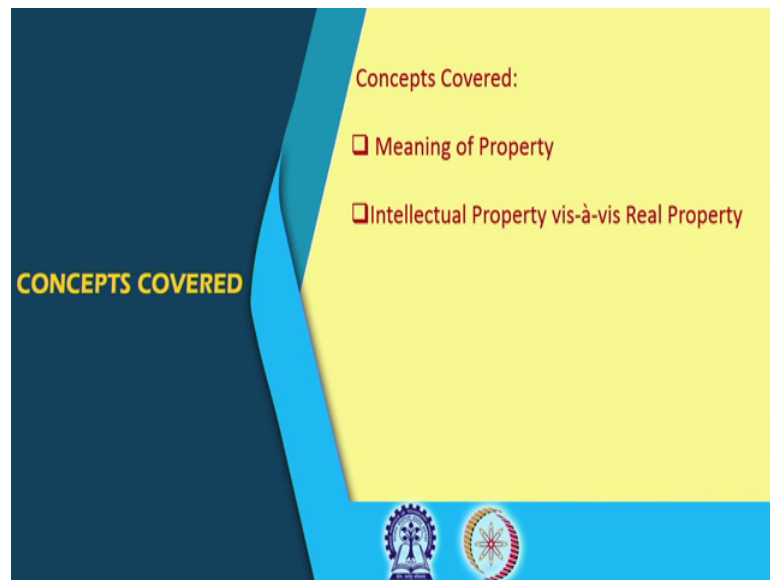


Patent Search For Engineers and Lawyers
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Indian Institute of Technology, Kharagpur

Lecture – 01
Introduction to IPR

Welcome, to my lecture on Introduction to Intellectual Property. At the outset we need to know that the way a labours and understands property. A lawyer having an academic bend of mind understands property or look into the concept of property from a different perspective.

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Now, in this lecture I will be dealing with meaning of property. To be very precise here I will be trying to make you understand that what does a lawyer mean by property. And then I will be comparing the understanding of intellectual property with that of real property and how intellectual property is nothing, but a ramification of the jurisprudential understanding of real property that we will understand in this lecture.

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Now, whenever a lawyer or an academic lawyer thinks about property it reminds him or her about a broom stick. Now, these broomstick in fact, is the understanding of the theoretical and the jurisprudential understanding of property; how it is we will try to understand.

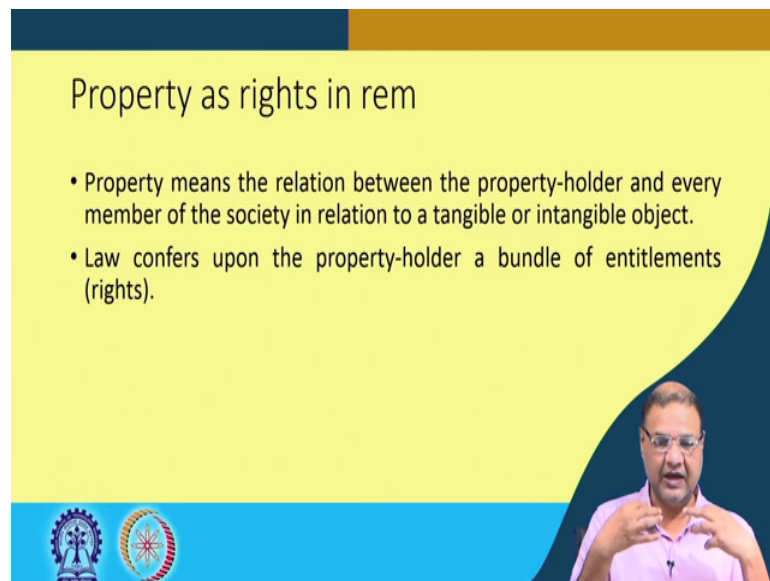
Now, when a Layman understands or thinks that this is my property he refers to a tangible or intangible object. Like he thinks that his land is a property; he or she thinks that his mobile phone is a property; he or she thinks that his car is a property. At the outset it must be understood that a car is not a property, a mobile phone is not a property and if a piece of land is not a property. What is property is this that the entitlements which he or she is having and these entitlements are created by the legal system.

So, a great scholar Jeremy Bentham once said that the law and property are born to cater taken away the property there will be no laws. To be very precise what he was trying to say that the understanding of property is an understanding of law and if the concept of property is not there legal system will not be there. How far however, the in ancient Indian script writers were much prudent and they have said that Dhanahingsha Shamud Bhavaid meaning thereby that law and Hingsha that means, sacred are the two main predicaments which legal system must address.

Whatever it may be let us come back to the concept of property; in fact, property means the entitlement which an individual is having in relation to the object which you or she is

holding. Now, suppose when I say that mobile phone is my property in fact, I can do certain things which with mobile phone. And these certain things what all we can do is these are all my entitlements, and these entitlements are varied because legal system has created a structure to enforce those entitlements and those entitlements in common per lands we call them legal rights.

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Property as rights in rem

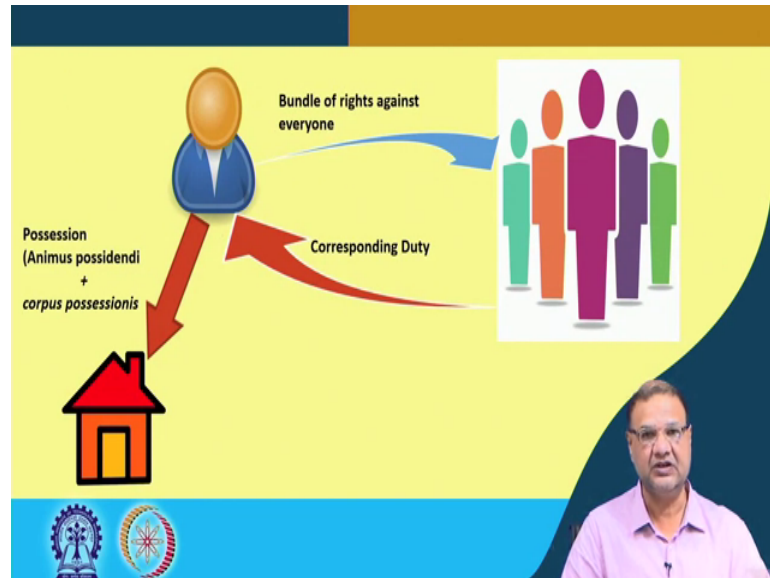
- Property means the relation between the property-holder and every member of the society in relation to a tangible or intangible object.
- Law confers upon the property-holder a bundle of entitlements (rights).

Now, the question is this that there is actually whenever I am having a mobile phone or I am having a piece of property say a land, I have those rights those entitlements against each and every member of the world. The way I have my right against the person A who is the poorest person of the world, in the same manner I have the entitlements against the richest person of the world because the law in fact, enforce created those entitlements, law enforces those entitlements and law supports those entitlements. To be very precise property at the outside it means a bundle of rights and those bundle of rights are protected by the legal system.

Now, let us go deeper in to the concept of real property and we will find that the intellectual property is nothing, but a ramification, a modification on the existing understanding of real property. It has taken 5000 years or more than 5000 years to develop this concept and understanding of real property. Real property is something which actually which was a part of human history and property actually laid to civilization, property accumulation laid to an a kind of understanding where perhaps

actually legal system was a enriched by developing different concept at different point of time. When it comes to intellectual property it is a recent phenomenon compared to the concept of real property which is in existence in for the last 5, 6, 7 or 10,000 years.

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Now, there is a simple picture. With the help of this picture I will try to understand we will try to understand the concept of real property. As you see if suppose a person is holding a house and these house he is holding and this holding is actually called possession. And, in order to hold that house he needs to have two things: number one, he should hold it and secondly, corpus possessionis means actually he should not only hold, but he should have the intention to hold that particular house.

When he has that, when he owns that house he is having that bundle of right, that pack of straight against the whole world. And, the whole world is having a corresponding duty not to disturb his legal right and if anyone disturbs, it anyone encroaches upon this regal the upon his legal right, the legal system will come into play and actually help that person to enforce those rights against these individuals who have violated his legal right.

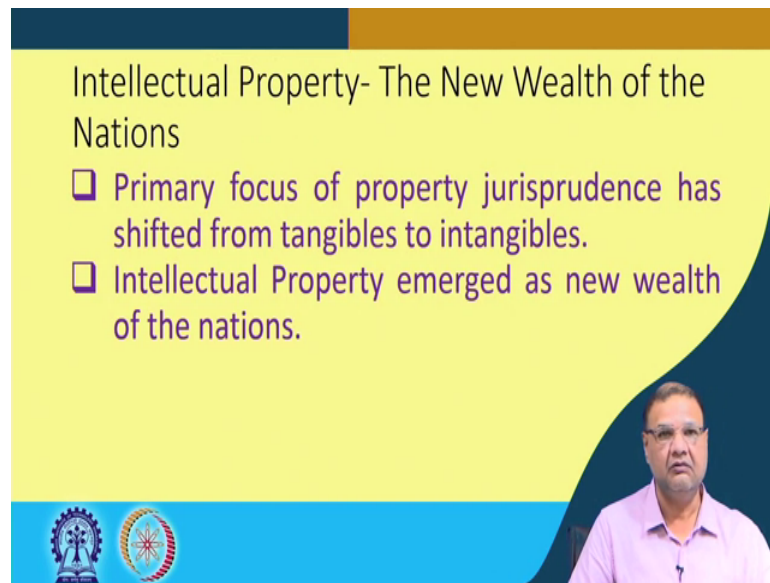
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The slide features a yellow background with a dark blue curved shape on the right side. At the top, the title "Infinite Series of Rights" is written in black. Below it, the mathematical notation $R_1, R_2, R_3, R_4, \dots, R_n$ is displayed. A bulleted list follows, containing three items: "Right to possess the thing which he/she owns", "Right to use and enjoy the thing owned", and "Right to consume, destroy or alienate the thing". In the bottom right corner, there is a small video feed of a man in a pink shirt. The bottom left corner contains two circular logos: one of a gear and a person, and another of a wheel with a star.

Now, when it comes to so far as the property right is concerned we can simply understand proper property right as actually the things what we all can legally do in respect of a material object, a tangible object or an intangible object. And if we keep on listing what I can do with what my with my mobile phone, what all I can do with my say for example, with my camera, what all I can do with my car these are actually endlessly I will be writing my entitlements.

So, the entitlements which I have this is an infinite series of right. And, this includes I have a right to possess the mobile phone, I have a right to use this mobile phone, I have a right to lend my mobile phone, I have a right to destroy my mobile phone, I have to right to modify my mobile phone, I have a right to burn my mobile phone and whatever I feel like doing with my mobile phone are my legal rights.

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Intellectual Property- The New Wealth of the Nations

- ❑ Primary focus of property jurisprudence has shifted from tangibles to intangibles.
- ❑ Intellectual Property emerged as new wealth of the nations.

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Now, what has happened in the recent years the main focus of property jurisprudence has shifted from tangible property to intangible property? Because we find today some hundred years back a person used to narrate his richness by telling how many house property he owned. But, today they are all individuals who do not hold anything which you can see or touch, but they are more they are richer than those individuals who have landed property. Think about those blockbuster movies which are coming from Hollywood or which is coming from Tollywood, these movies are all actually they total income of a movie is millions in dollars.

Now, in the recent days what we have seen that intellectual property is slowly replacing the real property as the wealth of the nations. A simple patent on a particular drug may fetch a kind of wealth which a company can even by selling all the properties real properties of the company the company cannot gather that kind of wealth.

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Intellectual Property- What does it mean?

Intellectual property means the legal rights which result from intellectual activity in the industrial, scientific, literary and artistic fields. [WIPO]

NATURE

- **Intangible:** Intellectual property does not protect the physical object that went into creation, but protects the intellectual creation that underlie the physical object.
- **Creation of Statute (Positive Law):** In general Intellectual Property had a common law origin, it is protected by specific legislations.
- **Bundle of Legal Rights:** Separable and Independent interests that are recognized and protected by law.

The slide also features a video inset of a man in a light blue shirt speaking, and logos of the Indian Institute of Intellectual Property and the Ministry of Education at the bottom left.

With these understanding let so, we will try to find out that whether intellectual property is also a having the similar structure of entitlements or not. We have seen that real property is nothing, but a bundle of in entitlements and it is like a broomstick where each stick is representing a single entitlement; similarly intellectual property does it have these characteristics or not.

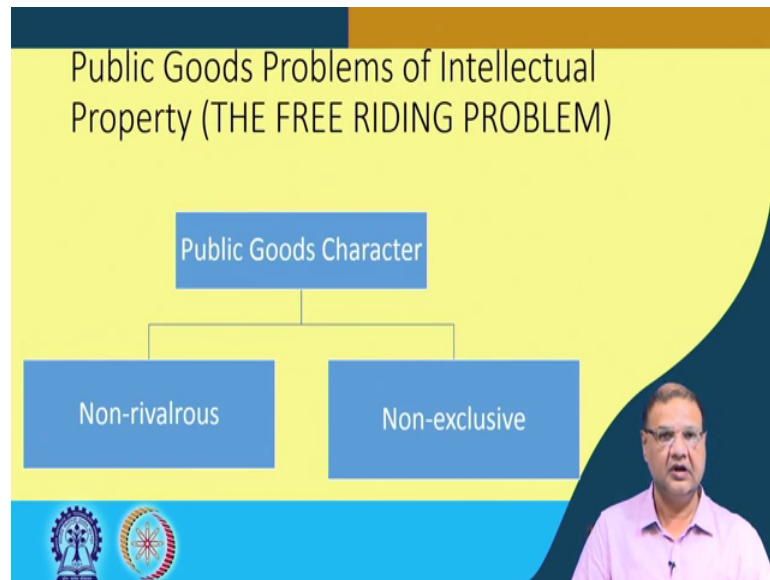
Now, to be very precise the world intellectual property agency or sorry world intellectual property organisation which is a specialized agency of United Nation, it has come out with a definition of intellectual property. The definition says that intellectual property means the legal rights which result from intellectual activity, in the industrial scientific literary and artistic field. And from these, from what we have learned so far we have seen that at the outset intellectual property is something which you cannot touch.

To be to be very precise when somebody is having a copyright over a book, the book is actually the intangible, intellectual property is embedded in the book, but the book itself is a real property. However, the intellectual property you cannot touch. Secondly, the way the concept of property was developed or the legal rights pertaining to property where developed through ages and it is there is no specific statute which is telling us that what is property.

But, so far as intellectual property is concerned, we the state has created specific statute to define intellectual property to define the entitlements to which an individual is entitled

to and therefore, intellectual property is a creation of statute. And, lastly like real property intellectual property is also a bundle of legal rights and those rights are protected and enforced by the legal system.

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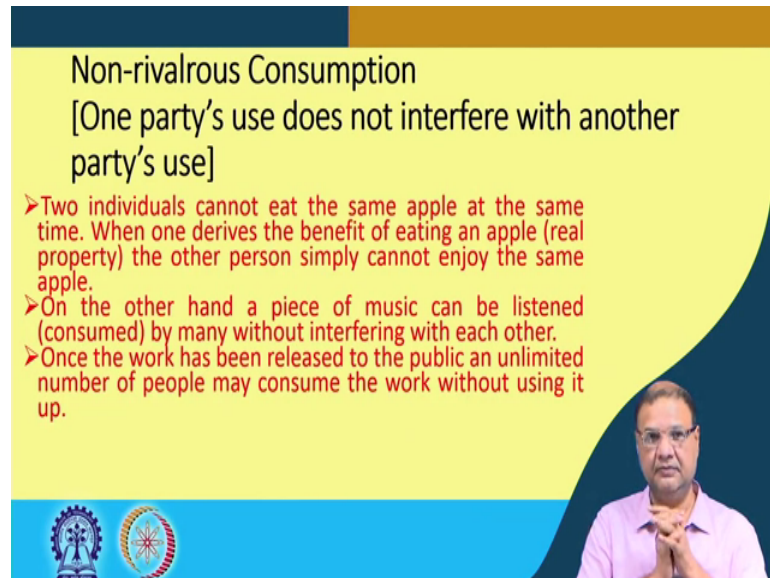
Now, when it comes to intellectual property there is a serious difficulty that when coming to I can simply protect my mobile phone which is my property in respect of which I have those entitlements by simply putting it in my pocket. When it comes to intellectual property if I put my writing or my patented invention in my pocket, I will not be able to gather any economic benefit out of the property; whereas, I can simply keep my mobile phone and whenever I feel like making using my mobile phone or making a call I can make a phone call using my mobile phone.

Whereas, when it comes to intellectual property the first thing what I need to do I have to depart with possession, I have to give up my exclusive possession over the property, then only I can get benefit from intellectual property. And, in since I am in order to exploit that property, I have to basically depart with possession intellectual property in fact, it has to public goods characteristics. And, what is this public goods is a concept of economics.

And, what are these two characteristics which intellectual property has having number one it is non-rivalrous; secondly, it is also non-exclusive. Now, what these two term means; what these two terms mean we will try to understand by with the help of example

because these are concepts of economics, but we will try to understand it from a Layman's perspective.

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Non-rivalrous Consumption
[One party's use does not interfere with another party's use]

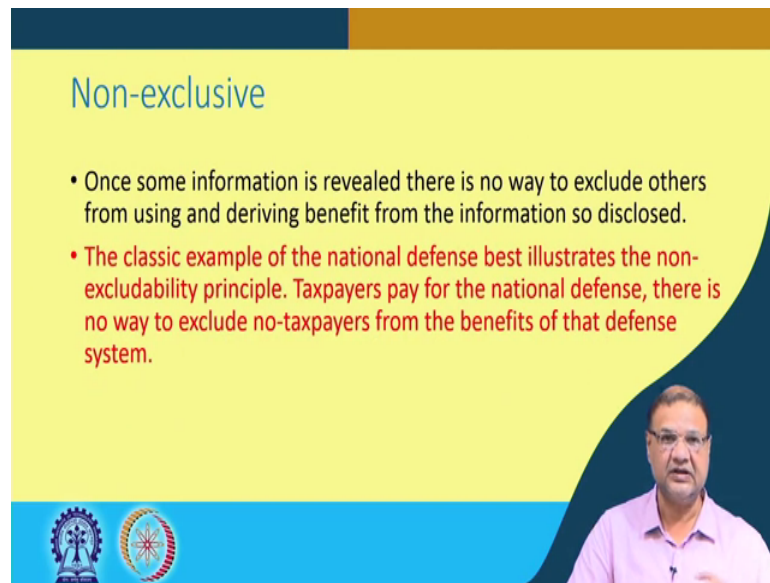
- Two individuals cannot eat the same apple at the same time. When one derives the benefit of eating an apple (real property) the other person simply cannot enjoy the same apple.
- On the other hand a piece of music can be listened (consumed) by many without interfering with each other.
- Once the work has been released to the public an unlimited number of people may consume the work without using it up.

Now, non-rivalrous consumption we can take the example of an apple. When somebody is taking an apple actually he is not required to when he is taking the other person or his friends who are also interested to take that apple they cannot take it because these are the limitations of real property. An apple can be eaten by two people it can be eaten by four people, but it cannot be eaten by a class of 40 students.

But, when it comes to playing of music or listening to a music in that case a simple piece a piece of CD where a music is being played that music can be heard by all 40 students without hampering the consumption of the other student. What I am trying to mean by this that real property by consumption it is exhausted, when it comes to intellectual property it does not get exhausted by consumption.

Therefore, suppose a grand party is organised by a graduating batch of students and the person who is in charge of food he may run short of food, but the person who is entrusted with the responsibility of organising the DJ he you will not run out of the music. Therefore, once when Mr. X is consuming that consumption of intellectual property by Mr. X, has nothing to do with the consumption of intellectual property by Mr. Y.

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Non-exclusive

- Once some information is revealed there is no way to exclude others from using and deriving benefit from the information so disclosed.
- The classic example of the national defense best illustrates the non-excludability principle. Taxpayers pay for the national defense, there is no way to exclude no-taxpayers from the benefits of that defense system.

The other characteristic is non-exclusive. See here the question is this that as an essential part of exploitation, the intellectual property owner has no other auction option except, but to depart with possession, but this brings with this a problem. See, the person who has actually paid for music the way the person who has created that music he does have a copyright over it and the person who has purchased this CD from the market he has paid the royalty for that music. So, he is not doing free riding, but the others who are listening to the music they are doing a free riding, they are listening they are consuming an intellectual property without interfere without paying for it and this is the main drawback.

Now, suppose say national defence. The national defence is available to the whole of a country to all members of a country, to all citizens of the country and those citizens include the tax payers and non-tax payers. In fact, the tax payers are paying for the national defence, but; however, there is no mechanism to exclude the non tax payers from getting the benefit of national defence which protects a country from external accretion.

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Intellectual Property
[Government's assignment of private property rights]

- Government by granting a bundle of private property rights provide a legal entitlement for an intellectual property owner to exclude others from enjoying certain benefits of her creation.
- This creates:
 - Incentive to invest (R & D)
 - Incentive to create (Encouraging Creative Minds)
 - Incentive to disclose and disseminate

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Now, at the outset we must actually understand that intellectual property what role it performs. At the government is basically there are they so, we must create a structure whereby what is happening that here actually these two problems of non-exclusivity and non-rivalrousness is addressed.

Now, let us take the example. Suppose, Mr. X is having a flat and he stays near his flat is adjacent to Mr. Y's actually house and Mr. Y maintains a beautiful garden in his house. The way Mr. Y is paying for raising and maintaining the garden whereas, without paying a single paise for maintaining the garden the other his neighbour Mr. X is enjoying the aesthetic beauty as well as the fragrance of the flowers which are being, which are there in the garden of Mr. Y.

Now, here the fragrance is the intangible property in respect of which say Mr. Y wants to actually achieve a kind of protection. So, he there are two options for the government. Number one option is actually to impose taxes on the neighbours of Mr. Y and by that taxation system a tax officer would be employed and that tax officer would be collecting taxes from the neighbours, and then that money here a part of that after deducting the administrative expenses the government will pay to Mr. Y to maintain and raise his garden.

The other alternative is to create a property alike structure, why not give a bundle of right in respect of this intangibles, the fragrance and once a person is having a kind of property

alike rights over the intangible property of fragrance and the aesthetic beauty he himself would actually one to one will deal with his neighbours. See here the problem is this that if government appoints a tax payers the question is this that for the purpose of benefiting a single individual or an handful of individual the government is actually taking money from the tax payers and paying his salary.

Instead of that this is the model which is called actually a kind of model where government is imposing a tax on those who are enjoying the beauty of the garden. The other model is to live it to the private ordering of the person who is actually whose garden is producing fragrance and aesthetic beauty. And, there what happens? There the person is having a similar right like property right, a bundle of rights and he can enforce those rights against the individuals who are enjoying the aesthetic beauty of the garden.

This can happen by see he whosoever would be enjoying he can charge a royalty from them and that way he is basically actually preventing the free riding by his neighbour and thereby they are also contributing to the development to the maintenance of the garden which he has.

So, see government is therefore, decided that there should be a bundle of rights and that bundle of rights would be similar to the real property. However, the main difference generally we find in most forms of intellectual property. So far as real property is concerned these rights bundle of rights are perpetual when it comes to intellectual property it is for a limited period.

Now, this intellectual property system in fact, creates three different kinds of incentives. Number 1, it is actually an incentive for the person who is having a garden to invest in the garden; number 2 he is also having the incentive to actually grow new kind of flowers, so, encouraging the creative mind. And, third he is also having the incentive to go public with his garden otherwise, he can confine his garden, he can raise high volts to protect his garden so that the fragrance and the beauty the aesthetic beauty of the garden is not visible to the outsiders.

So, intellectual property in fact, creates three kind of threefold incentives incentive to invest, incentive to create and incentive to disclose and disseminate.

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Distinguishing Intellectual & Real Property

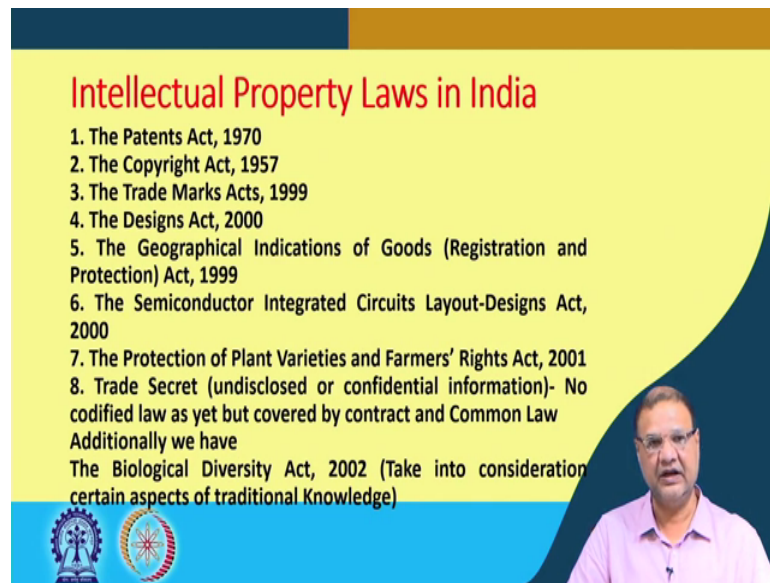
Real Property	Intellectual Property
<ul style="list-style-type: none">• Protected by Possession	<ul style="list-style-type: none">• Cannot be Protected by mere Possession <p>[Creations of mind, such as an idea for an invention or a piece of music, cannot like physical objects, be protected against others' use of them by mere possession of the object. Once the intellectual creation is made available for the public, its creator can no longer exercise control over it. This inability necessitated adoption of intellectual property]</p>

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Now, what we have seen now, let us try to understand the major difference between real property and intellectual property. We have seen this. Again, I want to emphasize that the real difference between the real property is you do not need a mechanism a serious mechanism for protection, by possession itself you can maintain your property, you can remain owner whereas, in intellectual property it cannot be protected by possession.

And, therefore, we need legal system through address this issue and we need a robust legal system and all the in one say sanity cases the problems which you have seen that must be addressed by the statute which governs the specific form of intellectual property.

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Intellectual Property Laws in India

1. The Patents Act, 1970
2. The Copyright Act, 1957
3. The Trade Marks Acts, 1999
4. The Designs Act, 2000
5. The Geographical Indications of Goods (Registration and Protection) Act, 1999
6. The Semiconductor Integrated Circuits Layout-Designs Act, 2000
7. The Protection of Plant Varieties and Farmers' Rights Act, 2001
8. Trade Secret (undisclosed or confidential information)- No codified law as yet but covered by contract and Common Law

Additionally we have
The Biological Diversity Act, 2002 (Take into consideration certain aspects of traditional Knowledge)

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Now, so far as India is concerned we have erected so far we have the and this is in tandem with the international practice we have patent law, we have copyright law, we have trademark law, we have designed law, we have geographical indication, we have semiconductor integrated circuit protection layout topographic design act, we have actually plant varieties act, we have a trade secret law. But we do not have a specific distillation with regard to trade secret and then some part of biodiversity act also takes into consideration certain parts of traditional knowledge.

In the coming lecture, we will be dealing with few major forms of intellectual property to understand that what is how to understand to compare and contrast the specific understanding of patent with those forms of intellectual property, specifically we will be looking into the copyright system and then we will be looking at the requirements of patentability.

Thank you.