to provide a convincing ground. Further, in the matters of trade secrets, and personality rights, the approach of utilitarian views does not hold a very strong ground as the theory follows the propaganda that the secrets must be disclosed if there is a public interest involved, however, this approach has many discrepancies if we relate it to the idea of trade secrets.

4. THE LIBERTARIAN PERSPECTIVE

John Locke, a 17th-century philosopher, came up with the natural rights justification for private properties that remains a strong and central pillar in modern property rights theory. His development of the libertarian approach theory was expanded by modern philosophers like Rothbard, Palmer, Spooner etc. Although Locke made many thoughtful claims in his justification, it will be an overstatement to say all his discussion clear. He said that the labour of one's body and the work of his hand should be called as his. In general, this means that if a person founds unknown land, clears it, cultivates crops, builds a house, and obtains a property right by engaging in these activities.[23]

He believed that at the beginning, everything that nature provides is common to all but as one applies his labour or something of his own to it, thereby making it his own. He openly and constantly uses what appears to be a metaphor such as an image of mixing labour with physical objects without disclosing any non-literalist intention.[24]

[23] Adam D. Moore, *A Lockean Theory of Intellectual Property Revisited,* 49, 1069, (San Diego Law Review, 2012) pp. 1075-76.
[24] Menell, supra note 5, at 157-58.

Locke claims that humans have natural rights to liberty, life and property and the sole purpose of government should be to protect these rights.[25] His theory said that all these legal rights are based on moral rights.

Locke's theory can be better understood as '*no harm, no foul principle*'. Any legal obligation or restriction is valid only if violates another person's natural rights. When a person takes a glass of water from a river it is as if he takes nothing at all. Others will not be affected by this acquisition at all. This is the '*enough and as goo*d' proviso defined by Locke. In the same way, in terms on intellectual property, an invention or discovery takes a lot of time, labour, skills and effort. For instance, creating a poem and keeping it a secret does not prohibit others from making their poems. This libertarian model believed that all creations of the human mind such as literary works, inventions etc. should be freely accessible and can be utilised by anyone.[26]

Rothbard argued that libertarians acknowledge the implementation of legal contacts by the idea that we should be bound and must follow the agreement which we had entered freely, and without any coercive interference with anyone. Rothbard supported theory of copyright, that if an author in his agreement properly conditions the sale of his work '*not to reproduce or recopy this work for sale*' then this arising copyright protection will be completely valid and legal on libertarian grounds. Rothbard distinguished between two types of intellectual properties that is, copyrights and patents. Unlike Copyrights, he claims that patents are invalid and contradictory to free market as they go beyond copyrights that are by protecting beyond of the original legal contracts. For him, if another person invents something independently, he will be perfectly able to use and sell it on the free market.[27]

Spooner argues that only tangible and physical objects are not the one that has value, but ideas should be seen as labour. He compares ideas to 'new forms and beauties' that human labour gives to physical objects. For Spooner, property rights can and must extend beyond physical objects, that the acquisition of property relies upon something that cannot be physically touched or seen, i.e., human efforts.[28]

---

[25] Garima Gupta et al. Avih Rastogi, *Intellectual Property Rights*: *Theory and Indian Practice, (*Centre for Civil Society, New Delhi, 2002).
[26] Supra note at 23.
[27] David S. D' Amato, *Libertarian view of Intellectual Property: Rothbard, Tucker, Spooner and Rand*, Libertarianism (May. 28, 2014),
https://www.libertarianism.org/columns/libertarian-views-intellectual-property-rothbard-tucker-spooner-rand.
[28] Ibid.

Even though these theories appear to be ideal, its application of enforcement in reality is to some extent a formidable task. We must realize that laws, in the context of property, are outcome of the moral unanimity among people. Whereas Intellectual property laws did not derive in nature but people living in civil societies slowly and progressively converged to them. Secondly, the market has developed methods to prohibit piracy and imitations. But with the evolution of technology, people will somehow always find a way to duplicate which eventually will lead to chaos in society and thus society will have to adopt and enforce a system of intellectual property rights whether it be legally or through mutual consent.[29]

Also, it is not entirely coherent whether Locke's labour theory supports any intellectual property rights. The question arises that why should the labour upon a resource that has been held common, entitles a labourer to claim property rights in the resource itself. Above all, most of the inventors and authors work very hard and their intellectual labour is much more crucial in the total value of creation then the raw materials they have employed. Locke suggests that a property one acquires from his labour over a resource held in common must last forever, that is, are inheritable and devisable for an indefinite period. On the other hand, unlike physical property, most intellectual property expires sooner or later.[30]

Another problem regarding these theories is that it does not provide clarity on the distribution of intellectual credit. Many intellectual works such as writing papers, movie scripts, and scientific experiments have more than one person involved, and the problem arises that arises as credit cannot be always given based on labour. For instance, in an experiment there are many technicians are involved under a senior investigator, technicians might work for more than 100 hours but the senior investigator only contributes 4% of the total labour, but it can be argued that senior investigator should be given the credit of first author despite of labour applied in the work.

5. HEGEL'S APPROACH TO INTELLECTUAL PROPERTY

One of the justifications for IPR is *Personality theory*. As claimed by this theory, any invention or work done by its inventor or author belongs to him or her because it depicts his or her personality. This theory, to some extent, seems to protect intellectual property from criticisms based on a utilitarian approach. So far, it can be said that the utility approach rejects natural rights and acknowledges property only concerning achieving social goals of utility or for maximization of wealth. This personhood justification of intellectual property derives mostly from Hegel's

[29]Gupta, supra note 2.
[30] William Fisher, *Theories of Intellectual Property*, (Harvard University, 1987).

philosophy of rights and has been further explained concerning modern context by Radin. It can be said that Hegelian theory looks notably like Lockean theory except for the fact that in Lockean theory, labour is mixed with an external thing while in Hegelian theory, one's will, or personality is mixed with an external thing. As personality has one of the central roles in Hegelian theory, it is said to be a Personhood theory.

In the most specific form, it can be said that an idea is owned by its creator as it is exhibiting his or her personality or self. Its main objective is that to achieve proper development, to be a 'person' and achieve 'individual freedom' particularly, one needs to have certain control over the resources that are present in the external environment. A person can describe his or herself only by manipulating or controlling external objects or environment and disavowing a person's right over property is the same as restricting his or her freedom.

Hegel gives more priority to individual will than external property, which is the '*manifestation*' or '*actualisation*' of that will. Hegel says that when a person expresses himself through his property or work to society, it is nothing but the manifestation of his personality thus providing him status of a person and individual freedom. Hegel's Personality theory can be used to justify the claims by artists, writers, musicians etc. for instance, a writer's personality or will is manifested through his or her work.[31] A book, which is an external property, wrote by an author is a manifestation of his inner personality, i.e., feelings, emotions, experiences etc. and so it justifies the right of the author over that particular property.

We need property to express ourselves in the world and personhood theory also known as self-expression theory resolves the property in question which reflects a person's unique knowledge, skill, genius etc. If a person has devoted him or her "*self*" to a work or object, then that object or work, without any doubt, should be his or her property.[32]

On the other hand, there underlies several shortcomings and disagreements in this theory. Personhood or self-expression theory, like labour mixing theory, works mostly when there is a single person related to the property. It fails or is not able to provide us with satisfactory results while dealing with cases of collaborative efforts. There is no certain answer to what sort of right should emerge from joint authorship. Personality theory falls short while providing guidance when there is a clash between the creators of how their work should be manifested in the world. One of the concerns that arise is the conceptions of '*self*' or personhood that we are trying to protect

[31] Waldron, J. *The Right to Private Property* (Clarendon Press, Oxford, 1988).
[32] Ibid.

through adjustments in intellectual property, is too thin and abstract to provide many specific questions. Either we need to have a more coherent vision of human nature, which will require addressing such grand questions like the importance of creativity or will to the human soul, or this understanding of personhood with respect to culture or time if lawmakers need to answer the questions arising out of disagreements with the theory.[33]

One of the other problems that arises out of personality theory is that it seems ineffective when used in support of property rights that are produced using automation or intellectual property that are not so clearly an expression of individual will or personality, such as industrial processes or computer software. In the contemporary world, most of the factories have replaced people with machines. Today even music, arts and animations etc. are generated through the computer. Although this automation does not completely polish off human expression or personality from the creation of information, it lessens that unique contribution which sabotages the argument that any product is the reflection of a person's special talent, edge, or creativity. All the above-mentioned arguments, to some extent, show that our current IP laws are more concerned with the utility or liberty approach than the personhood approach.[34]

6. HOW THESE THEORIES ARE IMPORTANT?

These theories, though cannot provide a wholesome account for IPR, are the foundation of the development of modern and advanced IPR laws. The IPR laws must be seen through the prism of the principles laid down in these theories. The common idea and objective that has been talked about by many philosophers and lawmakers is to strike a balance between the rights and interests of the inventors/service provider and the interest of the public who are the consumers. What one can notice from the outset is that the matters of intellectual property are a two-way traffic where on one side we have the manufacturers/ inventors/ authors/ publishers etc. and on the other hand we have consumers or users. The initial intent that leads to the formation of modern intellectual property laws was to promote the skilled arts, literature, inventions, creative works, etc. and to motivate and lure artists, scientists, and skilled workers, such intellectual property laws were formed to provide the desired incentives for their works, and this would lead to the promotions of art and invention.

However, it must be noted that public and societal interests cannot be compromised to fulfil the interests and incentives for the promotion of art and literature. It is evident that these

[33] Peter S. Menell & B. Bouckaert & G. Geest, *Intellectual Property: General Theories*, (2003).
[34] Ibid

approaches although do not provide a complete prescription of intellectual property laws, cannot be ignored that these approaches are the guiding light to strike a balance between the rights of the investors/manufacturers and the rights of the consumers and that is why IP laws become important, but such laws shall not encroach upon the interests of the society.[35]

If we take a sharper view, *the ideas laid down in these theories come under the wider ambit of natural justice*. The above discussion on these approaches helped us to know the rights and interests of the inventors and artists and why it is important to provide them with incentives for their work by safeguarding these rights. On the other hand, we had a detailed discussion on the importance of determining the utility of the consumers and users and why balancing both these sides are important. Therefore, these theories become much relevant in invoking a conversation amongst lawmakers and academicians on the law-making process and fitting a balance between the consumers and producers.

We see that the utilitarian view widely discusses the utility and rights of the consumers and on the other hand, the libertarian approach strongly supports the rights and autonomy of the producers. Why the lawmakers and academicians delve into such theories because these theories act as a guiding light in drafting the ideal shape of the laws to provide the right balance so that they will be implemented within the current market regulations.

For example, the newly evolving Publicity Rights or Celebrity Rights which is to put on control over the commercial use of the identity of a person without his/her consent. These laws are made to safeguard publicity rights and are believed to be primarily based on the privacy approach which promotes corporate or personal privacy. However, a proper inspection of such laws all around would certainly show that these laws do not exclusively follow or rely upon the privacy approach. It is so because the privacy approach is extreme which is not fit for efficient market regulations and laws evolving out of such extreme privacy views would lead to an imbalance between the producers and users.[36] That is why the lawmakers also investigate the utility of market players, contractual agreements, convenient market regulation etc. for better facilitation of such laws.

Rigidly following a single approach would evolve such laws that would be tough to fit into the current market regime. Therefore, this paper advocates the idea of a pluralistic approach to pitching the right balance between the consumers and producers/manufacturers for efficient market

[35] D.B. Resnik, *A Pluralistic Account of Intellectual Property*, 46, 319-335, (Journal of Business Ethics, 2003).
[36] Samuelson, *Privacy as Intellectual Property?* (Stanford Law Review, 2000), pp. 1125-1172.

regulations. Also, it provides the correct measures for the rights of the manufacturers/producers/ inventors and at the same time it also eyes to uphold the overall public interest in the law-making process.

7. CRITIQUES OF THE PLURALISTIC APPROACH

As we have already reviewed the different approaches and their importance concerning each other. The crux of the above discussion clearly shows us that different approaches have different values which mostly are autonomy, justice, freedom, and utility. Now, apart from the point that other approaches provide an inadequate account of IP, there are two other important factors for assuming and preferring pluralistic approaches. Firstly, the IP is highly diverse as it includes trade secrets, patents, economic interests, interests in authorships etc. The second reason is that modern society is pluralistic. People have different moral, cultural, and religious beliefs and provided this diversification, it is highly unrealistic that "*one size would fit all approaches*".

However, before concluding this paper, we must address the objections raised by critiques on the pluralistic approach. The first major objection raised concerning this approach is that it is inconsistent as it gives priority to different values in different situations. There should be a ranking system to achieve consistency for which pluralism fails to do so.[37] To answer this objection, it must be said that although pluralism provides priority to different values in different situations, it still is consistent as it provides us with principled reasoning for a shift in the priority of values. Consistency in moral reasoning has a requirement that similar cases should be treated similarly and different cases differently. The second objection raised by critiques is that Pluralism includes too many values in IP Law thus making it unnecessarily complicated. Therefore, it is not a very useful guide to policy formation. Now, concerning this objection, it must be said that although pluralism is more complex than other approaches, it is still practical. Social policies are not very often framed in simple terms of *costs vs. benefits*. Policymakers must wrestle with competing basic values and even though balancing competing values is not so simple, it is still realistic and practical.

[37] Beauchamp, T.L. and Childress, J.F. *Principles of biomedical ethics*, (5th Edition, Oxford University Press, Oxford, 2001) 59.

8. CONCLUSION

In summary, this research paper has analysed and critiqued different approaches to Intellectual Property and further argued or rooted for a pluralistic approach. According to this, different types of fundamental moral values such as autonomy, justice, and utility, play an important role in making IP laws and policies. To dispose of arising disputes, one must weigh and consider different values under particular facts. The paper has also further provided two major reasons why pluralism provides the best account of IP, which are, firstly, that IP is diverse and secondly that the society is diverse as well and people accept different moral and philosophical beliefs.

Since Intellectual property is rarely justified on one theory and we live in a pluralistic society in which different people want to control information for various reasons, a pluralistic approach is politically, morally and technologically realistic, sound and practical.