INTRODUCTION

There are two dimensions to intellectual property rights (IPRs): intellectual labour as property and intellectual property as a right. Is intellectual labour or knowledge amenable to propertization? Can it then be claimed as a right? These are the two central concerns of this study. In trying to offer answers to these questions, this thesis attempts to problematize the notion of intellectual property and then situate the problematic of intellectual property in the rights discourse to test its validity as a right.

The meaning, the understanding and the theory of property have undergone many changes over time. So also has the notion of rights, often in relation to the concept of property. Any discussion of intellectual property, as an issue in political theory, must take into account both the conceptual problems involved and the historical dimension of the theory and practice of property, since neither is the institution of property static, nor is there a common attitude to the desirability of a particular form of property. Notions of property are rooted in particular historical experience. For instance, western attitudes to property are associated with the development of capitalism and with the notion of commodity, which generates a notion of ‘private ownership’, which in turn confers, on the individual, the right to use and dispose property. There are fundamental differences in the concepts of ‘property’ and ‘persons’ in different social groups. Property, therefore, needs to be understood both historically and contextually. The whole idea of an individual actor having defined rights may be alien in other historical settings. Different historical and cultural settings which do not have defined or definite notions of individualistic rights have attempted to, in recent times, draw upon indigenous and human rights traditions to establish their claims to livelihood resources, territories, and cultural survival. This has led to the genesis of notions of group rights, community rights, cultural rights, all of which are underlined by the collective and communal nature of rights’ claims.

Contextually, the idea of intellectual property rights conforms to the western conceptions of rights. It is important to contextualize the relation between property and persons, as implied by IPRs, as also to demonstrate that this relationship has specificity in the western context and that this may not be the case in other intellectual or social traditions. Thus particular relationships between person and property need not be prescriptive or universalistic in nature. Property has developed both as an institution and as an idea in political theory and philosophy. Although there
are many notions and types of property - 'private property', 'common property', 'public ownership' and so on - the institution and the notion of private property is being considered here because that is what is considered as, and protected by, rights. One of the most revolutionary legal changes in the past generation has been the "propertization" of intellectual property (IP) and the development of IP as a form of private property.

Over the years, there have been three large movements within the institution of property. The first of these was the movement from common property to private property. Before the 17th century property was conceived either as common or private, but in the 17th century the idea of common property dropped 'virtually out of sight'. There was a marked change in the idea of ownership in the 17th century (S.F.C. Milson 1969). G.E.Alymer (1980) talks of the emergence of absolute individual ownership and of the erosion of the distinction between real and personal property. The development of the institution of private property was also matched by a concomitant movement in political philosophy, which sought to offer different justificatory premises for establishing the moral claim of private property.

The second movement was with respect to the changing conception of rights in general. In the aftermath of the collapse of communism and widespread disenchantment with the Marxist grand narratives of progress and emancipation many liberals came to see welfarism in a more positive light, as positively empowering for securing the autonomy and freedom of the individual. This came to be referred to as the positive conception of rights, in which rights were structures that enabled individual pursuits. The idea of socio-economic rights which enable individuals in a substantive manner, gained a great deal of ground. Although the indivisibility of rights is often proclaimed, socio-economic rights have traditionally been viewed as fundamentally distinct from civil and political rights. More recently, however, there have been important moves to recognise the fundamental nature of socio-economic rights as human rights, and to integrate them within human rights documents. Such rights are based on a wider understanding of human welfare and its economic, moral, psychological, as well as cultural requirements. The language of national and international communication reflects this shift in priorities and emphasis. A number of significant supranational pronouncements have acknowledged the significance of welfare, social

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1 C.B. Macpherson, *The Life and Times of Liberal Democracy* (USA: OUP, 1978), 10. For details refer chapter I, the section which deals with 17th C property.

justice and have tried to integrate it with the concept of rights. The Universal Declaration of Human Rights (1948) is perhaps the most important document in this regard.

Rights theory first emerged as defences erected around individuals to cordon off an unimpeded space into which the state was not allowed to enter, whether it was to protect the natural rights of an individual (Locke) or derived from the need to preserve the moral autonomy of the individual (Kant) or to maximize net welfare or productivity in society (Adam Smith; Bentham). Rights Theory suggested that the individual was a good user of the space and also that such arrangements provide better benefits for the society, thus putting a low premium on state directed activity or any such coordinated efforts. Historically, this was the negative rights conception supported by the natural rights theorists (17th C), liberal individualists and Utilitarians (18th, 19th C) and 20th C Libertarians. Rights at these junctures privileged the notion of liberty and autonomy. However, when the concept of rights got aligned with that of welfare, its interpretation profoundly changed. New interpretations revised the realm of the private, the locus of the rights-bearing individual, and the non-desirability of state intervention. As Kevin Floyd states, “while rights may serve as a source of autonomy and individual self assertion at one point, they may also serve as an indisputable force of emancipation at another point; at another time they may become a regulatory discourse - a means of restricting or co-opting more radical political or social demands.”

Conceptually, rights are rather like a capsule surrounded by other social and political concepts such as property, liberty, welfare, interest, self-determination etc., which makes it impossible to disentangle the analysis of rights from these client concepts. The social context of contemporary times, with its accent on ‘welfarism’, attached the concept of rights to the notion of social justice and welfare. The changing perspective of rights became critical in “shaping” the scope and structure of property rights too.

In a sense there are two opposite ideas of property: property as a commodity and, on the other hand, property open to social needs. In the construct of property rights, the social aspect, even though it never completely fades away, can range from a very limited incidence to a large, broad

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2 Michael Freeden, Rights (Delhi: World View Publications, 1998), 43
influence.\textsuperscript{5} When the social aspect is almost negligible, rights are typically deployed in their negative conception. Conversely, emphasis on the social aspect of ownership highlights the interests of society as a whole, as opposed to those of the owner alone. On the face of it, welfare rights cannot belong in a single system with unfettered private property rights. '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'.\textsuperscript{6}

In the context of the goals of social justice and welfare, the right to property began to be notably downgraded as is evident in some of the international charters and covenants. The European Convention on Human Rights (ECHR)\textsuperscript{7} invoked public interest in order to permit divesting individuals of their possessions. The American Convention on Human Rights\textsuperscript{8} subordinated the use and enjoyment of individual property to the interest of society or public utility. In political theory and philosophy, various strands (social democratic theory, positive liberal, liberal democratic etc.) emerged within liberalism to make the pursuit of liberal theory more sensitive to issues of equality and democracy. In consonance with these, property, as a private right, began to be seen as an institution which was associated with injustice and exploitation. It began to be seen as an institution embodying an inherent tendency towards inequity. In aligning the principle of liberty with equality, private property as an institution and as a right underwent a downward revision.

A third movement has been with regard to additions and deletions in the list of things that count as property.\textsuperscript{9} For instance slaves no longer count as property; there is an ongoing debate, in the context of trade in body parts of whether they comprise property. At the centre of the debate is also the conception of knowledge as intellectual property. Does intellectual labour comprise property and can a rights claim be formulated on this basis is a philosophically and politically contested issue. Knowledge is accorded the status of a material thing which can be traded, exchanged and sold like tangible material wealth. Such a notion is embodied in the idea of intellectual property rights. A contest around these notions serves to imply not only a plurality of perception emanating from varied philosophical and political perspectives, but would also imply a plurality of traditions and social organizations where different things count, or can count, as property. The difference in the list of things that count as property would serve to establish the


\textsuperscript{6} Attracta Ingram, A Political Theory of Rights. (Oxford: Clarendon Press, 1994), 44

\textsuperscript{7} ECHR, "Convention for the Protection of Human Rights and Fundamental Freedoms," Protocol 1, Article 1


\textsuperscript{9} Andrew Reeves, Property (London: Macmillan, 1986)
heterogeneity of social and, therefore, property arrangements. If knowledge as an item were to be anticipated as property, it would be useful to see if it is regarded as an object of property in non-western societies and that too only as property of particular persons.

The existence of particular interest in a resource is conceptually linked to the means available to protect it. One measure of the extent of interest is the range of interference from which protection is provided. Traderelated Intellectual Property Rights (TRIPS) as a legal regime offers protection to intellectual advancements and offers near absolute ownership of an idea, or a resource associated with the idea, for a stipulated period. In the context of global TRIPS laws, IPRs acquire a reach beyond that sanctioned by conventional property rights. What is significant is that against the backdrop of the second generation (socio-economic rights) and third generation (group rights) rights, a thoroughly capitalist principle – the right to the protection of material interests from scientific, literary or artistic productions (patent, copyrights) – has been entrenched. The TRIPS provisions of patenting, copyrights, trade secrets, Plant Variety Protection etc., have become potent vehicles for subverting the changed perspectives of the rights discourse. Granting knowledge the status of property and then incorporating it as a right is to eschew the minimalist notions of property and to reverse the downgrading of property right that had been accomplished with the emergence of second and third generation rights.

II

Intellectual property is an umbrella term for various legal entitlements which attach to certain types of information, ideas, or other intangibles in their expressed form. The holder of this legal entitlement is generally entitled to exercise various exclusive rights in relation to the subject matter of the IP. The term intellectual property reflects the idea that this subject matter is the product of the mind or the intellect, and that IP rights may be protected by law in the same way as any other form of property.

Although historically intellectual property laws varied from region to region (in fact there were a large number of societies where the notion of intellectual property was, and even today is, totally absent), these laws are becoming increasingly harmonized through the effects of international treaties such as the 1994 World Trade Organization (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The four main types of intellectual property include:
**Patents** - for inventions, for new or improved products or processes. A patent is a right granted for any device, substance, method or process, which is *new, inventive and useful*. A patent for an invention grants a property right to the inventor that will prevent anyone else from making, using, or selling an invention. A patent lasts for a limited amount of time, usually 20 years from the date the application was filed, and is only effective in the country in which it was filed. Since a patent is considered "property," it may be bought, sold, mortgaged, or licensed by the owner.

**Copyright** - provides legal protection for *original material* in literary, artistic, dramatic or musical works, films, broadcasts, multimedia and computer programs

**Trademarks** - A trademark is a *word, a group of words, logo, pictures* that are used to distinguish the goods and services of one trader from those of another. This is a valuable right to protect brand identity.

**Trade Secrets** - A trade secret is an idea or information that has commercial value because it is not widely known. "Trade secret" is a broad concept that includes a wide variety of business methods, processes, machines, formulas, patterns and techniques that are kept secret from one's business competitors.

Besides the above, IP covers a larger area which extends to plant varieties, geographical indications, circuit layout rights and so on.

These are exclusive rights but their application varies. There are some exclusive intellectual property rights that grant exclusive rights only on copying/reproduction of the item or act protected (e.g. copyright); there are others like patents and trademarks, that grant a right to prevent others from doing something. The difference between these is that a copyright would prevent someone from copying the material form of expression of an idea, but could not stop them from expressing the same idea in a different form, nor from using the same form of expression. A copyright protects a form of expression, but not the subject matter of the work. For example, if someone wrote an article about a new car on the market, the text would be copyrighted, preventing someone else from using that particular material. However, a copyright does not prevent others from writing their own original article about this new car, or from using or making the car themselves. Patents and trade marks on the other hand, can be used to prevent that second person from making the same design even if they were using their own ideas. In both cases exclusive rights granted by intellectual property laws are generally negative in nature, and therefore grant the holder of IP the ability to exclude third parties from infringing on their monopoly.
Intellectual property is not a monolithic concept: It functions more as an umbrella covering wide ranges of subject matter. As mentioned, IPRs cover patents, copyright, trademarks, trade secrets, and other state and related doctrines. This thesis does not endeavour to explain every nuance in every doctrine – the multiplicity and variety of subsumed topics precludes such an endeavour. But what is attempted is to pave the way for broader conclusions on the rights and defences in the sphere of IP. In particular, the study attempts to situate IPRs within the rights discourse and examine issues of intellectual property in larger debates about human rights, distributional equalities, and social justice.

The basic public policy rationale for intellectual property laws is that they, in some way, protect the rights of the inventor, author, or creator. IPRs have been conceived as a tool to reward innovators and creators, for their contributions to society, for a statutory period of time. They aim to promote a dual balance - financially rewarding the creation or innovation through the grant of exclusivity to the owner while simultaneously giving an impetus to that creativity by freely promoting the ideas. They are thus intended to provide the necessary incentives to the generation and dissemination of knowledge as well as to encourage the transfer and diffusion of technology. IPRs constitute exceptions to market mechanisms where competition and free access were not deemed to provide appropriate incentives for innovation and development (Cullet: 2005:1). It is typically suggested, usually by economic theory, that a free market with no exclusive rights will lead to too little production of intellectual works.

The presence of strong IPRs spurs innovation leading to higher economic growth and increased benefits for all. The argument seems coherent. No economic agent exercises productive effort without the certainty of controlling its fruits. What is true for physical effort must be true for intellectual effort as well. If strong property rights provide incentives for the production of goods, they must also provide incentives for the production of ideas. The economic rationale for IPRs is that unless invention or creation is compensated, invention and creation will be underprovided and economic development, even the development of science, will suffer. It is also designed to combat the "free rider" problem, given that recent changes in technology have made replication and duplication much simpler. Individuals and firms will hesitate to make costly investments in innovation if imitators can reproduce these at a fraction of the cost and technological progress will be hampered.
Why is it then that, more than any other notion of property, the notion and practicé of intellectual property is contested and lies at the centre of contemporary international disputes? The problem arises because Intellectual property has come to mean not only the right to own and sell the ideas but also to regulate their use. Intellectual property has two components. One is the right to own and sell ideas. The other is the right to control and use those ideas after sale. The latter is peculiar to intellectual property; in no other form of property does the owner continue to exercise control after the good has been sold. It is this aspect of IP which leads to a dramatic expansion of the rights of IP owners and a significant instance of the exercise of private power.

IPRs create incentives as well as monopolies: in fact they produce incentives because they are monopolies. The approach embodied in the TRIPS agreement, extending property rights and requiring high levels of protection, effectively narrows the options open to sovereign states and firms. This far-reaching agreement has important implications for innovation, research and development, future location of industry, and the global division of labour, and most importantly for the concomitant rights of ‘other’ peoples, particularly in the developing and underdeveloped parts of the world. Already environmental activists, farmers’ rights lobbyists and NGOs, are protesting against transfer of resources from developing country consumers, producers, biodiversity, and traditional knowledge resources to firms in industrialized countries. Often the inherent propensities – within the very conception of intellectual property – towards monopolization have tended to contradict the goals of sustainable, inclusive development.

Policy must strike a balance between the private interests of IP owners, who seek adequate returns on their investments in knowledge based products and processes, and the public interest in providing access to the inventions and their benefits. If the innovation and the higher product cost of the innovator is to be protected an argument can also be made that a cheaper imitation or adaptation may increase the social value of the product. Put simply IP rights reflect an inherent tension between monopoly and diffusion, on the one hand, and between individualistic rights, such as IP rights, and socio-economic and cultural rights, on the other.

III

IPRs do not fit in easily with the dominant rhetoric of ‘free market’ and ‘free trade’. IPRs also do not blend in with the visions of contextual, culturally grounded sciences. The indigenous science debates of the 1970s and 1980s have highlighted the value of indigenous systems of knowledge.
The wealth of local knowledge and indigenous technology has been highlighted not only by radical critiques of modern science but also by practitioners of modern science. The failure of grand universalistic theories of development has brought into light the need to “fit”, use and conjoin indigenous knowledge systems with the dominant perspective of modern western sciences.

Tensions arise out of two differing conceptions of science that are based on two differing logics: that of disclosure, open knowledge and thus free circulation of information: and that of intellectual property and knowledge as private property and thus retention of information. The latter gains primacy and dominance as IPRs come to be bestowed upon ‘first owners’ of a certain form of knowledge or technology. The traditional domain of other knowledges are branded as ‘non-scientific’, ‘folk’ and not accorded the status of intellectual property. What creates tension is that laws of Intellectual Property Rights confer an epistemic superiority on western science and technology. Societies that are not “legalized” find it difficult to register a legal claim to being first owners or establish objectivity and universality, necessary conditions for recognition as a modern scientific endeavour. A universal law, like the IPR, works against communities and societies that are traditional and are not ‘legal societies’.

An increasing number of products – from media mages to software and gene cloning – are more “ideas” than things. The ‘non-exclusionary’ character of ideas makes the authoritative enforcement of property rights more difficult and more crucial to profitability. Trading of non-tangibles requires authoritative structures. As Peter Evans writes, “While other forms of policing are in disrepute, this particular kind of policing has now become one of the cornerstones of economic civilization.”

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 globalisation have led to the rights discourse being widely adopted throughout 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. The contemporary rights discourse seems to embrace the notion that

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relations of entitlement and obligation be conceptualised in historically and culturally specific ways. 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 make the exploration of the philosophical, ethical and legal premises of IPRs particularly pertinent, especially in the context of globalisation of intellectual property rights.

IV

This study aims to analyze the established legitimacy of IPRs through an inquiry into the philosophical and moral premises of the IPRs. Moral philosophy cannot, of course prove that one way of organizing society is ‘objectively’ better than the other. But it can make our ideas of justice more precise and more reasoned. IPRs are both about distributional justice as also about rights, as rights discourses and rights practices have enormous implications for justice.

Most existing critiques of intellectual property rights are consequentialist critiques, i.e., they assess intellectual property rights from the perspective of whether they have led to economically more efficient outcomes, whether they have catalyzed innovation or whether they have had a positive impact on ecology or biodiversity or the rights of the poor. In other words, the validity or the critique of IPRs is seen to be contingent on the consequences. One of the effects of consequentialist approaches is to see rights as dependent wholly on the valuation of outcomes rather than being integrated with it. An integrated approach, on the contrary, would see rights as based on normative premises and as constructs which have far-reaching consequences. An evaluation of rights would therefore not be ‘consequence independent’ but one which is not wholly derived from the consequences. Consequences are therefore, in the present study, regarded as necessary for the evaluation of intellectual property rights but not sufficient in themselves to uphold or dismantle rights. Consequence dependent explanations are of course necessary, for intellectual property rights cannot be seen as independent of valuation exercise. But it is equally imperative to evaluate IPRs not just in terms of the consequences – i.e. in terms of innovations achieved, rights encroached upon or abrogated, or in terms of the fairness of benefit sharing mechanisms, the economic or biotechnological benefits of IPRs – but also in terms of a larger debate on the foundational principles of rights within political philosophy. The aim is not to suggest that the conceptualization of rights should be consequence-independent, or that the valuation of outcomes is secondary, but simply to assert that there are a category of rights
for which a normative defence can be advanced without an evaluation of the consequences (for
details see, Feinberg: 1973; Sen: 2002; 1999). The space over which rights are exercised can
become a further reason to claim or dispute a right.

States, NGOs and activists today are engaged in the process of fine-tuning the benefit-sharing
mechanisms, and the legal and political processes involved in making the IPR regime more
sensitive to the needs of the developing countries, traditional societies and indigenous
communities. While these are necessary practices to democratise the functioning of the IPR
regime, and while they make apparent the entitlements on which this right is based, there is
clearly a further need to question the basic assumptions and premises of the notion of intellectual
property and IPRs as a rights claim. Laws on IPR have profoundly normative visions of progress.
They reflect, not just in their functioning, but also in their conceptualisation and assumptions,
related to who qualifies to be the rights-holder and what ought to constitute a right.

The central concern of the study is with what may be called the conception or the idea of
Intellectual property rights: the question of the idea of IPRs precedes and governs the answer to
the question of whether intellectual property rights can be claimed as moral rights. The aim would
be, firstly, to evaluate the conception of intellectual property in the context of the property rights
discourse, to see how these rights play out and the implications that they have for other rights.
How rights proceed and are enacted is very often implied in the principles that underlie it.
Theoretical explorations of rights, property and other related concepts would be correlated with
empirical, contextual studies of the rights processes in order to evaluate IPRs as rightsclaims.

The critique of IPRs benefits greatly from the extended scope of political theory. The span of
political theory has been significantly extended by the insights provide by post-modern
philosophy, hermeneutics and anthropology, to include the study of language use, the
interpretation of texts, reflections on different modes of rationality, the study of science as social
practice, culture and the interpretation of tradition, cultural dimensions of rights and many other
areas of inquiry. A large number of these inquiries relate to the practice of rights, knowledge and
property practices. The acknowledgement in political theory and philosophy, of multiple modes
of rationalities and multiple epistemologies, has made it particularly pertinent to evaluate IPRs
and its universal categories from this perspective. This study endorses the perspective that rights
practices and theories need to embody the notion of cultural relativism and heterogeneity. IPRs
will be evaluated and examined in this context and assessed in terms of its capacity or its propensity, or the lack of it, to integrate socially and culturally heterogeneous rights claims.

Organization of the Study:
There are obviously many ways in which the study of IPRs can be both approached and organized. The study separates the idea of IPRs from the operation and consequences of the IPR regime i.e. the notion from the practice. This study makes sense of IPRs first by studying them in the context of the theories in which they are embedded and then by analyzing the political effects which this conception generates for 'other' rights of 'other' peoples.

The study has been divided into the following chapters:
Part 1: A Philosophical Grounding for Intellectual Property Rights
1) Property as a Right
2) Intellectual Property Rights and the Principle of Self-Ownership
3) Intellectual Property Rights and the Principle of Utility
4) Knowledge as Intellectual Property

Part II: Intellectual Property Rights and Aspects of Human Rights
8) Conclusion

IP is regarded as a form of private property, and as such the study begins by analyzing two of the intuitively most powerful premises for private property before evaluating whether these two premises easily translate into defences for intellectual property. The assumption here is that property in tangibles and property in intangibles like knowledge will pose problems for a justification of the latter. Chapter 1 outlines the two background assumptions of property — self
ownership and utility. The reason why these two premises have been selected for closer scrutiny is because they have proved, intuitively and historically, to be the most powerful of defences for private property. Chapter 1 outlines the fundamental premises of these theories as they reflect in the pioneering works of John Locke, Robert Nozick, Adam Smith and Jeremy Bentham. There is a background assumption in private property rights that property rules cover people as well as other types of external items. Secondly, there is an assumption that each bundle of human resources, mental and physical, can be assigned as private property to a particular individual named. It is a principle which regards each individual as possessing a right to private property in himself i.e., self-ownership. That each individual is the morally rightful owner of his person, powers and talents has been the foundational claim of liberal philosophy from the time of Locke: ‘every man has a Property in his own Person’. The principle of self-ownership, as a right over one’s body and talents, is joined with a principle of right over material resources. Bodily or mental powers require an implement and a material to act upon in order to create something. This thing that is created becomes the property of the person who has mixed his labour, powers or talents with it. Thinking about property, therefore, has been informed by considerations of the origin of the material. The creator was seen to be the legitimate holder of that property. Judith Thomson claims that the cluster of rights that people have in their house, shoes etc. is very similar to the cluster of rights that the people have in respect of their bodies (1990:225-6). Right-holding is thus linked to ownership, with a proprietary control over the domain specified as the object of right.

Self-ownership is a concept that brings persons into the domain of private property. This needs to be noted because not every system regards property in persons. It emerged in the context of injustices of slavery, serfdom, and political absolutism. In the context of self-ownership, these were regarded as violative of rights. The slave owner or the exploiter illegitimately claims rights of disposal over a person’s services that belong morally to that person himself. Subsequently, self-ownership has become one of the foundational principles of liberty and legitimating arguments for private property.

Another common argument for private property is provided by the Utilitarians. They argue that private property and its corollary, the free market, will lead to increased productivity and that it would be maximally efficient at increasing social wealth. Utilitarians favour the free market, since its efficiency allows for the greatest overall satisfaction of preferences. For Utilitarians, the creation of property rights is linked to the utility it generates. The Utilitarian defence of property
is the defence of a legal recognition of ownership as an instrument in promoting and optimizing welfare.

These two strands of liberal theory offer different premises of justification of private property and for claiming it as a moral right. The attempt in Chapters 2 and 3 would be to examine these philosophical premises of private property and see if they hold good for intellectual property rights.

Chapter 2 picks up one of the foundational premises, self-ownership and tests it in the context of intellectual property rights. The notion of self-ownership, allows the dissolution of the distinction between ideas and things. Ideas, knowledge, faculties of the mind are part of the 'self'. The self-owner of knowledge has full private property over its exercise. IPRs seem to flow out of this conception, endorsing the view that a man has property in his person. Locke interpreted it to mean labour but in the 20th century it has been expanded to mean intellectual labour. How different then is this notion of property in immaterials, like knowledge, from the earlier notion of property in things, resources, and labour? Labour too, like knowledge, is an intangible quantity. The distinction lies in their source. Earlier forms of property, including labour, had a clearly identifiable source, viz., the individual body, and was therefore amenable to characterization as 'separate' and individually owned. Knowledge, by contrast, defies such a characterization; it is something that is incremental, contextual, cultural and clearly not a product of an individual mind alone. The separate and the clearly divisible character of earlier forms of property seem absent here. This comes to have a significant bearing on the justificatory grounds of intellectual property.

Chapter 3 examines the consequentialist Utilitarian defence for IPRs based on the argument that the presence of strong IPRs spurs innovation leading to higher economic growth and development of science and technology which benefits the society at large. Utilitarianism tends to be the dominant means of justifying and evaluating IPR, at the level of institutions, legislation and policy. The commitment to utilitarianism is striking.

IPRs are seen as policy instruments that lead to a net increase in utilities for the society, utilities being measured in terms of increased scientific innovation which secures and improves quality of life. This chapter attempts to analyze whether a narrow conception of utilities, measured in terms of quantifiable costs and benefits, may not be a sufficient criteria for a moral defence of
intellectual property rights. It also undertakes a utilitarian cost-benefit analysis of intellectual property rights to reveal that, as against what is often claimed by practitioners of IPRs, the costs, when measured beyond a narrow utilitarian frame, often outweigh the benefits.

Chapter 4 considers the notion of knowledge as property where a thing-like status is conferred on knowledge. The earlier conceptions of classical forms of property regarded external material things to be the object of property. This means that the prevalent notion of intellectual property is not definitionally dependent upon the physical externality or materiality of the object owned. The classical distinction between tangible and intangible goods is rendered inconsequential in the determination of property rights. Knowledge, as a resource, is often created collectively, especially by the traditional/indigenous communities, and is intergenerational — not easily amenable to be fractioned, divided and apportioned. The propertization of knowledge was therefore not implied naturally or even historically. It is therefore public opinion, and institutional intervention, that makes knowledge eligible for appropriation. The attempt here is to establish that knowledge as a category has well-defined collective claims, having the character of indivisibility and therefore of a public good, and to therefore dispute the claim that individual rights can be claimed in it. The attempt in this chapter is also to understand the implications of this shift in the notion of property in tangibles to non-materials, for the creation of epistemic hierarchies.

Chapters 5, 6 and 7 derive their justification from the idea that rights need to communicate with other rights, because rights need to be evaluated in terms of how well they conjoin with other rights. This may be interpreted as a utilitarian approach but the idea of utility being employed here utilizes the consequence-sensitivity of utilitarianism without being bound by its narrow view of relevant consequences. The fulfilment and violation of rights are included among the relevant consequences to be valued. On this reading, therefore, compossibility with other rights becomes a necessary factor in deriving legitimacy for intellectual property rights. Three case studies have been taken as illustrative of three fundamental rights, also aspects of human rights.

Chapter 5 examines intellectual property rights in the context of the right to health (also interpreted in several contexts as the right to life). The case study of the Novartis patent claim for the anti cancer drug ‘Glivec’ in India has been presented to highlight the non-compossibility of intellectual property rights with health rights. The case of Novartis’ challenge to the denial of patent rights over Glivec by the Chennai patent office, goes much beyond the patent application
for its life-saving cancer drug 'Glivec'. It is a case which brings to fore the issue of patents, survival of generic drugs and their impact on access to medicines, which is so vital to the preservation of the right to health, now accorded the status of a human right as well as a constitutional right in many countries.

Chapter 6 undertakes the study of the case McFarling V. Monsanto and uses the study to draw attention to infringement of farmers’ rights because of the implications of extending patents and other forms of intellectual property protection to plant varieties, an example of intellectual property rights in natural and biological resources. Intellectual property rights in plant varieties, which exist as ‘breeders’ rights, has been created by a system that believes in private or monopolized control over plants and/or life forms. These rights have the potential to result in the disruption of the traditional farming cultures which have been the essence of agriculture. The MacFarling case highlights this aspect of intellectual property rights.

Chapter 7 presents the bio-politics of Neem through two prominent cases that were fought against patent claims on neem products in European Patent Office and the US. These two cases symbolize the vulnerability of knowledge or resources, which belong either to traditional peoples or lie in the public domain in poorer but bio-resource rich countries, to resource and knowledge piracy which constitutes an infringement of the knowledge rights of the traditional peoples.

The conception of IPRs reflects its biases and perspectives on science and technology, which gets reflected in what it regards as intellectual property. IPRs are one of sites which represent the encounter between indigenous knowledge and modern scientific knowledge. These are not just ‘cognitive’ encounters but relate to the larger issue of intellectual and cultural domination Vs autonomy of traditional knowledges. The perceived dichotomy between the two knowledge systems is not just about incompatible values, attitude and practices but also relate to rights within a legal framework. The issue is about the right for different forms of knowledge and their associated practices and ways of being, to co-exist and to carry weight in the decisions that affect people’s lives. Seeing knowledge as a relational concept provides a democratic frame for advancing democratic practice and for recognizing claims of communities, groups that may be articulated outside the realm of ‘science’. This chapter argues that unacknowledged cultural contingencies of scientific knowledge need to be deployed in the framing, definition and resolution of public policy issues.
The concluding chapter returns to the question of legitimacy of intellectual property rights which this thesis begins. Can intellectual property rights be legitimately claimed as a right? In the absence of moral principles that support such a claim, do IPRs derive any legitimacy at all from its ability to support or conjoin with other rights? Do intellectual property rights fit in with a framework of rights, which unites welfare rights with autonomy? Such a view of rights presupposes a commitment to both welfare and autonomy— not just a commitment to individual autonomy in the libertarian sense but also as the freedom of different cultural and social entities to define themselves. Autonomy implies that the conditions of moral and cultural pluralism be met in order for rights to be consistent with the enterprise of liberal democracy. While there is a shared basis for universalism of rights (that rights should exist), there is also a shared perception that particular rights need to be located in the cultural and contextual milieus of different societies. The danger of a universal rights regime is that it encourages the imposition of dominant ideals and standards of one culture on another, often through an implied cultural denigration and replacement of local customary ways of being in the world. IPRs are clearly a case in point.

VI

Methodology of the Study:
This study is largely a politico-philosophical inquiry into the justificatory premises of IPRS. It is an analytical study which uses philosophical debates, empirical data and case studies to locate IPRs within the Rights discourse. Consequently much of the research is based on review of exiting philosophical debates within the Rights, Property and Knowledge discourses, developing their relevance for the study of IPRs; using the data bases of existing research institutes, like the Gene Campaign, Research Foundation for Science, Technology and Ecology (RFSTE), MSF, Oxfam, SARAI, RIS Centre, to name a few, for empirical research, case studies, field studies, campaigns. The attempt was to develop a fresh perspective on the subject, drawing on the linkages that the study develops between the theory and practice of Rights.