

General background on law

Introduction

- Laws should be fair, justice, process (often more important than the actual outcome),
- Legitimacy (What rules are legitimate? Aren't rules arbitrary? Fear of consequences; authority to make a rule,
- dispute resolution
- rule of law and monopoly of violence (laws are more important than individual peoples; rule of law is one of the attributes said to comprise political freedom; the state has monopoly of violence, and even then violence is subject to the rule of law)
- Necessity – we would kill each other if the world had no law
- Weak people who could write started writing laws (possible explanation, probably not true)
- In looking at primitive traditions, we don't find anarchy in any long-run system of government. People can't tolerate such anarchy over the long run.
- Natural law – from the Enlightenment: Through insight, certain things were obvious.
- E.g. Man is endowed with certain inalienable (can't get rid of it) rights
- These sorts of rules can't be removed or sold. You always have them.
- You have the right to "life, liberty, and the pursuit of happiness"
- Liberty – When you work for someone, you sell some of your liberties for money.
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What is a right?

Something individuals value that will be enforced by the state against other people who would take it away from you. It's a thing of value, not necessarily material, that the state will protect on your behalf.

E.g. if someone threatens you with physical violence, the state will attempt to protect you through the police force.

What is a duty?

If you want the right to be left alone, then you have the duty to leave others alone. These duties are the counterparts of whatever rights you have. In being so constructed, you have society. Law can therefore make the world fairer.

Virtues of Common Law

- Predictability
- Flexibility
- Legitimacy – appeal is to tradition rather than sovereign authority

Property Right

- legal recourse; something that the state will protect/ensure; but then the state could infringe on your rights; something that the state should protect; something valuable
- Someone else's attempt to take it away from you would be a cause of the government using force to protect your retention of it.
- E.g. Right to privacy. The court ruled that the right to use contraceptive devices is a right to privacy granted in the constitution. The word "privacy" is not in the constitution, but supposedly it's implied. In this case, the state was the party allegedly infringing on the right. Would that right, as described, protect you against a neighbor who watches what you do on your property?
- Many developing countries have property rights, but lack the means to enforce those rights. One reason why those countries have difficulty in developing b/c that property, whether in themselves or in physical capital, can't be kept. They can't keep their own property – the local government or other people just take their property... leaving very little incentive to invest in human or physical capital.
- Three characteristics of meaningful property rights: universality, exclusivity, alienability

Universality

- Property rights have to encompass everything that is worth anything to anyone. There must be a property right for everything, or otherwise there'll be a market failure, and then we'll result in the tragedy of the commons.

Exclusivity

- Every useful thing, including procedures, have to be associated exclusively with people, an individual or a group. If not, we'll have the tragedy of the commons, another market failure.

Alienability

- People have to be able to transfer these rights.

Question: should we be able to alienate human rights? Right to pursuit of happiness – if this is inalienable, is there a market failure? What about your reputation, such as your reputation of being a good payor of bills, i.e. credit rating?

Tragedy of the Commons

If something is in the common, then nobody will take care of it.

E.g. Fisheries. If everyone uses it but no one uses it, then no one takes care of it. If no one owns it, then everyone will over-fish the area. People will overfish whales or other species, driving certain species to extinction.

Intellectual Property:

The objectives of the IP are creations of human mind, the human intellect ideas, and knowledge is an important part of the trade. Creators can be given right to prevent others from using their inventions, designs, geographical indications, and protection of layout designs, and use that right to negotiate payments in return for others using them. These are intellectual property rights covering copyrights, trademarks, industrial design, geographic indications, patents, integrated circuits and protection of undisclosed information.

Patents: Patents Act 1970 and Amendments in March 1999. Patents provide property rights to inventions – a novel idea which permits in practice the solutions to a specific problem. To be registered as patent the invention must be new. The process or design of something.

Right to business:

Principle of Public Trust Doctrine

Who is the owner of fisheries?: All non private resources-state manages the resources as trustee. The doctrine of public trust has its origins in Roman law, especially in the concepts relating to common property. Under Roman law, the air, the rivers, the sea and the seashore were incapable of private ownership; they were dedicated to the use of the public. Under English Common Law, the principle evolved in the context of the sovereign holding navigable waterways and submerged lands not as a proprietary owner but rather as a trustee of a public trust for the benefit of the people for uses such as commerce, navigation and fishing.

So very simply put, the public trust doctrine implies that all natural resources are preserved for public use by the state (in its capacity as a trustee). The government is also under a duty to maintain the natural resource for the reasonable use of the public. These resources cannot be handed over to a private party even for a fair cash equivalent. The idea was believed to have been encapsulated for the first time by Joseph L. Sax, in an article written in the Michigan Law Review. Public Trust jurisprudence has a relatively older history in the United States, where the judgment of the U.S. Supreme Court is regarded as the 'Lodestar in American Public Trust Law' as compared to India where its evolution was comparatively more recent.

Legislations covering IPRs in India

Patents

The Patents Act, 1970. The act was amended in March 1999

Design

The Designs Act, 1911. A new Design Act 2000 has been enacted superseding the earlier Designs Act 1911.

Trade mark

The Trade and Merchandise Marks Act, 1958. A new Trade-marks Act, 1999 has been enacted superseding the earlier Trade and Merchandise Marks Act, 1958. (Enforcement pending).

Copyright

The Copyright Act 1957 as amended in 1983, 1984 and 1992, 1994, 1999 and the Copyright Rules, 1958.

Layout Design of Integrated Circuits

The Semiconductor Integrated Circuit Layout Design Act 2000. (Enforcement pending) Protection of Undisclosed Information: No exclusive legislation exists but the matter would be generally covered under the Contract Act, 1872.

Geographical Indications

The geographical indication of goods (Registration and Protection) Act 1999.

Contracts

A contract is a promise to perform, to do something.

The vast majority of contracts in the real world don't need to be thought of in terms of promises – they are instantaneous and finished. They are simultaneous and so don't really need a contract. However, there are times when the action by one party is later than the promised reciprocal action by the other party. There is a potential for opportunistic behavior – so you need a method of enforcing the performance of the person who is supposed to perform first.

Indian Contracts Act 1872

It extends to the whole of India [except the State of Jammu and Kashmir] and it shall come into force on the first day of September, 1872. Nothing herein contained shall affect the provisions of any Statute, Act or Regulation not hereby expressly repealed, nor any usage or custom of trade, nor any incident of any contract, not inconsistent with the provisions of this act.