INTRODUCTION

The earlier chapters have attempted to question the justificatory premises of intellectual property rights. They have examined two intuitively very powerful arguments in defense of property - Self ownership and Utility- and have examined their validity for intellectual property. Two primary conclusions have been:

a) Both self ownership and utility are insufficient premises, by themselves or in conjunction, for claiming rights in intellectual property.

b) Knowledge has well defined collective claims and that individual claims become contestable in the light of the fact that knowledge necessarily has a cumulative, historical character.

The conclusions have been arrived at both by questioning the philosophical claim behind intellectual property rights or by examining its claimed utility. This chapter moves beyond the analysis of the premises of this right and moves to another dimension of rights. Rights are established not merely on grounds of utility, intuition or morality but also for the effects that they may generate for other rights, in other words in terms of their compossibility with other rights. A right which conjoins with other rights has a stronger claim than a right which infringes upon other rights. There are inherent tensions between some rights viz. between the right to liberty and the right to equality; between individual rights and group rights in general. Which right is accorded primacy, or as Rawls would put it, 'a lexical priority' would largely depend on the discourse that dominates social policy, in a particular sector/country/ community. The key focus in this chapter would be to see the extent to which intellectual property rights seek to conjoin themselves with other rights and reflect the prevalent concerns of the existing rights discourse, which in the last two decades has been dominated by concerns of human rights. Philippe Cullet argues, in the context of patents and the right to health, that while there is a need to recognize the importance of scientific and technological development there is also a need to acknowledge the possible tension between the interests of inventors and the interests of society at large in benefiting from scientific advances. Interests of the inventors are not fundamental human rights. Further, the interests of inventors must be understood within the context of all the other human rights protected, for instance, under the UN Covenant on economic, social and cultural rights. The recognition of the
interests of an inventor can in no way qualify fundamental rights such as the right to health or
food. Rather, they must be integrated within the framework of these rights.¹

Together with the notion that people should have access rights over external resources, and that
people have rights over their own persons and powers, another notion has gained ground – the
idea that people should have access, as a matter of moral right, to certain welfare conditions. This
notion in fact became the very grounds on which group rights and human rights were claimed.
This idea underlies the provisions of documents in international covenants on economic, social
and cultural rights and the European Social Charter.² Welfare rights, it is acknowledged,
presuppose a welfare principle according to which individuals are entitled to call on the efforts of
society as a whole to achieve an acceptable welfare condition for all.³ Welfare rights presuppose
that the powers and talents of more able members are treated as common resources, which are
used to bring about collective welfare. This principle is in clear contravention of the libertarian
principle as per which individual powers and talents cannot be used to alter conditions for the
sake of greater good. One of the things evident in the second and third generation rights, group
rights, human rights etc, is that the rights discourse gets aligned with issues of needs and welfare
and the issue of culture. An important aspect of a rights claim becomes its composability with
different conceptions and forms of welfare and human rights which have acquired a centrality in
the rights discourse.

How do intellectual property rights fit in within this emerging discourse of welfare and human
rights, most of which have strong cultural overtones? IPRs are a domain of rights that are both
universalistic’ in conception as well in application. It is based on the assumption that rights and
property practices need not be culture specific, or that they need not be contextual in nature.
Intellectual property is an individual and individualistic right, which is being supplanted on to
societies and communities that recognize primarily collective rights over knowledge resources.
Such societies may, in fact, lack the very conception of self-owned knowledge rights. The self
and the self that ‘knows’ and, in fact, even the natural world with which the self interacts, do not
exist in subject-object relationship. The contention here would be to argue that universalistic
conceptions of property rights, particularly intellectual property rights, bring into sharp focus the

¹ Philippe Cullet, “Patents Bill and the Right to Health,” Economic and Political Weekly, XXXVI/43 (27 Oct,
2001), 2

² International Covenant on Economic, Social and Cultural Rights, Art.7, 9, 15; European Social Charter, Arts. 2,
12; UDHR, Art.22-7).

tension between the cultural and contextual nature intellectual practices and a universalistic IPR regime. The cultural and intellectual domination that is implied by intellectual property rights impinges upon and gradually infringes a range of rights which go beyond knowledge rights. The rights in question could be livelihood rights, right to subsistence, health rights, right to life, all of which have become important dimensions of human rights discourse which has gained acceptability across the globe in official, quasi official protocols, social movements, intellectual debates, policy forums and so on.

In the past few decades there has been a dramatic increase in negotiations between social groups of different kinds and political institutions, whether at the local, national or supra national level, phrased in the language of 'rights'. Processes of globalization have led to the rights discourses being adopted widely through the world. New domains of political struggle have been framed, such as reproductive rights, animal rights, ecological rights and so on. There is a never-ending struggle to establish, as legitimate, the ideas and rights of specific individuals or groups or societies against others. Since Intellectual property is claimed as a right and also contested from a rights perspective it forms yet another domain of struggle. The ubiquity and the diversity of rights discourses and rights practices made the exploration of the philosophical, ethical and legal premises of IPRs, in the earlier chapters, particularly pertinent. Equally pertinent, especially in the context of globalization of intellectual property rights, is the question of how intellectual property rights relate to other rights of 'other' peoples.

Three case studies have been taken to illustrate the point that IPRs are not necessarily attentive to the moral claims or rights of diverse communities or societies. The range of rights that intellectual property rights seek to infringe, either directly or by implication, are diverse. Three rights – the Right to Health (health as a human right or as a right to life); Farmers' Rights; and Knowledge Rights – that have been affected have been taken and illustrated through case studies. All three case studies have in some sense become symbolic of the politics and conflict over intellectual property rights. These three rights are by no means form a complete list of rights that IPRs seek to impinge upon, but they are nevertheless three significant and illustrative rights and reflect aspects of other rights and rights infringement as well.
IPRs and Right to Health – A Case Study of the Glivec Patent Claim in India

IPRs and Farmers' Rights – McFarling V. Monsanto: A Case Study

IPRs and Knowledge rights – Patent claims for Neem: A Case Study

This section aims to examine the different aspects of the relationship between intellectual property and the different categories of rights that have been affected in the process of intellectual property protection. The group of rights referred to above is crucially linked to the evolution of the field of Human rights. What is significant is that though human rights and intellectual property rights are 'rights', they belong to two distinct fields that have largely evolved separately. How they relate to each other is always a subject of examination. The impact of intellectual property rights on the realization of human rights such as the right to health and livelihood rights/subsistence rights will be examined provides an opportunity to judge the co-existence of intellectual property rights with three different categories of rights, all of which have been granted salience, in varying degrees, as human rights.