Intellectual Property Rights in China:

A Case Study of Copyright; 2001 to 2018

Thesis submitted to Jawaharlal Nehru University for award of the degree of

DOCTOR OF PHILOSOPHY

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DECLARATION

I declare that the entitled "**Intellectual Property Rights in China: A Case Study of Copyright; 2001 to 2018**" submitted by me in fulfilment of the requirements for the award of the degree of **Doctor of Philosophy** of Jawaharlal Nehru University is my original work and has not been submitted for any other degree of this University or any other university.

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CERTIFICATE

We recommend that this thesis be placed before the examiners for evaluation.

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Dedicated to my parents

Usha Devi and M.K. Jha

CONTENTS

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LIST OF ABBREVIATION

CAICCF	:	China–Africa Industrial Capacity Cooperation Fund
CBD	:	Convention on Biological Diversity
DSM	:	Dispute Settlement Mechanism
FDI	:	Foreign Direct Investment
GATT	:	General Agreement on Trade and Tariff
JCCT	:	Joint Commission on Commerce and Trade
IDL	:	International Division of Labour
IPR	:	Intellectual Property Rights
MNCs	:	Multi-National Companies
PRC	:	People's Republic of China
PNTR	:	Permanent normal trade relations
SASAC	:	Supervision and Administration Commission of the State Council
TPRM	:	Trade Policy Review Mechanism
TFP	:	Total Factor Productivity
UN	:	United Nations
UNDP	:	United Nations Development Programme
UNCTAD	:	United Nations Conference on Trade and Development
WIPO	:	World Intellectual Property Organisation
WTO	:	World Trade Organisation

Chapter-1

Introduction

Chapter 1

Introduction

Background

In his article, “Does China Matter?” Gerald Segal (1999), raised a simple yet critical question, “Does China Matter?” Almost a decade later, another question regarding China was brought into the academic discourse by Leonard Mark (2008), “What does China Think?” The query by Leonard Mark, “What Does China Think?”, these queries reflect China’s increasing relevance in contemporary world. Over the years, China has adopted different strategies to revive itself. One of the major reforms in China happened during Deng Xiaoping period i.e., four modernisation - agriculture, industry, science and technology, and defence. The development of Intellectual Property Rights (IPRs) in China was an implicit implication of this modernisation program. All four modernisations required some form of innovation and new ideas.

However, with regard to the concept of innovation, China decided to become party to, and follow the international IPRs framework. The question that must be addressed and answered is whether China joined the IPR willingly or was it forced to do so by the developed countries. The response to the above question highlights the nature of relationship that China shared with the concerned developed countries.

Developed countries have had a monopoly over industrial property for a long time. The 1883 Paris convention also known as the “International Union for the Protection of Industrial Property”, signed by thirteen members, eleven of which were industrialised countries. Only Brazil and Tunisia belonged to the category of developing nations. Even after being revised for the fifth time and taking place during the period of decolonisation in 1958, it was still dominated by developed countries. In the 1967 Stockholm conference, developing countries put forward

the demand to revise imperial rules and promote the voice of 'Global South' (Rao; 1989: 2841). The PRC joined the Paris convention in 1984 (WIPO). This Paris conference was based on Stockholm conference of 1967 (Paris Convention; 1984). Meanwhile, as a result of the restructuring of economic system in the early 1990s, the PRC had productive growth, which immediately safeguarded itself from economic crisis. The era of reforms and opening up also promoted the theory of "economic nationalism" in China (Bottelier; 2007: 33). The 21st century witnessed China's economic transformation and upgradation, in almost every field - agriculture, heavy industrial economy, the knowledge economy, and the defence sector to name a few.

This transformation has not only been officially acknowledged by the Great Powers of the world, but it is also reflected in the working of different multilateral institutions like the WTO, where China officially joined in 2001 and it has been playing a major role. The WTO's Dispute Settlement Mechanism' (DSM) offer conflict resolution among numerous countries often arise between countries, so much so, that is often termed as the 'crown jewel' of the organisation.

The WTO has ensured a time bound dispute settlement in relation to the conflict between various countries regarding production and sell of counterfeit products. The function of the WTO is not confined to laying the code in the realm of international trade; also prescribes the institutionalisation of conflict settlement mechanism for the unimpeded implementation of the code (Quereshi; 2019:146). The institutionalisation of conflict settlement at the domestic level is, therefore, also part of the conflict settlement mechanism and the practice is supervised by the WTO Trade Policy Review Mechanism (TPRM). The WTO DSM articulates the issues within country (Quereshi; 2019: 142)

The conceptual and institutional evolution of IPR has now reached a stage of maturity. IPR have been classified into two broad categories at present i.e., patent and copyright. Historically and philosophically however, China has rejected the

idea of individual ownership of intellectual property. The same did not enjoy any legal protection. At the same time, the Confucian, Taoist, and Communist ethos never promoted the development of IPRs (Maguire Jennnifer Wai-Shing; 2012: 895-96). For about thousands of years, China had encouraged its citizens share knowledge, creation, discoveries and invention. For instance, The "first trademarks surfaced in China nearly 3000 years ago, during the reign of the Zhou Dynasty" (Willard 1996 : 413). However, "the first recoded case involving trademark did not appear until 1730s during the rule of Qing Emperor Qian Long" (Willard ; 1996 : 413).

Simultaneously, the Chinese dealt with the Copyright. The root of the concept of "copyright" in China can be traced back to Japan. The term *banquan* which means copyright in China is however not a Chinese term (Wang Fei-Hsien: 2019:24). *Fukuzawa Yukichi* who was the most prominent intellectual of the Meiji period coined the term copyright by applying a combination of two terms - *han/ban* along with *ken/quan*, which stands for printing blocs and right to translate respectively. "No one truly understood that the exclusive right of publishing work belongs to its authors; this is a form of private property" (Wang Fei-Hsien: 2019: 24).

Moreover, in the contemporary era, as Michael Keane argued that the PRC is in zeal with the transition of "made in China" to "created in China" began. This changeover has improved the image of China in international arena. Its economy faced competition from other developing countries earlier whereas now China is being compared with developed countries. Meanwhile, Foreign Direct Investment (FDI) decline especially in manufacturing sector. The especial feature of this time period i.e., in monetary terms PRC grew in actual way and simultaneously number of project dropped almost by 27.3 percent. This development has led into creation on local industries. The reason behind the development of local creative industries was that local industries began with the low investment and offered high profit. However, with the development of local

industries there were, harsh impact on environment. In academia, the discussion began that the development of local industries in China led to the rise of China. This rise further offered space to *gaige* chuangxin (reform and innovation) from *gaige kaifang* (reform and opening up).

Review of Literature

It would be consisting of the works of Chinese scholars along with other scholars. The basic question that is addressed here is 'What are Intellectual Property Rights?' with special emphasis on the concept of copyrights. Intellectual property includes copyrights, trademarks, patents, trade secrets and so on. This would be followed by question on how China aligns its domestic law with International law in relation to its own interest. The structure of review of literature of this thesis is thematic. The sections of the literature are in this framework - historical perspective followed by developed and developing countries understanding on TRIPS, China and IPR and the lastly China and the WTO.

Historical Perspective

Wang Liwei (1993) argued that culture that China continued even after the formation of PRC's was not appropriate for the innovation (patent law). During the Mao era the innovation remained in the box. The top leadership in the PRC, followed the top down approach continued to suppress the idea of patent right. The author buttressed the argument on why China could not accessed the Paris convention after 1949? The author argued a) "a residual mistrust of innovation"; b) the traditional Chinese cognitive methodologies for scientific inquiry, which, though undesirable, are insignificant in the PRC's patent law; c) that the Chinese tradition ignored science and technology while stressing politics and the humanities; d) the monarchic-like regime behind Maoism which should be changed in light of the Patent Law.

May and Sell (2006) argued that the concept of IP is a modern development that took place in the contemporary Western Europe and has been strongly advocated by the United States in the current times. The ideas of IP as rights are neither inevitable nor natural but have a historical origin.

Developed and Developing Countries on TRIPS

Yu (2006) argued that the before the enforcement of International law by WTO there was nothing like a general duty of a sovereign nation-state to secure the IP domestically. The relation between the IP rights and the trade within TRIPS agreement changed the arrangement consequently. This development of IP regime internationally revolutionised with mid-1990s the TRIPS agreement. The main aim of the TRIPS agenda is to minimise the contortions and obstruction to the international trade. In addition, to this it has promoted the potentness in the cross borders promotion and protection of IP laws. However, the neutrality of the objectives of the TRIPS has been contested. Drahos and Braithhwaite (2002) have argued "TRIPS primarily benefits advanced nations and their powerful industrial lobbies and disadvantages developing nations that were coerced into joining the agreement as it increased the costs of using intellectual property protected technology and information".

Richard (2004) argued that the TRIPS agreement is yet to be in the position to call itself in the social interest of underdeveloped or developing countries. It does not promote the concept of welfarism to support the developing countries. In addition to this, even when it comes to developed countries it is said that the only a particular section of people are getting benefit out of the TRIPS law. Archibugi and Filippetti (2010) added an argument that fulfilled the research gap of Richard with an argument that final benefiter of the TRIPS agreement is not the advanced countries but the large corporate houses. The argument of Richard and Archibugi and Filippetti are devoted to understand the economics as well as the politics of TRIPS.

However, it was Sell (2003) who figured out the complete story of TRIPS agreement and its relevance in international politics. Sell (2003) showed how the power politics by developed nation-states played a key role in the implementation and enactment of TRIPS. In addition to this Sell (2003) has also showed how implementation of TRIPS has affected developing countries. With the arguments of Sell, the debate and discussion around the globe began to address the politics behind the TRIPS agreement.

Altbach (1986) has dealt with the concept of copyrights and various issues related to it in the international arena. Author has focused on the origin of international copyright and mentioned three aspects of copyrights which are: Copyrights as moral right of the individual, also called the moral right approach; the American approach to Copyright, also called as the 'Commercial approach'; and the 'Societal Theory' which was represented by the Soviet Union Copyright system.

However, Altbach has failed to foresee the challenges put forward by the e-resources which have generated debate on infringement of copyrights as books and other sources that are available online can easily be hoarded and distributed in soft copy or printed form giving air to piracy at extraordinary levels. In addition, author has failed to throw more light on how to evolve a system which takes into account the national as well as international aspects when it comes to a country's stand on copyrights issue.

China and IPR

Torremans, Shan, and Erawu (2007) in their work have offered varieties of perspectives from academicians, judges, politicians, and practitioners in the region of IP law in PRC. This book offers how developed countries view IPR of the developing countries. This book offers both the European and Chinese viewpoint. Authors are both European and Chinese, but the vantage point is European i.e. of a developed country. This book lacks the Chinese vantage point.

Author went through the different approaches to understand China's IPR law and argued that the Chinese IPR law has missed the socio- economic experience of the people and focused on the international norms. However, author has failed to address how people can be taken into consideration in aligning IPR law in China with International law.

Etzioni (2011), who belongs to Communitarian school of thought, emphasised on the issue of stakeholders in the field of IP laws. Author has written on the behaviour of China in the international arena regarding the IP laws. The author has analysed the conduct of China as a 'responsible stakeholder' within the given international system. After viewing China's behaviour from different lens author has found that China has more interest for power than values. However, it is pointed out that China is viewed through the western lens.

China and the WTO

Toohey (2011) in her work has emphasised on China's engagement in various trade disputes while being a member of the WTO for almost a decade which provides for a study of China's attitude towards mechanisms of international adjudications.

Author brings to light the inherent conflict between China's socialist market economy and Neo liberal WTO. Author has pointed out how Chinese approach towards governance is being at direct odds with the Neo-liberal leanings of WTO agreements. In addition, the disagreements and disputes that China had with its trading partners are both pragmatic and symbolic in nature.

Dong Tao (2014) argued that as a major part of international trade system, out IPR institution made a stride after the entrance of WTO. But due to some misunderstandings of IPR policy, China has had face some difficulties. Author viewed this thing from three perspectives, that is, a) the real crisis China's IPR policy; b) What road it should take and c) what IPR foreign policy China should

implement? He has pointed out the Chinese perspective and how China would cope with IPR internationally.

Lu Xiankun (2019) The WTO has failed to live with the dynamics of the twentieth-first century as the rule book has not been revised since 1995 which in turn leads to the negotiation function not been able to cater to the global economic order in the contemporary times. The constant blocking of the WTO bodies by the Trump administration the USA has led to adverse impacts in the organisation's workings, such as the dispute over the AB.

Blanchard (2013) argued that is using the WTO like similar other countries while paying lips service just like other organisation. While China has been engaged in using the mechanisms such as the DSM for its own intentions, on the other hand it 'appears' to show respect to the organisation like the other members. China has taken a case-based approach instead of forming any solid coalition with the other developing states.

Toohey (2011) focuses on Beijing's participation over trade related disputes in the organisation in the last 10 years and aims at assessing the broader significance of the trade disputes in the backdrop of China's evolution in the global adjudication system. Thus, the disputes between Beijing and its trade partners are not only symbolic in nature but also pragmatic in approach.

Definitions Rationale and Scope

In the contemporary era, an understanding of law should be based on its period of evolution as pre-modern law, and modern law. The difference between the two lies is in the scope and applicability of the law. The pre-modern international law there was consensus which articulates about the applicability that how law ought to be arranged to make it universal. There was not a single methods of thinking that tried to control any method of organisation (Bently and Sherman; 2003: 3).

The main feature of modern law is that it is accepted almost across the globe or that it is universal in nature. One of the reasons behind this is the development of international organisations like the League of Nations, which was followed by the United Nations (UN). According to WIPO's official website, the organisation has a long evolutionary history and falls into the category of the oldest specialised agencies of the UN (WIPO; 2019).

Among all the law that falls under Intellectual property this thesis emphasises mainly on the Patent and copyright laws. The emphasis is on patent and copyright are mainly done to understand the hypotheses which categorically mention about the technological and traditional knowledge respectively. As one down that patent and copyright is no more an arcane topic and it affects persons those who are involved in mental labour. Indeed, at domestic level as well as the international level laws are there to protect the work related to research and innovation but there are number of cases among developed countries and China with talks about the violation of IP law.

In his edited volume "Intellectual Property", Gallagher (2007) has defined the usage of the term 'intellectual'. According to him, the term intellectual is used as, "they provide protection to the diverse types of intangible products of the human intellect."

As per the definition, in majority of the cases, the culmination of intellectual labour are associated with intangible property rights. The right provides exclusive control over procedure of the products or the techniques to the owner. IP law is a branch of law that defines those intellectual creations.

Intellectual Property Law or IPR is one of the significant domains of law that categorically deals with the intellectual designs and methods that qualify to be protected as intellectual property, also dealing into its possession or how to do away with these sets of rights, while also dealing into making the best possible use of these resources. It also delves into the larger process of enforcement and

compensation if the rights are violated or infringed by a parallel competitor or other entities with nefarious intent. The Intellectual Property Law have its set of laid down guidance to support a competitor who wishes to come up with a production of a new product by applying newer methods of designing, thus comfortably skipping the proprietary domain of another person or entities intellectual property rights (Rockman; 2004: 4).

The concept of intellectual property rights is legal in its process and a competent device as it provides protection while innovative ways and means such as working in the sphere of art, literature and creative designs. The Intellectual Property Rights have also established a unique mark as its identity on its every manufactured product to differentiate its products from a potential fake or similar product available. Presently, the following categories characterise the idea of IPRs i.e.,: copyrights, patents, trademarks, geographical indications tags (GI tags), industrial designs, plant breeders rights, trade related secrets of companies and industries. However the most significant, economic and common among the following are copyright, patent and trademark. These differ in their characteristics such as the aim of patent is to safeguard the idea while the copyright focuses to safeguard only the articulation of an idea.

The role of Intellectual Property rights has become even more significant especially in the ensuing period post-cold war. The IPRs have become more relevant economically and politically thus leading to several instances of contention and controversies over it. The major characters of IPR such as copyright, patent, GI Tags and trademarks have become a major cause of discussion and debates that have been also covering the domains like education, human rights, information technology sector, industrial policy, agriculture sector, biodiversity management, public health infrastructure, trade as well as media and entertainment industries. In the 21st century, the rising in inequalities at income levels among the developed and developing countries has only further widened whereas the worst effected ones are the under-developed countries and these

factors have significantly led to several confrontations and controversies on the issue of Intellectual Property Rights at multilevel global platforms. There is a need of comprehensive understanding of IPRs in order to dispense an informed policy making in various facets of human development.

The grant of patents is done on the basis of manufacture and production of new and serviceable products, materials, and machines. The grant of design patent may also ensure the protection of designs of utilitarian articles that have been manufactured (Rockman; 2004: 5). The manufacturer of the product or the service provider involved in this domain are allotted with the Trademarks, trade names, trade dress and article configuration, collective membership marks and services marks in order to maintain their credibility and reputation of the services they are providing. These allotted marks categorically distinguish between the origin and manufacturing of the products of the different service providers and competitors. All the manufactured products gets these allotted marks that comprises of name, symbol logo, tags on container as well as all other distant features are specifically mentioned on the products to clearly determine that a creation entity or a person is the sole manufacturer and supplier of the product and to further determine the authenticity of the manufacturer of the particular product. Meanwhile, this process is highly effective as it makes sure that the manufacturer stands firmly with its supplied products however it also helps in holding the manufacturer directly accountable in case of any defect or malfunctioning in the supplied product. The products are specifically marked to avoid instances of similar product or fake product in the market being purchased by the consumer. These marks are useful for consumers to determine the authenticity of the product (Rockman; 2004: 6).

According to Gallagher (2007) through IP, monopoly rights are granted to the owners of intellectual property for a limited period of time and it provides ‘property-like protection’. As per the definition given on the official website of WIPO, “Copyright (or author’s right) is a legal term used to describe the bundle

of rights that creators have over their literary and artistic works for a limited period of time". Copyrights become available from the moment the work is being created. Through copyright, it is ensured that the protected matter is not reproduced without prior consent of the copyright-holder. Accordingly, the copyright owner is entitled to the share that is earned by the reproduction or utilisation of the copyrighted work.

Apart from the above mentioned economic right, there is also a moral right which ensures that the work is not tampered with or misrepresented. In cases of infringement of rights of the copyright owners, compensation is, and has been awarded by the relevant state courts.

This section also highlights the boundaries of the thesis. The boundaries are a) time period of this work focus on 2001 to 2018; b) Chinese language materials are consulted but not extensively; c) this work is not based on interview and fieldwork.

Hypothesis

1. China undertook international patent and copyright laws for the development of its technological knowledge and for the protection of traditional knowledge.

2. IPR laws provide benefits to China's economy and further helps to create the image of an innovative country.

Research Questions

1. Is there a contrast in the stand of China with respect to various forms of IPR laws? Does China argue for stricter IPR law in the domain of technological and traditional knowledge?

2. Did China have any other laws to protect intellectual property before it became a member of the WTO?

3. How the rise in creative industries in China has led to strengthening of IPR in China?

4. Are Chinese IPR laws consistent with the TRIPS agreement? Does China have robust copyright law in comparison to the international law?

5. Has China been facing discrimination in the WTO in the last two decades?

6. Why the developed countries have been skeptical of China on IPR?

7. How the contemporary international law of Copyright evolved? Did China have any role in the evolution of present copyright law in international arena?

Research Method

This dissertation is analytical and the research methods used will be primarily qualitative. The study is deductive in nature. The research subject is interdisciplinary. The sources of research are both primary and secondary. The primary sources include various international and domestic statutes as well as reports published by various governments and international organisations. The secondary sources are mainly the articles and books written by experts, periodicals and news sources and electronic data available on the Internet.

The articulation of this thesis employs a majorly deductive mode of research and analysis. This thesis contains two hypotheses: both hypotheses contain independent and dependent as well as intervening variables. In order to prove these hypotheses, the thesis contains further research questions.

The primary focus of this research is on Intellectual Property Rights with special emphasis on copyright law in China. It covers around two decades of law and policy from 2001 to 2018. It is therefore naturally based on state information and observations by both political leaders and experts. It would be empirical in

nature. In this thesis, the research uses both primary and secondary data. Primary data used consists of speeches made by important leaders, which includes the speeches of President Jiang to President Xi (1992-2018). It also includes White Papers (government official document), as well as Communist Party documents. Apart from international research, Secondary data and sources of information consulted during the course of research include translated works of Chinese authors.

Chapterisation

Chapter I: Introduction

The introduction briefly discussed the context, rationale and scope of the study, gave a review of the literature referred to, and highlighted the important research questions, hypothesis and the structure of the thesis.

Chapter II: Theoretical Foundation of IPR

This chapter dealt with theories related to knowledge, property and labour along with a socialist interpretation of international law. The theoretical framework was discussed in order to understand the concept of IPR in a more nuanced and comprehensive manner. The chapter traced the theoretical development of all three terms and concepts, including the thought of various political philosophers (both Western and Chinese). Therefore, in order to gain better theoretical insight into the concerned themes as well to understand the research problems associated with them, the chapter followed the line of enquiry taken by existing theories of knowledge, labour and property. In addition, the chapter also included a discussion on the theory of labour which is based on both manual and intellectual labour.

This chapter dealt with theoretical development of Intellectual property. The concept ‘intellectual property’ was separated into ‘intellectual’ and ‘property’. Here each term has its own sphere.

Chapter III : China’s International Patent and Copyright law

This chapter emphasis on the following aspects and dealt with issues concerning: nature of the Chinese state, its Patent Law; and the relation with international patent law. In a very similar way, this chapter analysed the copyright law of China at domestic and international level. In addition, it dealt with the hypothesis i.e., “China undertook international patent and copyright laws for the development of its technological knowledge and for the protection of traditional knowledge”.

Chapter IV: Innovation and Image of China

This chapter explored whether the China has faced any challenges in its association with international law. It further sought to find out and understand what those challenges are. This chapter, in effect, dealt with the second hypotheses, i.e. ‘IPR laws provide benefits to China’s economy and further, help in the furthering China’s image of an Innovative country.

Chapter V: Conclusion

The overall analysis of the subject was done in this chapter.

Chapter-2

Theoretical Foundation of Intellectual Property

Chapter 2

Theoretical Foundations of Intellectual Property

About Chapter

In this chapter, the researcher has dealt with theoretical development of Intellectual Property. The term ‘intellectual property’ (IP) connotes a vast terrain of understanding and meaning. This chapter dealt with the concept and ideas of ‘intellectual’ and ‘property’ that developed in Western and the Chinese philosophy. However, the notion of intellectualism and property do not represent a universal meanings and norms. As opposed to the universal norms, terminology like ‘intellectual’ and ‘property’ change their meaning based on the time and space. The cultural aspects also influence notion of intellectualism.

The chapter highlighted and elaborated five key terms like ‘knowledge’ (scientific), ‘labour’, ‘property’, ‘rights’ and ‘legal’ in context of intellectual property. The purpose of this chapter is to demystify the theories behind these conceptual and value laden terms. This chapter is structurally categorised into various topics, such as, the - introduction, evolution and debates on International Law followed by China’s role in it. Then it delves into the theories of Intellectual Property.

An attempt has been made to articulate the theoretical understanding of philosophers and thinkers like, John Locke, Karl Marx on the Labour question and also to shed some light on Locke’s theory of Property, The chapter also looks into Gaun Zhong’s theory of settlement of the inhabitants by the division of professions, followed by Confucian and Mencius understanding on the division of Labour. At the end, researcher answered a simple, yet, deeply contested question - What is Intellectual Property? And what are the Classifications within Intellectual Property Rights.

Introduction

To understand Intellectual Property Rights (henceforth IPR), a detailed and comprehensive discussion is provided on the theoretical framework of IPR. In order to lucidly understand the IPR, a three staged explanation of three separate terms of which IPR consists of, that is, 'intellectual', 'property', and 'rights' is discussed by discussing the genealogy of these terms and situating their theoretical development in thoughts of various Western and Chinese political philosophers. Further, an enquiry in existing theories of knowledge, property and rights is done to understand the research problems relevant to IPR. In addition, the theory of labour, both the manual and intellectual is also discussed in this chapter. At the very onset, it needs to be mentioned that there is no possibility that human activity (human labour) can occur without a certain degree of coordination of the 'head and hand'. However, it is of tremendous importance for humans to distinguish between arena of personal and societal unison of intellect and manual strength. To substantiate the argument, Alfred Sohn-Rethel (1987) gives an example of "the slaves who had been engaged in the production of pottery and textiles". The author, further states that in such a case the "individual labour of the slaves used in the production does not make them the master of the art form produced" (Sohn-Rethel 1978: 85).

However, Karl Marx opines that "a spider conducts operations that resemble those of a weaver, and a bee puts to shame many an architect in the construction of her cells" (Marx 1887: 27). He adds that "the architect raises his structure in imagination before he erects it in reality. In the end of every labour-process, we get a result that already existed in the imagination of a labourer at its commencement" (Marx 1887: 27). Through these statements Marx in simple words put forth both the concepts of labour, manual and intellectual and their relevance lies in the idea that had already formed in the virtual/imaginary world and it is the work of the manual labour to bring that imaginary idea that erected in virtual world in reality.

A communist society is characterised by the social unison of head and hand in terms of labour. In sharp contrast to such a social unity enjoyed in the communist societies, the existence of social division is apparent in the societies based on exploitation, as also have been observed through different phases of history. Different phases in history - Primitive Communism- the very beginning of commodity production where, there has been a step wise extension of individual production, the nature of production is communal. It marks the age of social thinking, sheer intellect, making intellectual labour cosmopolitan in nature, whereas manual production stands at the individual level. Middle Stage- this stage was for societies of appropriation, where, the slaves in Greece and Rome were denied the right to equal participation in the human social order and process. This epoch gives rise to a socio-politico-economic order where, socialization overpowers and leads to the present stage. Capitalist Society - As the preconditions of a modern social order of production has been set, an order of appropriation is established. In such a condition human being are faced with either an inescapable alternative of social production or a society based on appropriation (Sohn-Rethel; 1978: 86).

Moreover, the theoretical aspects of intellectual, property and rights would be dealt separately, so that it is articulated in order to form a foundational basis for other chapters in this thesis. The methodology "consists of methods, procedures, working concepts, rules and like used for testing theory and guiding inquiry and search for solutions to problems of real world. Methodology is a particular way of viewing, organising and giving space to inquiry" (Chilcote 1981: 3). The chapter follows the deductive methodology to understand the theories of IPR.

To understand the title of this chapter, researcher began the discussion on of the Intellectual Property Rights. Scholars, like Theodor W. Adorno, define theory as a purpose or aim and that aim is to reflect reality. Scholars further elaborate that "theory is already practice. And practice presupposes theory. Today, everything is supposed to be practice and at the same time, there is no concept of practice"

(Adorno and Horkheimer 2011: 11). In the words of Ronald H. Chilcote, "theory refers to sets of systematically related generalisations and method is procedure or process that involves the techniques and tools utilised in inquiring and for examining, testing and evaluating theory" (Chilcote; 1981: 3). In order to understand the theory of IPR, it is relevant to understand this in context of different time and space i.e. with respect to different ideologies such as Libertarian, Marxism and along with the Confucianism Mencius and others.

Concept of IPR brings together the intellectualism with that of intangible property. The term property indicates that something needs to be protected and safeguarded by default connoting some kind of rights to safeguards tangible property. Does intangible property hold similar rights to that of tangible property rights? Are there any laws (at China or international level) to safeguards intellectual property as a right?

However, some scholars viewed the concept of Intellectual Property as an agency that "transcends culture and history" (Ghosh 2014: 52). Such transcendental cultural history indicates that the meaning of property has changed in contemporary era, as it is now being distinguished at legal level which broadened its theoretical understanding especially when it is being understood from the economic theory perspective. In the 19th and 20th century, law began to define property in association with tangible property. These treaties has had set new parameter to view and understand the international history. For instance, Berne Convention on copyright and Paris Convention on industrial Properties and Trade Related Intellectual Property Rights (TRIPS) bring signatories into the common table to harmonise the laws of Intellectual Property. Subsequently, Intellectual Property was referred to as a "novel products of human intellectual endeavour" (Macqueen, Waelde and Laurie; 2008: 7).

The business of law of IPR is to safeguard the works like painting, films, pharmaceutical. Sometimes IP law is misunderstood as a single or homogenous law but it is not so. This chapter demystifies the theoretical foundation of IP law.

Here, researcher agrees with Kenneth Waltz differentiation of laws and theories. According to Waltz, "theories are collection and set of laws pertaining to particular behaviour or phenomenon …. Theories are more complex than law and qualitatively different from law". However, the difference between "laws and theories have no difference of kind appearance" (Waltz: 1979: 2).

Moreover, when it comes to patenting, copyright and other laws, each of the terms carry its own characterisation. In the IPR, the term "intellectual" i.e., the adjective which describe about the production (out of labour) from human mind, whereas property denotes the private ownership as well as the self-rights on that (Bently, Sherman, Gangjee and Johnson 2018: 1). The concept of property which denotes control by the individual or the group of individuals are also called rights holder, is a matter of property rights (MacQueen, Waelde, and Laurie; 2008: 7).

The concept of property is not new to the society, state and international politics. It is also an inevitable part of political theory or philosophy. The historical study of property indicates that it has passed through different phases along with adapting to transitions in course of time. These changes broaden the conceptual understanding as it keep on developing as it is influenced by environment like politics, economics and society.

The relation between theory and practice is influenced by the idea of rights and property. Therefore, it is important to analyse the historical as well as conceptual issues and its dimension on property. So far, it is understood that IPR is a broad topic. It is essential to define the broad meaning of IPR. Before moving to discussions on IPR, it is necessary to articulate the historical development in International law.

International Law:

The history of modern international law is interwoven with the history of capitalism and its phases. As capitalism evolved and developed in Europe, it

began to spread its tentacles to create a global market in which individual countries participated. The international division of labour is reflected in substance of international relations and eventually percolated into international law. The first challenge to this economic system was meted out by the October Revolution which initiated a process culminating into two parallel "socialist international division of labour" (Chimni; 1993: 220). The disintegration of socialist IDL or socialism ensured that now international law and its structure and function was shaped by the needs of the world capitalism.

Evolution and growth of world economy and Contemporary international law

B. S. Chimni classifies history of the world order into the following four phases:

Old Colonialism (1600-1760): Chimni stated that the emergence of capitalist order in Europe was preceded by a period where primitive accumulation took place, a process that involved a forceful conversion of the producers into wage labourer. This phase had an external dimension - where wealth both human and material was plundered from the outside world (not Europe). Here he resorted to Marx to substantiate his argument that "the discovery of gold and silver in America, the extirpation, enslavement and entombment in mines of the aboriginal population... signaled a rosy dawn of the era of capitalist production" (Chimni: 1993: 224).

Chimni further states that the seventeenth century colonial system capitalist world order emerged where the sailing ships along with guns and treacherous intentions played a major role. With the legislative measures such as the Navy and the Navigation Acts of 1651 and 1661, the British established their dominance. With the help of the above-mentioned acts Britain had successfully established its monopoly in the colonial trade system and also subordinated the colonies to imperial policies passed by her parliament (Chimni; 1993: 224).

The dawn of the 19th century saw the rise of Britain to supremacy which triggered a commercial rivalry between the British and the Dutch. 1652 -1674 witnessed three wars between the two which paid the way for the British territorial power in India. The Jamaica in 1655 and Dunkirk in France laid the very foundations of Slave Trade, which enriched the English merchant class.

After setting the premise, Chimni states that Grotius endorsed the evil institution of slave trade, thereby, making it clear that both internal law and lawyers are a product of their times (Chimni; 1993: 225). By prohibiting manufacturers in the colonies which has the potential to compete with those of the home country the British announced her complete hegemony. Chimni quotes Maurice Dobb, where he stated that not only coercion was used as an instrument but also, control of the colonial production became the preoccupation of the seventeenth century.

By the 1690s, 'new world market' and 'new international division of labour' came into reality whose relation was hitherto unknown. And this marked the world economic order at its infancy (Chimni; 1993: 225). The process of industrialisation in Britain went hand in hand with its capture of almost all world markets for certain manufactured goods, and the control of most of the world colonial areas. At the same time the beginning of modern system of interdependence came into the picture along with this a parallel development of the origin of the European states system with the rise of an absolutist state. The absolutist state arose as a centralised institution with source of all political power "*inside a territorial-national domain."* These rivalries were fought both on the land and water and hence one can find a great amount of laws enshrined about laws of war, peace and to the problem of freedom of the seas.

The very concept of state sovereignty was subsequently accepted. The treaty of Westphalia symbolises the birth of international law. Grotius's path breaking work "*Jure Belli ac Pacis*" upholds the very spirit of Westphalia (Chimni; 1993: 227). His work is said to be the first comprehensive and systematic treatise on international law which, articulated the norm laden basis of the rising world

order. His work along with the modern doctrine of international law was first challenged by the 19th century positive, Christian law. Since the very struggle against the feudal order required the assertion of equality of states and a separation of secular from spiritual power, Grotius extended this equality to the non-Christian nations also. The main problem remained the commercial rivalry along the European countries for the spoils. (Chimni; 1993; 226)

New Colonialism (1760-1875): The very essence of new colonialism was a reversal of roles as a product of the imperial policies followed by Britain which then emerged as a leading metropolitan nation. The Treaty of Paris marked as a watershed and since then greater stress on colonies as markets and sources of supply.

The industrial revolution rendered mercantile system anomalous along with the old imperial system. The European wars fought between the European states made Europe strong and mighty - firepower and trained professional troops had taken over and thus aided in their expansionist policies as large colonial markets were required for their sustenance. The defeat of France paved the way for the conquest of India and the extension of British settlement in Canada and other areas of North American continent. The American war of independence symbolised the loss of American colonies which followed their worldwide expansion. Colonial tribute and market were two significant factors in making Britain powerful and mighty. In such a backdrop a mature world economy was waiting to be born out of international division of labour (Chimni; 1993:228). However, world economy revolved around a single country - Britain. These typical characteristics of the international world order had a great influence in shaping international law.

The foundation of the bourgeois international order after the French Revolution, the notion of sovereignty became the focal point of external policy and international of all leading European states. Vattel's "*Le droit des gems, ou principles de la naturelle"* (1758) described as the first modern book in

international law provides us with a legal form of new political understanding of Europe as an international system (Chimni: 1993: 228). The European law of nations also had a great impact of the contemporary features that prevailed in the period. The Congress of Vienna needs a special mention in this context as it not only adopted a policy on abolition of slave trade but also gave the first impression of free navigation in international seas. Though Britain's naval strength was unchallengeable, it chose not to challenge the Congress of Vienna on naval context.

The famous Navigation Acts which brought undisputed glory to Great Britain was repealed in 1849. A transformation came where the bourgeoise international law shrank to form a Christian law of nations. The colonies soon became objects which catered to the colonisers without any voice to shape their own law. To meet the demand, state responsibility was shaped in way that it acted to the disadvantage of the non-European states. The positivist ethos helped in rationalising and eventual theorising that war and non-military pressure was intrinsic to sovereignty. Eventually the so-called standard of civilisation became justification for their iniquitous law of state responsibility.

1875-1945- Imperialism: It was in the last quarter of the 19th century when capitalism entered in its phase of monopoly. The Territorial acquisitions of this new imperialism were almost three fold of the earlier period. Nations which were not formally colonised was independent in name only which has been described by Lenin as semi-colonial countries. Some of these countries are Persia, China and Turkey. Latin America became an arena of financial blackmail and repeated armed interventions. Here, Chimni argues with the help of Lenin's analysis that the emergence of finance capital as an emphatic force at international economic relations founded a world of colonial oppression. Lenin stressed that finance capital has increased the unevenness and contradiction, which were inherent in the world economy.

The two World Wars bear the truth of Lenin's theoretical analysis. All such development of the period, the drastic and sweeping changes in the global political and economic order created deep influence on the normative and theoretical development of International Law. The overtly Christian and geographically restrained law formulation saw a transition where law was framed according to the definition of secular and universal nature was shaped to accommodate the growing non-European great powers such as Japan and Turkey. In such a phase, imperial needs were disguised as 'civilised'. In the face of imperialist rivalries there coexisted continuous efforts for peaceful settlement of disputes, along with the realist approach attempts were made to humanise war and thus law of war was codified. The Hague Conference was a first step in this attempt (Chimni; 1993: 234).

1945 onwards- Neo-Colonialism: This was the time period of when World War II culminated and led to an ideological war i.e., cold war. The end of colonialism gave rise to imperialism without colonies - a new phase of imperial rule (Chimni; 1993: 235).

Scholars view on International Law and the Rise of China

The international legal norms have tremendous significance on international law. Tunkin had differentiated between the particular and general international law. The former revolved around legal relations with the capitalist economic order, thus, was operated outside the socialist bloc. The later had no class essence attached to it. Chimni criticises Tunkin stating that the norms of general international law cannot be socialist as an agreement between the capitalist and the socialist states is impossible. Socialist international norms can only be carried in relation to socialist states. While the contemporary general international is the embodiment of an imperialist policy, as agreement between the socialist and the capitalist is impossible to strike on this basis (Chimni: 1993: 244).

Morganthau had made a distinction between the realm of law and politics, however, without denying an essential relationship. This proposition cannot explain the essence of international law because the relationship between character and interests of states which participate in the process of law making has not been considered at all. Secondly, there lies an inability to construct the history of international law. The irrelevance and ineffectiveness of international law is declared without studying the considerable influence of history that produced them. It has been noted that Morganthau in later part of his life repudiated hard-core power politics to embrace international law and organisation. However, the failure of realism to understand international law is not necessarily an opposition to concern for national interests. The more powerful states are able to write their interests as law, is the reality. Law thus is a means to legitimise and augment power (Chimni: 1993: 44-45).

The moment Morganthau rejects the realist approach by repudiating the moralist approach, though he warned against the overrating influence of ethics in the realm of international politics. He was occupied with exposing the detrimental impact of moralism on international politics. However, he was careful to distinguish his arguments from that of Hobbes and stated that the actions of states are based on universal moral principles. He did not endorse moral scepticism. He further elaborated that legal fiction of equating nations and individuals cannot be permitted in moral discourse as it is within the human conscience where moral rules are applicable (Chimni: 1993: 61-62).

International morality as an operational system of limitations upon international strategy becomes impossible. He ignored that international law can directly influence the conduct of an individual in certain circumstances, for example war crimes. He did not subscribe to the fact that transformation in international law has transformed the status, rules and role of international morality.

Tunkin's differentiation between 'general' and 'particular' norms to characterise the contemporary international law can be linked to the sustenance of his thesis

on the principles of socialist internationalism. These principles of socialist internationalism represent a parallel system of international law, though they are overlapping in nature. Here, Chimni argues that two or more 'systems' of international law cannot co-exist without negating the very idea of 'international law' because it is the function to regulate the relation between the states with their diverse socio-economic systems on the basis of uniform criteria (Chimni:1993: 256).

The new type of international relations as propounded by the then Soviets was based on the principles of socialist internationalism as advanced by Marx and Lenin. In the legal aspect socialist international referred to the right and obligation of each socialist state to cooperate with other socialist state in their struggle against imperialism and in the construction of socialism and communism. The implications were on "Sovereignty, Social equality, Non-intervention policy" (Chimni; 1993: 259).

These constituted the fundamental features of international law. The element of fraternal 'mutual assistance', inter alia meant the need to come to aid of the members of the socialist bloc in their struggle against the aggressive designs of imperialism such as the USSR and the WARSAW Pact countries. The argument provided in short, was that the principles of socialist internationalism represented. The principles represented an international law at its pinnacle. The principles dialectical internationalism is dialectically related to those of general international law. He stated that there was no reason for the socialist scholars to have contributed and put forth in parallel to international law - one operating between socialist states while the other operated in its relation with the outside world. In its interaction with the imperialist world it had ascribed primary to international law over politics and had abided by its voluntary taken obligations. They thus abused the very laws of dialectics while incorporating negation of negation to justify the two parallel systems (Chimni; 1993: 260).

However, China's re-rise to power in the twenty-first century has been accepted by the global leaders. There lies very less certainty what might unfold from China's rise in the global political and legal sphere. Especially, it's engagement with the United States.

The optimist point of view is that of the belief that the contemporary international political order can tackle the rising growth of the once 'Middle Kingdom'. However, Ikenberry takes a critical stand in relation to the rise of PRC's with the growth in economic and another arena that shatter the West oriented world view by bringing an end to the US dominated era. However, he believes that the path to an alteration in the western hegemony in the global political order is not inevitable. Again, he states that Beijing power position does not integrally mean a "wrenching hegemonic transition" (Ikenberry; 2008: 24).

The transition of power pertaining to the United States and China is quite different from the previous period. This is because of the political matrix that Beijing is facing is intrinsically different from the ones that the states in the past had to confront. At the present juncture, China would not only face the US alone but also, a hegemonic western oriented system with its deep political linkages especially in the field of international law.

Another approach influenced by Barry Buzan's English School takes a milder route. Barry Buzan's English School lauds China's integration in the international social order, but is also of the view that a peaceful rise to power position, which indeed is possible, would not be as easy as it was in the last three decades. The process of Beijing rise to global power would inevitably bring tensions. Buzan further adds that the peaceful growth "cannot be accomplished by China alone, but only by China and the rest of international society working together to create necessary conditions" (Buzan; 2010: 7). This statement thus, reveals that in the process of rise and growth of China, the international society plays a crucial role.

In 2001, John Mearsheimer had warned against China's rise to power and stated that China would be such a power that the US did not encountered in the 20th century. Being critical of the USA engagement policy with China, Mearsheimer predicted that the American expectation of Chinese transition and integration to the international political order as a democratic state and an ally of the United States would inevitably fail. He further predicted that the rise of China as the economic powerhouse would culminate itself into a military giant and thereby, dominate the entire region of Northeast Asia (Mearsheimer; 2001: 401).

China's status as a democracy or an autocracy makes very little impact as the concept of security is intrinsic to survival of any state. However, it is imperative that neither the US nor any other country would watch silently as China gains its might. With the aim of containing China's rise, they would make attempts at forming coalition to create a balance in the international political system. This in turn would give rise to heated political competition between the China and those who assumes it to be a threat.

For Mearsheimer, it is only its might that creates a difference in China's rise and growth to power. No international rules and regulations are strong enough to stall China emergence as a hegemon. Fortunately for the US, it returned to the realist domain before too late to contain Beijing, of course it needs to be noted that when Mearsheimer was writing, China was not as powerful as it is today to challenge the American led hegemony in the international political sphere.

Many incidents in the recent past, between the US and China, especially during the Trump administration, has an upper hand to the pessimists. The National Security Report, 2017 mentions China for the first time as a "revisionist power," whose aim is to "challenge American power, influence, and interests, attempting to erode American security and prosperity" and to "shape a world antithetical to U.S. values and interests." It no longer stayed within the confinements of rhetoric alone, as soon the trade war between US and China erupted. The trade war between the two has been identified as the "biggest trade war" by China. The

trade war between the two rival economies has the potential to reach a turning point in their relationship (White House; 2017).

It has often been suggested that the international law plays a major role in China's rise to power. It needs to be mentioned that there has been no unanimity achieved in the analysis of role and effects of international law on the rise of great powers in a global scenario. Example, the US has often raised complaints that international law promotes the rise of China and has little responsibility in the context of regulating Beijing's actions. In sharp contrast to this, lies the Chinese perspective, where they view international law as a "weapon" which can be easily misused to act as an impediment in the road to its glory.

A consensus was reached where it was viewed that Beijing was highly sceptic and critical to the West dominated international legal order in 1949. China as a country of revolution did not show much interest and respect for the West dominated international law and showed little willingness to integrate into the legal system and thus, did not threaten the international legal order. Within a decade, the point of view of the lawyers underwent a change. Some anticipated China to take a robust action which the West had not expected. "China has attempted to accommodate the international community in some areas more than in others; its practice show both admirable compliance with, and complete disregard of international law; and the future participation of China in the international legal order is certain. Less predictable, particularly with respect to certain subjects, is China's acceptance of existing standards" (Feinerman; 1995: 210).

Both Posner and Yoo did not support the argument that the US should have the responsibility to make the world adhere to the international law and institutions like the UN and the World Court. The US when not in a strong position "will be grateful for the protection that these institutions offer to the weak against the strong" (Posner and Yoo; 2006: 3). International lawyers like Katrin Kinzelbach

are of the opinion that China has been trying to mould and reshape the world legal order.

A similar string of thought has emerged among the policy makers. The U.S. Trade Representative (USTR) asserted that they "erred in supporting China's entry into the WTO" (USTR: 2019: 5). US President Barack Obama made a statement arguing that his "top priority as President is making sure that more hardworking Americans have a chance to get ahead. That's why we have to make sure the United States - and not countries like China is the one writing this century's rules for the world's economy. Right now, China wants to write the rules for commerce in Asia. If it succeeds, our competitors would be free to ignore basic environmental and labor standards, giving them an unfair advantage over American workers" (Obama, 2015). These scholars' views on international law and its impact on China articulated the position of contemporary and its understanding of international law and also paved the way to understand the theoretical development of international law.

Positivist on International Law

The enormous influence of the positivist theory of international law exercised for almost two centuries has had a baneful impact in many respects. There existed a lack of concern with human situation in international legal literature. Purged in the history, positivist theory has been entrapped in a paradigm which had no concern with the underlying social realities. In its first (colonial) phase it occluded any debate which was linked to international law and relations to democratic theory and traditions. In the second (post-colonial) phase the positivist had prevented any realist statement of rights as its methodology rules out serious sociological inquiry. Thus, there took place a revival of natural approach, though disguised in different forms. The content of rights is derived from 'higher law' which is, or ought to be, justification of every positive law. Thus, it can be noted that self-serving interpretations can be formulated by those in power to justify practically any action, for instance, humanitarian intervention.

According to Marx, “human essence is the ensemble of social relations.” According to Levi-Strauss there is a “little connection between actual life of actual groups of the people and such notions as value, utility, profit and like” and that “the subject of economics is not universal, but narrowly restricted to a small portion of the development of man.” The Marxist approach to human rights may be clarified further through the concepts of positive and negative liberty as had been advanced by Isaiah Berlin. Being inspired by the English political philosophers and J. S. Mill, Berlin stated that negative liberty can be defined as the area where man can act unobstructed by others. That is to say there should be some portion of human existence that needs to remain free from the sphere of social control. To invade, and preserve, however small would be nothing but despotism. While the positive liberty meant that man could be his own master (Chimni; 1993: 283).

There has been a rapid increase in the rules and regulations along with their importance in the economic and cultural domain. Intellectual Rights is intrinsically linked to the several business houses as they are heavily depended on the infringement of the IPR. Along with this a huge share of legal professionals are working in Intellectual Property disputes. Policy makers are revamping and bringing changes to the IP laws all throughout the world. These growing trends have induced scholars to focus in this area (Fisher; 2001: 168).

Theoretical Approches to IPR

There are four contemporary theoretical approaches advanced in relation to IPR. First one is the Utilitarian approach. It is undertaken by the policy makers to mould the property rights in order to maximise social welfare. In the pursuit of bringing about social welfare the policy makers are “required to strike a balance between the power of getting exclusive rights of creations in order to stimulate inventions and an offsetting of these rights in a partial manner, in order to curtail a generalised enjoyment of those creation” (Fisher; 2001: 169).

The Second approach constitutes the dominant approach taken. This approach is traced from the understanding that labour on the unclaimed resources or those that 'held in common,' owes a right to natural property which is a product of the labour. The state too has been vested with the responsibility of safeguarding the natural property rights of the individuals. Robert Nozick in "Anarchy, State and Utopia" upholds this argument on Patent law. In his book, Nozick relates his understanding to John Locke and his concept of "proviso" which is wrapped in an ambiguity. Proviso refers to an understanding where an individual might have legitimate property rights over the product produced by mixing his labour to those resources that are "held in common," provided only after acquisition, "there is enough and as good left in common for others" (Fisher; 2001: 169). Nozick in his book tries to content the right interpretation of the above mentioned limitation of Locke.

Similar to Locke's original ideas, acquisition of property is legitimate, provided no person suffers from net harm. Net harm can be understood as circumstances where injuries like being left poorer due to the acquisition of the property. Nozick further stated that the patent helps the consumers instead of causing them hurt. However, highlighting two limitations emanating from Locke's theory, firstly, an individual who had invented the commodity independently should be given the right to make and sell the same. Else, the patent issued to the initial inventor would culminate into a worse order; Secondly for similar reasons, patents should not be for forever. Someone else might have created the same device too, had no knowledge of the invention of the device been made disabled to the creator for creating them independently (Fisher; 2001: 170).

Third Approach - it has been borrowed from Kant and Hegel. Private property holds tremendous importance in bringing satisfaction to the basic human needs. Thus, the policy makers should be formulating such policies to ensure such satisfaction to the people. From such a point of view, the IPR is essential to

shield from moderation and appropriation of the commodities, through which the creators have expressed their wills.

Tracing from Hegel's theoretical understandings, Justin Hughes formulates the structure of intellectual property system. Much more willingness should be expressed in granting legal security for the protection of artefacts that are product of high intellectual labour than those of less intellectual rigour. A person's persona deserves a generous amount of legal protection.

The Fourth Approach is found in the theories of property rights in general and IPR in particular. Theoreticians working on this approach rely on the writings of a diverse range from early writings of Marx to that of Jefferson and the works of Legal Realists and diverse off-shots of classical republicanism. This approach lies in similar line to that of the utilitarian line of thinking in the teleological aspect and holds tremendous difference in its willingness to dispose the idea of a desirable social order which is richer in comparison to the social welfare society as advocated by the utilitarians.

All these approaches justify the international law set by the capitalist understanding on property. Therefore need to demystify the each associated terminologies of IPR, such as labour, intellectual and so on. In order to understand the each term scholar's views on each one of them need to be understand.

Locke on Labour

Western culture and society were mostly influenced by the Catholic Christianity. Society was controlled by the King as well as the Church. However, in the fifteenth century, authority of Catholic Christianity was questioned and new form of Christianity came into existence that is the Protestant. Protestant believers advocated about individualism which further helped in the emergence of private property developed with an aid of capitalism.

The concept of commodity transformed into an idea of private ownership of property. It also led to acceptance of an idea of the right to use and disposal of property by an individual. The idea of private property equips an individual with rights such as governing the access to a particular piece of land. It also allows the power to control the land use and resources belonging to that piece of land. However, such rights remained disputed for long with regard to its structure and application.

There is a normative understanding attached to the concept of property rights. Such normative application of rights brings cultural meaning also into consideration. Different societies have distinct understanding and cultural practices, yet many times, coexisting together despite differences. In such a context, it becomes pertinent to comprehend that rights as practice needs to be responsive and sensitive to such distinctiveness in the societies so as to accommodate the diverse practices. Moreover, the discussion on private property becomes a precondition to any discussion on the intellectual property.

Thomas Hobbes is considered as a champion of individualism. Liberal ideology or liberalism believes in the ability of individuals to make meaningful choices and to be responsible for their choices. From the economic point of view, libertarian believes that the market freedom is primary and needs to be safeguarded. Libertarians oppose the redistribution through taxation policy in order to implement liberal theory of equality, something akin to welfare regime. The theoretical understanding of property in modern political philosophy began with John Locke. Locke in his “Second Treaties of Civil Government” elaborated the concept of property as:

“Though the earth, and all inferior creatures, be common to all men, yet every man has a property in his own person: this nobody has any right to but himself. The labour of his body, and the work of his hands, we may say, are properly his. Whatsoever then he removes out of the state that nature hath provided, and left it in, he hath mixed his labour with, and joined to it something that is his own, and

thereby makes it his property. It being by him removed from the common state nature hath placed it in, it hath by this labour something annexed to it, that excludes the common right of other men: for this labour being the unquestionable property of the labourer, no man but he can have a right to what that is once joined to, at least where there is enough, and as good, left in common for others" (Locke; 1690: 41-42).

John Locke advocates that an individual possesses labour in order to create and maintain a property. Locke emphasised on the question of labour and made it a vantage point in his theoretical framework of political and economic ideas. Locke in his philosophy uses the human labour as a medium of justification to take control of a piece of land and claim it as a rightfully acquires property. Such acquisition could be justified by Locke as an individual has put his/her labour in that piece of land. Thereby, Locke argues that man can acquire property in a state of nature only by putting his own labour and hard work. This was the only legitimate means to have a right over a land to convert it into a private property.

To put in context, what differentiated a common piece of land to that of a privately owned property, according to Locke was the labour put in by an individual. Labour ensured an entitlement akin to possessions of private and landed property. Thereby, own the property in personal capacity. Locke argues that when a man mixes his labour with anything, it becomes his property, a sort of natural right which no one else was morally entitled. It is to say that the expenditure by means of labour needs no agreement, equivalent to a pre-social and pre-political right to property. By this way, Locke was able to distinguish and situate the development of property rights and private property as a natural economic progression, somewhat similar to natural rights. Therefore, infringing upon the rightfully acquired property was morally and ethically unjust and wrong.

The natural right to property in the state of nature depended on various conditions as well. It also required a moral limitations of the law of nature as an

individual can go on appropriating property from the nature. At the same time, there is limitation on appropriation. Such constraints are put in place so as to keep the private property rights legitimate. In other words, right of appropriation from the nature is limited.

The constraints is put on place by application of the "fundamental laws of nature", also referred to as "sufficiency limitation". It means that there must be enough for rest of the mankind therefore necessary to leave for others. The property rights are there to fulfil dual purpose, to ensure subsistence and also to use the resources for best advantage of life and convenience. Cultivating the land is meant to fulfil the utility of the land. It serves by maximising the productivity.

The use of private property enhances the use of resources in production so as to compensate those who are propertyless. For Locke, the relation with private property with livelihood is more stable as compared to earlier. The conception of rights better protects an individual's subsistence. The 'sufficiency limitation' is waived off by Locke only after the beginning and justification of private property.

The transformation of a common property to a private property lies in the efforts put in by the labour leading to enhancing the utility value of the land, also legitimising the entire process. This manifested into differences in the status in society as the production, and industry was directly proportional to the ownership of the property. However, this notion changed completely as money started to play pivotal role other than property.

The distinctiveness lies with Money in its value. It did not get spoil. This brings the distinctive character of money as opposed to a property. The importance of money is characterised by its capacity to expand the possession of assets. Moreover, there is no limitation on money to accumulate like that over the land. Even McPherson argues about the degree of change induced by the application of money.

"That labour put a distinction between them and common" (Locke; 1690: 41-42). "the grass my horse has bit; the turfs my servant has cut; and the ore I have digged in any place, where I have a right to them in common with others, become my property, without the assignation or consent of any body. The labour that was mine, removing them out of that common state they were in, hath fixed my property in them" (Locke; 1690: 47).

Application of Locke's Theory on IP

There are two themes from Loke's theory that must be applied to understand the IP law in modern state. These two terms are 'labour' and 'common'. As labour and common are appropriated by Locke in his idea of property. As mentioned above that the generation of property takes place when human labour mixed with nature. For instance, a person who areengaged in gardening the land with his own labour and produces fruits and flowers over the land. Then the person becomes sole owner of the product that he had generated with his labour. In other words, property rights are determined by this implementation of labour to the fields. Labour imparts validity to the assertion of proprietorship; from an economic standpoint, supplies the stimulus for independent administration of the appropriated land.

The idea of appropriation has an instinctive appeal when applied to intellectual property. By listening to sounds, observing nature, or obtaining products such as stone, wood or clay, a creator proceeds, and writes songs, discovers the bonding properties of materials, or produces a painting or a sculpture, through their interaction with nature. The created work results in a property right, which can take the form of a copyright, a patent, or other type of intellectual property, through the application of labour. Rights are based on production of original work or new work through the application of creative labour to nature.

Property rights may take various forms. For instance, division of land rights is often done amidst entities, spatially, and temporally. Rights may also be

established on the basis of an agreement. Forms of intellectual property rights, like, copyright, patent, trade secret or certain other forms can in turn be modified through a contract.

Appropriation, by itself, does not explain the scope of property rights, while explaining how rights are obtained or justified. Rights to the entire acre of land would not be obtained by tilling one half of a one-acre parcel. Rights to all variations of the musical tune would not be obtained by creating a song. Therefore, appropriation is not a determiner of the scope of property rights and is determined by something other. Property theorists who build on Locke point to his theory of the commons as providing the baseline for addressing the question of the proper scope of property rights (Shiffrin; 2001: 159).

According to Locke, prior to the creation of property rights, all resources were held in common by the entire population "relevant to a particular resource". However, for the sake of the current argument assume that the relevant population is well defined. The relevant population may belong to a particular place or a spatially specified clan. Appropriation is by individuals in order to fulfill their requirements of sustaining their existence or for accumulation of wealth. This result in property rights as an occurrence created by necessity. However, the commons bind the limits of individual appropriation. The commons must left "sufficient and as adequate" for other individuals after one takes only enough, which would meet their need. This means that acquisition of resources by an individual further kept the scope of property rights for others. In other words, acquisition of resources does not insinuate complete appropriation.

A smaller extent than that of full appropriation does not signify division of the already acquired resources by an individual. Adequacy indicates that there is enough of the commons left for the rest after the appropriation of it by an individual. For example, with resources like, water and land, individual appropriation may not contaminate the commons and their attainment could not let the remnant of the commons be deficient for the rest. While considering

intellectual property rights, the commons represents the realm of ideas and culture, meaning linguistic and expressive forms, basic scientific principles and know-how. When it concerns an art work or a new machine, the property right's appropriation does not mean full appropriation of all uses of that work of art or new machine. The fundamental scientific principals or ideas incorporated in the particular output can be accessed by all. It can be argued that, there is a limitation on individual property rights.

Locke provides a base for theory of civil society, through limiting individual property rights with the idea of the commons. Locke does not reinforce an illimitable structure of a capitalist economy by means of acquisition, even though he provides a foundation of market economy through the idea of property rights by means of appropriation. On the contrary, property rights rather than be a tool for individual material acquisition, provides a foundation for governing and organisation of a society. Some scholar observed that, Locke was one of those that acknowledged the formation of modern state was material acquisition.

Locke understanding of market is based on the mercantilism. As per the mercantilist understanding, sovereign states would develop its own markets with an aim to make more and more wealth. In Locke's idea, property would be measured by collection of precious metals which could be used as the basis for currency (Rees-Mogg; Kelly, 1991; Leigh; 1991). As an international relations and trade theoretician, notion of a global commons is not articulated or have had by Locke. The idea of the civil society before appropriation of commons is a localised notion for Locke, which probably existed at a nation state level but has a higher probability of it being more regional.

Locke's notions of international relations and appropriation of property create some implications of international intellectual property, notwithstanding the fact that Locke did not state it. Property rights are created through toil, which later may become a foundation for market exchange and specie accumulation. This accumulation is encouraged via international trade and is encouraged through the

shaping of contractual provisions of exchange inwards by the sovereign nation. Through a combination of Locke's property rights theory and his ideas of mercantilism, it can be implied that maximisation of the wealth of nation should be the purpose of the definition of international property rights.

However, the one of the major challenge remained is on the definition and scope of IP laws in the country. Some interpretation of the Locke's theory argued on the harmonisation of IP law within the country as well as it could be built across the world. The idea of harmonisation is viewed as it brings the benefit Locke's concept of civil society, precisely about the democratic partnership, ownership of property as well as economic exchange to the global south.

Moreover if it is viewed from Locke's idea of mercantilism, the extension of Lockean property rights systems is equally consistent with maximising the welfare of the developed world. Number of patents in global south that have adopted rigid patent systems are controlled by MNCs that belongs to developed countries. IP safeguards in global south give birth to the markets for business from developed nation-state. Here the notion of harmonisation it is resulted as the developed countries benefited from the developing or global south countries. But intellectual property harmonisation may well be a form of modern-day mercantilism.

John Locke's understanding of property rights has a stark impact on the theory of IPR. These Lockean theoretical implication on IPR are neither deterministic nor inevitable in nature. The argument that arises in this context is that the neo-mercantilist conception of IPR was formulated on the basis of an assumption that the strict protectionism of the IPR in the developed states has resulted in harmony. Again, the developed countries have subjected the IPR to reform, criticism and revision. A difference of opinion regarding the concepts of patent and fair use is prominent in the EU, US and Canada.

It needs to be pointed here that neither the international IPR is hegemonic in nature nor the Lockean ideas are neo-mercantilist solely. A comprehensive study of Locke's conceptualisation of IPR demonstrates that his support for a discourse of the international IPR that is not pacifying in nature. It must be noted that in his philosophical thought no concept on mental and intellectual property was mentioned.

He stated that in the state of nature things were free and distributed to all equally. His later work on "the theory of natural acquisition of property rights paved the basic settlement for an entitlement theory of property which was extracted from the work of Robert Nozick." Nozick's "Anarchy, State and Utopia" (1974) navigated with the idea of property and the Lockean state of nature. The entitlement theory as advanced by Nozick has three phases - a) the 'account of justice in original acquisition'; b) the 'account of justice in property and c) the 'account of justice in rectification'. Locke's theory on the concept of property acquisition in his state of nature basically is nothing but a justification legal property being acquired naturally. Robert Nozick came up with a resolution regarding unethically acquired property.

It becomes interesting for the theoreticians of IPR to analyse the premise set by Locke. It is because Locke intends to an account of ownership of natural law in context of the unowned and acorns in the forests of Britain as written by him. This mixture of labour is intended to grant the ownership of natural rights to those acorns that has been separated from any positive law, which had been implemented by a social understanding and to which all are obligated.

From the Marxist point of view, the socialisation of property constitutes the sole criteria to emancipate the labours in a capitalist economy. G. A. Cohen argues that, in the pursuit of realisation of freedom and enjoyment of equality it becomes essential to transcend beyond the boundaries of self-ownership. This has helped to bring forth an essence of 'mutual service' in the discourse**.**

Karl Marx on Labour

Karl Marx in his Das Capital, provide the reason for the "immense accumulation of commodities" (Marx 1867: 27). For him, commodity is an object that is placed outside us (human being). The purpose of any commodity is to fulfil the human wants (fully or partially). These objects can be viewed from two directions: a) quality and b) quantity. The quality and quantity are being determined by the recognition of object in the society. It can also be said quality and quantity of any object is based on its use value.

However, the property of the commodity has nothing to do with the labour applied on it to bring out its useful qualities. It is only after the labour applied on the any raw material in an appropriate way it becomes ready special study that of capital "knowledge of commodities." After the applied labour quality aspects get enhanced and then the question of quantity comes. Quantity is based on the requirement of the products for instance, dozens of something, or tons of something is based on requirement and the nature of product.

The quality is associated with the use value and the quantity is associated with the exchange value. Marx writes that the use values of any commodities are, above any other of different qualities, but when it comes to exchange values, it merely counted in different quantities and therefore do not carry an atom of use value. So it is to be understood what happen when commodity is taken without use value, then it is understood by Marx that one common property left in that which is considered as "being products of labour."

In one of the study of the product of labour, Marx discusses on the abstraction on the use value. "Along with the useful qualities of the products themselves, we put out of sight both the useful character of the various kinds of labour embodied in them, and the concrete forms of that labour; there is nothing left but what is common to them all; all are reduced to one and the same sort of labour, human labour in the abstract" (Marx : 1867: 10).

C. B. Macpherson stated that ‘‘Locke’s deduction starts with the individual and moves out to society and the state’’ (Williams; 1996: 98). He viewed the ‘‘possessive individualism’’ as propounded during the ‘early modern liberal political thought’ was not successful in taking any concrete account on the necessary social conditions that were required to make the conceptions plausible (Williams; 1996: 98).

The problem arises due to the little attention given to rights and properties owned by the “possessive individuals” and the way they were dependent on the subordination of others like -propertyless, women, enslaved and colonised section of society.

He pursed the tradition of natural law which had been established by Grotius. Nozick gives a detailed account of the problems pertaining to the result of mixing labour in relation to property as propounded by Grotius. It has been established that very little has been achieved from the liberal and Marxist perspectives on IP. While the neoliberalism is synonymous to the concept of ‘reassertion of the power of finance, to its sharp contrast lies the social democratic, Keynesian model where, the stakeholders are partners with the managers and are in almost equal position with the state

Marx refers to his theory of antithesis in his work “Critique of the Gotha Programme”. Here he writes that the communist society would be possible only “after the enslaving subordination of individuals under division of labour, and therewith also the antithesis between mental and physical labour has vanished.” The concept of existing division between physical and mental labour has been there throughout the history of exploitation. This constitutes one “phenomenon of alienation” upon which exploitation thrives. However, it has not been clear by itself how the ruling class exercises its hegemonic control over the intellectual capabilities, which it needs.

Human labour has gone far and has been engaged in the production of money and commodities for exchange which determines the value of the commodity or the portion of the particular commodity exchanged. The concept of money abstraction has been said to be term in a proper fashion as “the exchange abstraction”.

Horkheimer’s theory states that labour is something that mediates between humans. The fetishised “process of civilisation” becomes the core concept. Adorno writes in relation to fetishism that the social relation has taken the shape of exchange principle. However, he further states that it is upon the theoreticians to give an explanation to this phenomenon by going through the origin of labour.

For Adorno in Marx’s chapter on fetishism, the social relation appears in the form of the exchange principle, as if it were the thing in itself. But our task is to explain this by speculating on labour’s ultimate origins, to deduce it from the societal principles and thus, it goes beyond the Marxist concept of labour.

What is Intellectualism or knowledge theory?

In context of how a ‘pure’ form of socialisation possible? The word ‘pure’ has been used in the similar context as have been put down by Kant in his coined concepts of “pure science” and “pure mathematics”. A translation of Kant’s idealist equal classification among manual and mental labour in Marxist understanding would read as: How the objective understanding of nature can be possible to comprehend from diverse sources other than that of manual labour? By such formulation of the question, the focus becomes the classification among the manual and mental labour. This type of classification is essential for the capitalist societies grow and flourish. The remarks made illustrates that how the above analysis in relation to commodity abstraction forms the critique of the age old theory, from the perspective of historical materialist critique and it also goes with the Marxist criticism of political economy. The importance given to the aspects of economic really constitutes the distinguishing feature of the Marxist

conceptualisation of economics to that of the bourgeoise (Sohn-Rethel; 1978: 30-31).

Knowledge has played vital role in the progress of human culture and establishment of civilisation. There are many forms from where knowledge resources came in - labour and skill, material and immaterial, flow and forms. However, IPR being a legal issue, its legality is related to intangible ideas when take place in the form of tangible ideas. Therefore, intellectual property is frequently referred to as magnanimous products of human intellectual labour. When intangible ideas transformed into intellectual property (or tangible form) then there are laws created to protect these exclusive rights in a diverse area, from painting, novels performances, computer programmes, genetically modified plants as well as animals and so on.

However, from ideological perspective IPR is more closely associated with Capitalist aspects. So, the relation between IPR and capitalism are to be discussed here. The ownership of private property is one of the fundamental aspect of capitalism. It is a right to have ownership. Moreover, the capitalist wave across the world got a fresh impetus after the end of the cold war and disintegration of USSR. Francis Fukuyama however, refers to this juncture of time as the end of history.

Knowledge in history as well as in the contemporary era is associated with the politics and the economics and therefore it is naturally keep strong bound with the leadership. So, it can be said that the leadership of twentieth-first century would remain in the hand of those who creates and harness knowledge in the world. With the development of Neo-liberal competitive market economy where emphasis is given on harnessing knowledge based on science and technology. Whosoever states, are willing to lead the world whether the United States, Russia, China or India in the contemporary era its need to develop its own scientific knowledge system.

The increasing globalisation of corporate activities and free flow of trade beyond borders introduced new challenges as well as new opportunities. Since, free flow of trade and internationalisation in the Neo-liberal economy brings inequality both in the state and at international level. It function based on the accumulation of knowledge and wealth. In a general sense, knowledge can be divided into narrow or broad sense. Narrow knowledge is to determine the concept of knowledge and the boundaries and categories of knowledge based on the use of knowledge; knowledge in a broad sense is based on different categories of social practices to gain knowledge and experience (Li Ying; 2008: 151). With the strengthening of the trend of economic globalisation and the internationalisation of economic and trade rules, the economic attribute of knowledge becomes more prominent. The so-called economic attribute of knowledge means that in the process of cognition, acquisition, processing, preservation, use and dissemination, people need to invest time, energy, material and other limited resources, and expect to bring economic and social benefits.

Knowledge retention and sharing are as acute and important a set of law and policy problems as knowledge production. According to Abbe EL Brown, the concept of knowledge management should be understood as a means of making clear that control and sharing knowledge involves much wider and legal question than just IP (Brown; 2005). The Convention on Biological Diversity (CBD) 1992, and long standing and incomplete discussion on WIPO in relation with IP as well as genetic resources, folklore along with traditional medicine.

In its history, patents, copyrights, trade secrets and trademarks have been a puzzled among the elite intellect class and their interpretation of different dimensions of law and policy. In the words of Kamil Idris (Director General WIPO), “modern Intellectual property system has become an important tool for harassing the power of knowledge for development and this enhanced the focus on intellectual property has put this system under intense scrutiny, from multiple perspectives, worldwide”. Intellectual Property is typically considered to be

exclusively incorporeal property since its products (particularly work and interventions) emanate from the mental labour of the creator. Intellectual property law is a subject of increasing economic importance and the focus of the great deal of the legislative activity at the national and international level.

In order to defend the intangible property, different kind of property protection were in use protect the economic activities related to intellectual property. But the government of some states (developing states) might perceived the benefit of the weak IPR regime as being greater than benefit derived from enacting a strong regime.

However, here the concept of knowledge. Knowledge or intellectualism in ancient China could be brought into the better light with the theory of division of labour. The intellectualist that promoted the division of labour was Guan Zhong. Guan Zhong belonged to the Spring and Autumn period.

Gaun Zhong's Theory Settlement of the Inhabitants by the division of Professions

Gaun Zhong commercial experience brought him in the court (minister incharge of reform) of Duke Huan of Qi. Duke Huan of Qi was the first popular sovereign of the five powers of the Spring and Autumn period. Gong Zhong philosophy could be traced in "The Book of Gaun Zi". Here he mentioned about his economic thought, in which the most outstanding "doctrine of inhabitation based on the division of profession, whereby gentry, the peasantry, the craftsmen and the merchant (i.e., four category and each one of them allocated in the four settlement)" (He Zhaown, Bu Jinzhi, Tang Yuyuan and Sun Kaitai; 1991: 125).

In this theory of the settlement, the gentry (professional warriors) was assigned only duty to safeguard the interest of the ruling class. The Gentry, followed by the peasants was asked to settle in the countryside, official workshop was given

to the craftsmen and merchants were in the market place. Here, Gaun Zhong not only fixed theprofession but also specified them with certain areas.

In this way, the Qi dynasty was classified into twenty-one county. Each category was under the strict supervision of the ruler and none of them were allowed to move outside their settlement. The purpose of this settlement was to develop the social order in which "the descendants of the gentry will always be the gentry …. the defendant of the peasants will always be the peasants" and so on (He Zhaowu, Bu Jinzhi, Tang Yuyuan and Sun Kaitai; 1991: 126). This division based on labour sounds similar to that of caste system of Ancient India and Plato's ideal state as mentioned in the Republic.

Confucians and Mencius on Division of labour

Confucian believed in the philosophy of righteousness and therefore its guiding principle was ethics. Confucius thought, "At the sight of the profit one should think of righteousness first" and "it matters to me only like a piece of floating cloud that I could become both rich and dignitary but without righteousness" (He Zhaowu, Bu Jinzhi, Tang Yuyuan and Sun Kaitai; 1991: 129). "Mencius went even further in preaching righteousness versus profits". He said, "Enough will it be to have benevolence and righteousness; why do you need to more to speak of profit?" (He Zhaowu, Bu Jinzhi, Tang Yuyuan and Sun Kaitai; 1991: 130). In addition, Xun Zi argued that when righteousness prevail, the world would be in good order and when profit prevails world would be in disorder.

On the question of labour, Confucius and Menicus both argued in favour of mental or intellectual labour. Once when Confucius disciple "Fan Chi asked to learn how to plow" then Confucians blamed him as a little minded men". Confucius taught, "Engaging in plowing, you will become hungry; engaging in studying, you will become a well-paid official." Mencius even thought "those who labour with their brains govern others and those who labour with their brawn are governed by others. Those govern by others feed them and those who

govern by others are fed by them. This is a universal principle in the world." And again "if there is no gentleman, there would be no one to rule the countrymen. Of there would be no countrymen there would be no one to support the gentlemen" (He Zhaowu, Bu Jinzhi, Tang Yuyuan and Sun Kaitai; 1991: 130).

What is Intellectual Property?

In academic discussion on the theory of intellectual property, one need to understand from historical, cultural, as well as from philosophical perspectives. This is also applied in development of different concepts like intellectualism and rights. Over the period of time, its meaning, understanding, and theory have undergone many changes. In the discipline of political theory, discussion on intellectual property is to be done in both.

The conceptual issues that are involved here have historical dimensions. For instance, in day-to-day conversation with family or friends, one uses some statements to articulate their own points or to bring the statement/s of others (like leaders or scholars or their view/s) through quotations, someone consciously or unconsciously in order to refer what the third person has said. To understand more broadly researcher usually take the academic, for instance, if a seminar is going on an individual quotes the views (may be from leaders or scholars speeches or interview) of any Chinese scholars on foreign policy or domestic policy is something that is considered as intellectual property of that Chinese leaders or scholars or expert. If some research scholars misquotes that individual scholars than that scholars can claim legal action against that research scholars who had misquoted him/her. So from such occurring instances, it can be firmly argued that the concept of Intellectual Property Rights that has been formulated to provide a certain kind of legal protection for his/her work against of various levels of legal regimes (David and Halbert; 2014:XXXIII).

When the expression of certain ideas take place and in the form of some goods in the public domain, that is where the need and role of Intellectual Property Rights

come into functioning. It creates certain level of balance between the two processes i.e., idea of ownership and the individuals entities hesitation in providing absolute rights in this entire domain of ideas. It therefore, do not offer absolute ownership to the inventions or new idea, it promotes new idea with limited monopolies. The larger aim of limited ownership was to create a firm balance between the private remittances and the public good over the ideas and innovations that were designed.

Despite of the major dissimilarities that is covered by the legal regime and in very common terms defined as the intellectual property as well as our general understanding of the real property, the term Intellectual Property is squarely designed to make a direct parallel with those particular rights that have been accorded to the owners who owns property in physical forms. To put this argument in other words, the usage of the term Intellectual Property Rights intends to induce the general understanding while at this juncture explaining virtually 'natural' concept of ownership, much prevalent at least in the capitalist structure. In this context it could be convenient to argue that the over the period of time the inherent nature of social relations have evolved to a greater extent. For example, as matter of fact it was always and yet it is considered dissident or nonconformist to raise a question against the unaccountable decisions and rights of the mighty rulers in societies such as feudal or theocratic in structure. The very argument that this kind of dispensation gives that ruler has been natural inherent, and questioning its existence as well as the gendered roles and patriarchal structure would be deemed as crime against the very nature as well as crime against the laws of the land.

Generally, the inventors and creators are expected to be rewarded. The reward in turn makes the inventor secure for enjoy the benefit of the investment for a long term. In circumstances of such security getting threatened, the society in entirety shall suffer as it would jeopardise the spirit of innovation and creation among people. The most important protection available to humankind for such security

is the legal protection. There are three basic rights available to the people for securing such innovations: a) patents; b) copyright; c) Trademark

The society might reward the inventors with some exclusive rights in relation to the profits made out of the innovations and creations, these rights act as a source of encouragement to the individuals to pursue their intellectual explorations and produce utility, however, this might or might not executed, and stands in accordance to the convenience of the entire society, sans claim or complaints from any individual.

According to Robert P. Merges and Jane C. Ginsburg, the concept of property rights has paved the intellectual foundation of IPR legal doctrine in the super power of the world. Thus, the whole summation of the IPR is the reward given for the achievement by human beings. IPR acts as an encouragement for the individuals to innovate and create by giving the individuals protection. According to the report of Trade Secrets and Intellectual Property Management, the trade secrets are well embedded in the form of strategy used for management and in order to prioritise on how much to disclose in relation to information (Gordon C.K Cheung; 2009: 8-10).

There exist several other factors along with that of legal that decides whether the action is of fair competition or unfair. Moral and psychological factors are also counted as times. The origin can be traced back to the complained filed by the US in 1987 in GATT due to $50 billion loss incurred as a result of ineffective protectionism of the IPR. With the aim of bringing forth an impartial mechanism at the international level, by keeping both interests of the developed and the developed states into account, to act as an overseer of the negotiations, deliberations and discussions were started with the framework of the GATT. The concept of social cost has been recognised as an integral factor in the realm of economics, subsequently there has been a shift as the studies tried to focus on reconciliation of the problems with the price. It was also aimed at extending the level and horizon of comprehending the ill effects on the environment and

counterfeit products along the infringements of the IPR (Gordon C.K Cheung; 2009: 12).

On the concept of consent, it denotes the entire 'process of reconciliation where recognition of social cost and awareness of the externalities within a country's domain gives rise to the attribution of that awareness as worldwide concern'. The procedure of tacit consent takes place at two levels: (a) 'strong recognition of IPR protection at home; and (b) norms proliferation and world welfare loss'. As the concept of social pressure has been defined as the predicted method that brings the global norms to the domestic level, in such a scenario the norms pertaining to the IPR protectionism would be much "more secure if it could be translated as loss to the world as a whole" (Gordon C.K Cheung; 2009: 15).

Explicit consent governs an individual's political obligation. In explicit consent is confined within the arena of legal and global conventions, which has the power of regulating Chinese IPR protectionism. The concept of tactic consent and transformation from tacit consent of IPR from one country to the international economic order had made it essential to the rise of the world welfare loss concept. In order to promote enhancement of global welfare with the help of international law "means the production of general good to the world society as a whole" (Gordon C.K Cheung; 2009: 16). Plus "the manifestation of IPR protection through international agreements and conventions gives rise to *de jure* influence in China's pace towards IPR protection" (Gordon C.K Cheung; 2009: 16).

WIPO constitutes the biggest global level organisation in terms of regulating the IPR protection. The preamble of the WIPO has clearly stated that the contracting sides should be, "Desiring to develop and maintain the protection of the rights of authors in their literary and artistic works in a manner as effective and uniform as possible" (WIPO; 1996).

However, there exists a wide gap between China's acceptance of the IPR protectionism and the level of implementation of the IPR. The liberal agreements signed between the US and China also failed to yield any fruit in terms of Chinese guarantee regarding the infringement of the IPR. Law can act as a vehicle for settlement of disputes as an embodiment of treaties.

However, both the concepts of social cost ad world welfare loss are the policy choices undertaken in order to regulate the massive IPR infringement in China, with the US (bilateral) and or with the rest of the international organisations.

Classification within IPR

Before enquiring about the different dimension of IPR that is, its historical, philosophical, conceptual, and political dimensions, in relations with the key legal dimension regimes are together known as intellectual property law. These include copyright, patents, trademarks, trade secrets, the much newer geographical indications.

Apart from this, there are other of legal regimes like *sui generis*, which protects are genetic plants and others similar resources. The following descriptions are general and cannot bring in all the nuances of local protections that may deviate from the international norms that have been established. Before moving further researcher introduce the concepts, definition, and development of some IPRs like copyright, patents, trademarks, trade secrets, the much newer geographical indications.

Let's begin with the concepts of copyright. The roots of the concept of "copyright" in China can be traced back to Japan. The term *banquan* which means copyright in China is however, is not a Chinese term. *Fukuzawa Yukichi* who was the most prominent intellectual of the Meiji period coined the term copyright by applying a combination of two terms - *han/ban* along with *ken/ quan*, which respectively stands for, printing blocs and right to translate.

In common parlance of the modern day Japanese history *Fukuzawa Yukichi's* role has been highlighted as the major torch bearer of *bunmeikaika* (enlightenment and civilisation). His role has been equated to that of Benjamin Franklin. A wave of western ideas and norms transformed the country as a strong and independent nation which was modern in essence. He had taken great pride in his translation of the western ideas and its role in revamping Japan as a 'new Japan'. At such as point of time there was no such term in Japanese to explain the meaning of the term copyright (Wang Fei-Hsien; 2019: 24).

The concept of 'copy' here indicates printed books which have originated in 1710, when Statute of Anne in England was enacted. The earlier purpose of copyright law was to keep check on the IPR regime, which later changed into the act of copying itself. The basic concept of copy or copies itself re- conceptualised to meet the invention of new technologies and upgradation of copyright protection (David and Halbert; 2014: XXXIII).

Fukuzawa Yukichi in his autobiography stressed the significance of '*hanken*' the term that was coined by him. "No one truly understood that the exclusive right of publishing work belongs to its authors; this is a form of private property." (Wang Fei-Hsien: 2019: 24:3). Through, his works he established that his rediscovery of '*hanken*' to uphold the cause of copyright, he announced that it was not just about a translation of an English word to Japanese but also enlightened his Japanese about an advanced concept of property rights that was hitherto unknown in Japan.

The application of using "XX Zohan" 'in the colophon or on the title page of a book, as well as stamping a block-owner's seal on top of such statements to indicate who owned the blocks, was invented by neither Fukuzawa nor Tokugawa booksellers.' (Wang Fei-Hsien: 2019:33). The words and their practice were both western conventions which the early Japanese had incorporated from the Chinese. China had enjoyed unquestionable dominance in East Asia's till the mid-nineteenth century in the sphere of culture. The cultural

importance of china can be established by the fact that for several centuries there has been a constant import of Chinese literary works, books, Confucian classics along with Daoist and Buddhist scriptures to Japan. These rich sources of literature imported from China was placed at a higher alter not only because it nurtured the Japanese social elites with Chinese classical learning but also, it was seen as a medium which transmitted the ethos of 'Civilisation' to the peripheral areas. A lumpsum of Chinese books were regularly imported to Japan via Nagasaki by Chinese junk during the Tokugawa period (Wang Fei-Hsien; 2019: 35). Most of these imported books were collected by the wealthy daimyo while, Japanese booksellers and the official institutions (Wang Fei-Hsien; 2019:243) reproduced some of the imported ones (either with or without Japanese annotations). The Japanese reproduction of the Chinese books also witnessed copying of cover page or colophon, page layout and the typical Chinese style of binding. Gradually, books dealing with the traditional Chinese learning by the Japanese scholars were also copied from the Chinese ones to uphold the traditional Chinese culture.

In early modern era Japan Chinese books were lauded as the epitome of perfection. A large chunk of the Japanese book published, during the Tokugawa period have similarity with the Chinese texts produced during Min-Qing period, especially in the titles which, included the "phrase Zohan and the block-owner's seal" (Wang Fei-Hsien: 2019: 36). Zohan meant a loanword for Chinese *cangban*, which also meant "processing and printing blocks" (Wang Fei-Hsien: 2019: 36). The use of the term *cangban* has had its historically linkages from the 12th century as it can be traced from that early phase where it was used in the colophons and the title pages of the books printed. "XX *cangban"* is used in the Chinese bibliographical works to signify the publisher.

However, the contemporary Chinese scholars have all come to a mutual consensus that with the span of time there could be a scenario that could bring fundamental changes in the ownership of the printing blocks, thus, the "XX

cangban" should not be taken as "infallible" in order to determine the publisher of the book. Instead they agreed that it should be viewed as a statement uploading that it was the 'XX' that retained the blocks after the printing procedure (Wang Fei-Hsien; 2019: 38).

The term copy was basic concept behind the development of copyright law in the initial phase. There are extensive debates and discussion at international and regional regimes, in which Latin based legal school and Anglo-conception convergence on copyright emphasised on the 'moral rights' of authors. The legal school of the copyright aims to protect the authors, publishers from the piracy related incident.

Presently, the copyright law is not adamant means to say that absolute right are not given to the author or publishers. This law carries the time period which is also viewed as a limited monopoly, which in general term continues for minimum fifty years after the life of the author. In some countries like the United States it is protected for seventy years. It means to say that it differ from country to country as the laws enacted in their local legislature.

Copyright is that part of IPR which protects not the ideas but the physical property or tangible property, that is to say any written documents either in the hard copy that is book or in soft copy or digital copy published on particular websites.

The copyright owner, who may or may not be the creator, gains the rights to the copy, which means they have control over who may and cannot make authorised copies of the original work. The copyright owner also has authority over derivative works, which are works that are inspired by the original creative act. They also have control over the work's public performance. In some jurisdictions, the author retains what are known as "moral rights" in the work, which means that their work must maintain the artistic integrity with which it began even after the first sale.

Others can use a copyrighted work under the limits of what is known as fair use in the United States and fair dealing in the United Kingdom, but which ultimately offers a tiny amount of flexibility for others to remark on, criticise, or quote the original work. Every definition, concept, and approach written into copyright law has been tried and contested, and it is safe to argue that the notion of what constitutes a fair use or a public performance evolves with time.

While a copyright does not need to be legally registered to enter into force (it happens the moment anything is fixed), registration allows for the pursuit of possible copyright infringement. Unauthorised production of a copyrighted work is known as copyright infringement. Infringing behaviour can be intentional or unintentional, but it is always followed by hefty fines and the prospect of criminal penalties. Since the internet's mainstreaming in the year 2000, policymakers, industry leaders, and academic observers have emphasised the various issues that digital technology presents, as well as the need to expand the range of copyright protection (David and Halbert: 2014: XXXIII).

Patent: The beginning of patents have an earlier starting point than copyright - some scholars argued that in the fifteenth century it began with the guild system in Italy (May & Sell 2006). However, the evolution of modern day patent protects inventions. Like copyright, one cannot hold the absolute monopoly overt the patent, in-fact in atent time period for protection of invention is less than copyright. The time period for the protection of patent is only twenty years from the date patent is filled.

Inventors place their ideas in the public domain by filing a patent. The IPR legislation protects the company's public-domain invention and prevents others from manufacturing or producing it without sufficient legal authorisation. Instead of the “first to invent” method that was in use in the United States until 2011, virtually all jurisdictions now employ a ‘first to file' system to determine who is to be assigned the patent.

Patents protect ideas, business techniques, and designs, but they also protect certain features of computer programmes (which can also obtain copyright protection), live beings, seeds, business methods, and much more. Obtaining a patent is far more difficult than obtaining a copyright. A patent must be filed with the appropriate national authority, and it must be evaluated to ensure that it fits the requirements of usefulness, innovation, and non-obviousness before being issued. The courts have gone over each of these important phrases in great detail.

Furthermore, while the definition of what constitutes prior art varies by country, the invention must not already exist - in most cases, this means it cannot be in the public domain or published. As a result, patents are meant to protect novel, inventive, and valuable goods that will advance science and technology.

Trademarks: A company's trademark protects a variety of words, colours, symbols, and even sounds that are connected with the company's brand. Trademarks are internationally recognised brands for huge multinational firms that are vigorously safeguarded from any possible dilution of the brand in its most visible and popular forms. As long as a corporation is actively using a trademark, it is a perpetual type of intellectual property.

Most companies with valuable trademarks say that the mark identifies a quality of good as well as the health and safety of the product being sold hence trademarks are justified in part as a sort of consumer protection. Counterfeiting is the act of producing items under a trademark without permission, and corporations devote a significant amount of time and resources to preventing counterfeit goods from accessing the market as real products. While the stakes in conflicts over counterfeit handbags, watches, or shoes may merely be profit margins, the ramifications for counterfeit pharmaceuticals are far more serious, especially if consumers mistakenly acquire counterfeits that have not received the necessary regulatory approval.

To make matters more complicated, patents, trademarks, and copyrights would protect distinct parts of some consumer goods. As a result, it is acceptable to state that modern consumer things are a web of intangible property rights that stay linked to the object long after it has been sold to a potential customer. In all circumstances, the laws make it illegal to make copies of the original work without permission. In every situation, current technologies make unlawful copying far easier than it was previously.

Geographical indicators: Newer types of intellectual property have also been established with the intention of providing commercial protection. Geographical markers, for example, protect products from a given region against confusion rather than an individual product. The most well-known examples are sparkling wine and Champagne, which can only be termed Champagne if it is produced in the suitable French region. The same may be said for a variety of other items that are intimately linked to a specific place. The purpose of such a designation, which is frequently indicated by a certification from the relevant regulating authority, is to demonstrate product authenticity and ensure that quality control requirements have been satisfied.

As previously stated, other types of intellectual property rights protect specific items or things. The categories of intellectual property discussed here are among the most well-known on a global scale. While it can be difficult to tell them apart at times, each type of protection provides a different level of protection and lasts for a different amount of time.

Conclusion

In the chapter, author discussed, in detail, the theoretical development and concept of international law and property. It was found that in different time and space, the law was dictated in favour of the hegemon of the international system. The modern Europe, where the seed of capitalism flourished, led to the development of modern international law. In order to counter the capitalist (liberal) ideology, the socialist pointed out the exploitation based on division of labour. In international politics division of labour is thus bound to reflect the substance of international relations and eventually international law.

In the contemporary era the system of IP is considered as a tool to harness the power of knowledge for the growth and development of a country. This system puts IP under the immense pressure and scrutinise it through international law. IP is typically considered to be exclusively incorporeal property since its products (particularly work and interventions) emanate from the mental labour of the creator.

It indicates that the champion of liberty or who, later, classified as a libertarian school of thought could move itself from the philosophy of ethics. The philosophy of ethics itself reflects in Karl Marx's analysis of labour and it's due. The division of mental and manual labour divided society into two major classes. The collapse of the socialist international division of labour or socialism ensured that now international law and its structure and function was shaped by the needs of capitalist world.

Furthermore, Tunkin highlighted the difference among particular and general international law. Particular international law focused around legal relations within the capitalist economic order which remains outside the purview of the socialist order. Tunkin further argues that the general international law carried no class essence attached to it. Chimni criticised Tunkin over this argument. He

stated that the rules of general international law can't be socialist in nature because an agreement between the socialist and capitalist states is impossible.

With the disintegration of USSR and the re-rise of PRC, international leaders have come to accept PRC's prominence. Some scholars view this transition as peaceful, while others, like realists, predict that PRC would become a military giant and dominate the entire landscape. The recent trade wars project PRC as a revisionist power whose goal is to challenge the influence, interests and power of the USA in an attempt to wear down its prosperity and security. The goal is to shape a world order hostile to the values and interests of the USA. It no longer stayed within the confinements of rhetoric alone as the trade war between PRC and the USA began. This has been classified as the biggest trade war by the PRC. It has the potential to cause a significant turn in their relations.

However, scholars like the Ikenbery, viewed China's rise as a challenge to West oriented world view. In addition, he also highlighted that Beijing's power position does not integrally mean it would use high politics to bring hegemonic transition. The Neo-realist school of thought believed that China rise has developed economic powerhouse that would led into a military power and then become a regional power into the northeastern Asian.

Chapter-3

International Patent and Copyright law in China

Chapter 3

China's International Patent and Copyright Law

About Chapter: This chapter discusses the following sections and sub-sections on International Patent Law, International copyright Law, China's identity - China's patent law and its Copyright law along with the Technological Knowledge and Traditional Knowledge. The purpose of these sections and sub-sections is to test one of the hypothesis of this thesis i.e., "China undertook international patent and copyright laws for the development of its technological knowledge and for the protection of traditional knowledge". The chapter further classified the hypothesis into three arenas: a) International patent and copyright laws as independent variable; b) China as intervening variable and c) development of its technological knowledge and for the protection of traditional knowledge as dependent variable.

Structure of the chapter

Introduction - International Patent Law - International copyright Law - China's identity -Technological Knowledge - Traditional Knowledge - Conclusion

Introduction

"China undertook international patent and copyright laws for the development of its technological knowledge and for the protection of traditional knowledge". The above statement highlights that China undertook international patent and copyright laws with an aim to develop its technical or technological knowledge and it also says that the same international patent and copyright law would protect China's traditional knowledge. Based on these statements the questions are to be discussed - a) what is international patent law? b) What are international copyright laws? c) How has China understood it? As per the WIPO, the concept of exclusive rights is fundamental character of the patent.

According to WIPO, it describes patent as a method that is related to an invention of any product or a process that comes up with a newer or an innovative idea of producing or performing something while also seeking to solutions to any incurring issues. According to WIPO, copyright is also known as author rights. It is a right of author or any artist which is safeguarded by law of the land. Work that falls under copyrights are music, painting, films or any map, data base, advertisements and technical drawing.

However, the relation between IPR and China need to analyse, but before that one need to go through notion of Chinese economy along with its cultural aspects. China has multiple identity, especially, since the reform and opening up. Cultural heritage is defined as "an irreplaceable repository of knowledge and a valuable resource for economic growth, employment and social cohesion" (Qing Lin and Zheng Lian; 2018: 1).

It comprises of both tangible and intangible elements. Its urgency of protecting the tangible cultural heritage has already been established. It is only in the recent times, intangible cultural heritage and the need for its protection has garnered lime light. The IPR Law evolves with the progress of science and technology. It is based the scientific and technological revolution. Due to this, its institutional history is itself, a process of mutual promotion between the innovation of legal system and the innovation of science and technology.

What is international patent law?

Patents are intellectual law. It safeguards the new, non-obvious, and useful inventions, like new chips. Inventors who hold a patent, enjoy exclusive rights to reap the financial rewards from their inventions for a certain period. Generally it goes up to twenty years. Once a patent complete its time circle it gets expires, then it becomes a part of the public domain. Once it comes to public domain, anyone can utilise the invention. However, there are ways to classify the Patents, for instance, invention patents, utility model patents, and design patents.

First category of patent is an invention patent. An invention patent safeguards either a new product or a new process. In China, this type of patents is awarded for twenty years Second category of patent is a utility model patents. This kind of patent protects simpler inventions that do not meet the stringent requirements for patentability that are applied to products and processes. Unlike invention patent applications, where a substantive examination for novelty, non-obviousness, and usefulness is required, utility model applications are subject only to a formal examination for novelty. Third, category of patent is called design patents. This type of patent is awarded to unique shapes and forms. Like utility models, design patents are relatively easy to obtain. In China, both utility model and design patents are awarded for ten years (Dimitrov; 2009: 250).

According to the WIPO, patent is related to invention that provides exclusive rights on any products or process which provides a new method of doing something or it offers a technical solution to any problem. A patent applicant must disclose the technical or technological information about the invention in order to get patent of his/her product. The protection of patent offers by providing exclusive rights to the patent owner and stop others from commercially exploiting the patented invention. Patents are sovereign law. It means that exclusive rights are only applied to those who filed and granted patent in particular country (as per the law of that country).

However, in the Paris convention (1883) which in broad sense applies to industrial property includes patents, utility patent ("small-scale patent" are provided by laws in some countries). The substantive provisions of the Paris convention is defined into three main categories: a) National treatment; b) right of priority; and c) common rules.

a) As per the national treatment provision, each contracting state is bound to grant similar safeguards, "to national of other contracting states that it grants to its own nationals" (Paris Convention 1883) there are also provision for the non-contracting states nationals to get national treatment if one show their domiciled

and present commercial establishment in the contracting state. b) In case of patent and utility model patent the Paris Convention provides for the right of priority. The right indicates that if first application in any of the contracting states then the applicant might, get 12 months for patent and utility models, apply for the protection in any of the other contracting states. c) The Paris convention have common rules that all protecting states must follow: For instance, in the case of patent, invention of some common product in different contracting states, each contracting states are free to grant patent on the same product.

In addition, there is international patent system. It is nothing but the treaty which assist the patent seekers or the applicants to safeguard invention internationally. The purpose of 'Patent Cooperation treaty' is to assist the "patent offices with their patent granting decisions and facilitate the public access to a wealth of technical invention relating to those invention". (WIPO: April 2020)

After having the brief understanding of international patent law researcher here discusses the international concept of copyright law to understand the hypothesis.

What is international copyright law?

According to WIPO, copyright is also known as author rights. It is a right of author or any artist which is safeguarded by law of the land. Work that falls under copyright music, painting, films or any maps, data base, advertisements and technical drawing (WIPO; April: 2020).

However, it does not cover the ideas, it covers the expressions, procedure, and method of operations. The key feature of TRIPS agreement is that it is an agreement that ensures the enforcing of minimum standard at international level and enforcement of almost all the vital IPR law like copyright, trademark and patent (Dutfield and Suthersanen 2008: 352). As mentioned in the international law that the WTO member nation-states are required to pass new legislations, so that minimum requirements laid down by the TRIPS agreement are followed. In

addition, the TRIPS also demand the legal mechanism for the enforcement of IPRs.

The juridical history of TRIPS takes the researcher into different international agreements this includes the Paris Convention (1883) for the protection of industrial property as well as the Berne Convention (1886) for the safeguard of literary and Artistic works (Richard; 2004: 4). The Paris Agreement as mentioned earlier is concerned with industrial design, patent and trademark, on the other hand, Berne Convention only deals with copyright.

However, copyright is not a natural right. As May and Sell (2006) argued that IP has developed in the modern phenomenon and originated in the European culture. The core argument offered by the May and Sell in their work "Intellectual Property Rights: A critical history" and have shown that Intellectual property has recently originated in the western history. "Intellectual property rights are historically contingent and socially contested rather than natural or inevitable" (Susan and May; 2006: 491).

Modern Copyrights emerged in Europe post the invention of the printing press as it became possible to make cheap reprints. Copyrights were earlier used as a means of censorship and later on, they were propagated with the intention of protecting author's interest. Copyrights spread in the European region during the seventeenth century. Also during those times as European countries had colonies worldwide the concept of Copyright got transplanted in these colonies. Hence colonised regions adopted copyrights as required by the imperial laws during those times.

As explained by Birnhack (2012) in his work, "The term deliberately appropriates and reverses the nineteenth century meaning of the same term, which referred to British interest in the colonies. Colonial Copyright as used here, is a mode of legal transplantation, of imposing copyright law from above and outside, by a foreign imperial power onto a governed territory and its

people(s), in a way that serves first, the coloniser's interest, second, an overall imperial agenda, and third, it supports an emerging international agenda regarding copyright law" (Birnhack; 2012: 23).

There is wide literature on the topic of legal transplant which refers to a law emanating from one place and being installed in another place (Graziadei; 2012). Hence, legal transplant provides an interesting paradigm to study colonial copyright and figuring out its notable features which relate the colonial experience to the contemporary globalisation.

A legal transplant does not end when the administrative body enacts a foreign law but the borrowed laws need to be assimilated in the existing local legal and cultural system. Hence the process involves legal transformation (Watson; 1993). In Watson's (1993) words: "A successful legal transplant is like that of a human organ which will grow in its new body and become part of the body just as the rule or institution would have continued to develop in its parent system. Subsequent development in the host system should not be confused with rejection" (Watson; 1993: 21).

While explaining the reasons for the success of a transplant, Watson (1993) writes, "reception is possible and still easy when the receiving society is much less advanced materially and culturally". Laws have underlying assumptions to its subject matter. However, these assumptions are not always clear or valid. Hence, the laws are amended to fit newer beliefs and values. A rich body of literature has uncovered assumptions of copyright. In the 1980s scholars searched for the figure of the author that copyright assumes following "Michel Foucault's question, 'What is an author?'. Scholars have argued that the author is a social construction and is embedded in the European romantic movement" (Birnhack 2012: 46).

In England, the Statute of Anne gives the central stage to the author but historical research has proven that it was bookseller's plan who invoked authorship. This

point is highlighted by the fact that the moral rights which have not been accepted as a part of TRIPS.

When it comes to colonial Copyright a great deal of literature exists, however, historians have focused mostly on internal British legislation that dealt with colonial and international copyright. The exception is Catherine Seville's discussion of the international dimension, along with the British, imperial and American dimensions. There is not much work on other colonies, especially those which were not self-governing dominions. The imperial laws were not confined to the Empire and were affected by a parallel discussion, within an emerging paradigm of international copyright law (Seville; 1999: 237).

By the end of the nineteenth-century, Copyrights got internationalised with the adoption of Berne convention. The internationalisation of Copyrights got major thrust with the adoption of TRIPS. Similarly, Lokaganathan (2012) has argued "Prior to the emergence of the WTO and the development of TRIPS nations had no general duty to protect or enforce intellectual property rights within their borders. The linking of intellectual property rights issues with trade agreements under TRIPS, however, substantially altered this arrangement."

This adoption of TRIPS was a significant event as it led to the emergence of a global Intellectual property regime (Yu Peter K; 2006). May & Sell have argued that the history of Intellectual property rights is not a linear history leading to TRIPS but it is an international history of the idea of making knowledge and information own-able. This history is contingent, contested and constantly evolving (May & Sell; 2006: 5).

How the contemporary international law of copyright law evolved? Did China have any role in the evolution of present copyright in international arena?

The evolution of the international copyrights regime has been dealt in two phases in this section. The first phase emphasised on the adoption of Copyrights in Europe where it would highlight why and how copyrights were adopted in Europe; the second phase would deal with the internationalisation of Copyrights and what roles did the developed and developing world play in it.

Early phase of Copyrights from 16th century to present

The genesis of what we know today as 'copyright' can be traced back to the 17th century in England. However, the establishment of printing press in England was much earlier in the 15th century itself. Before the establishment of the printing press in England, the English royalty had full command and authority over the press and they vehemently suppressed the voices and authors who dissented from their line (Varian; 2005: 122).

There was a gradual shift and the control of printing press was handed over to publishers as the royal declarations were in need of printers so that they could exhibit their names, cities as well as dates of publication on every work they accomplished. Variety of publishers came together on one platform to create Stationers Company. In the year 1662, the Stationers Company was designated with the exclusive right so that it could effectively practice the "mystery or art" of printing. This move came with a condition that it would be publishing only those works that had been approved by the parliament.

The stationers were enforced with power to trample and burn the books and press offices of any unauthorised competitors who they deemed as a threat or dared to challenge the Stationers monopoly. The Stationers, in their objective of keeping a track on the production of unauthorised works, made a registration scheme, this scheme remained as a precursor to the copyright registration system. By the year 1694, the English laws on censorship expired and thus the Stationers started an intense lobbying for a relief as they found themselves abandoned in an environment of tough competition (Varian; 2005: 122).

In 1662, this monopoly power was enhanced when the Licensing Act, prohibiting the printing of book which has not been licensed and registered with the Stationers' Company, was passed in England. Thus, it was the 1662 Licensing Act which made the goal of protecting literary copyright and fighting its piracy quite explicit. Public protested the censorship administered under the Licensing Act (Rose; 2009: 137). The licence era was short lived, as in 1694, the Parliament refused to renew the Licensing Act when it was supposed to be renewed after two years. This decision of Parliament ended the Stationers' monopoly as well as press restrictions ((Deazley: 2004: 1).

The Stationers continuously argued for re-enacting the earlier licensing system, but the Parliament refused to do so. Later on, the Stationers changed their strategy and started advocating the benefits of licensing for authors. This strategy of focussing on authors rather than publishers proved beneficial as Parliament accepted to consider a new bill which was passed on 5 April 1710.

"Whereas Printers, Booksellers, and other persons, have of late frequently taken the liberty of printing, Reprinting, and Published books, and other writings without the consent of authors or Proprietors of such books and writings, and too often to the ruin of them and their families....." were the major concern of the authors (Statue of Anne; 1710). However, this issue were addressed by the Parliament of England though the famous "the Statute of Anne, 1710". In addition, 1710 copyright law also assured that those works which were published after the enactment of "the Statute of Anne"[1] enjoyed a protection of fourteen years.

In the larger framework, the motive behind licensing was to regulate and monitor the works being published in print by restraining the press on the pretext of maintaining good order. The purposeful objective of the Statute of Anne has been

[1] Statute of Anne also known as the copyright act. "An Act for the Encouragement of Learning, by Vesting the Copies of Printed Books in the Authors or Purchasers of such Copies, during the Times therein mentioned"

to stimulate study and speech while also encouraging and endorsing the discourse in a larger public domain. In addition to it, the statute directly entrusted the copyright of the published book in favour of the author instead of the publishers or the seller, this statute distinctly regarded the author as the first stakeholder responsible for the published book. It differed from the old licensing system where the role of state was minuscule and the publication of the book remained a privilege at-least in theoretical sense. However, as per the statute the copyright has been redefined as a source of right instead of a matter of privilege, that provides an author a by default grant for his grip on his comprehensive literary work. Hence, it can be argued that the statute provides enough space for the authors to bring in their work and expression in public space without much legal hindrances.

As was the idea of Milton, the authors should be encouraged to display their hard earned work of deliberation, learning and reasoning into larger public sphere. At the same time the statute keeping in consideration the conventional idea of public order substituted the conception of private rights, authors and proprietors were vested with the right to control or to approve their published works and books (Rose; 2009: 83-84).

They fought by suing other publishers who started printing cheap editions once the copyright expired. Their thirty-year battle is also known by the name 'the Battle of the Booksellers'. However, in the case of Donaldson v. Beckett (1774)[2], the idea of the perpetual copyright was rejected by the Lords. In 1710, the new Copyright Act 1842 was enacted by replacing the former "Statute of Anne".

The 1842 Copyright Act gave protection for the author's lifetime and forty-two years thereafter. It was in many ways an 1987ambiguous and unsatisfactory piece

[2] Alexander Donaldson was a Scottish publisher, bookseller and printer. In 1748, he started a bookshop in Edinburgh and was, later, indulged in many printing firms. He was famous for selling low-cost reprints of various books after their copyrights had expired under the Statute of Anne.

of legislation, but it survived for nearly eighty years, firmly embedded the concept of authors' rights in the law and ultimately made it possible for the United Kingdom to become part of a network of international protection for copyright and other intellectual property (Feather 1994: 124–48; Seville 1999: 6; Feather; 2006: 114)

Several nations, including the USA, framed their copyright laws based on the statute. Within a century after several obstacles, the statute was accepted in England and had spread to large parts of Europe. In France, the idea became popular around the time of the French Revolution while in Germany, copyright legislation inspired from British, was introduced by Bismarck (Boldrin and Levine 2008).

In 1790, USA adopted the copyright law. Copyright since its inception of proto-copyright laws have been developed around the concept of 'copy' which initially referred to printed book manuscript and is often said to have its origin alongside the Statute of Anne, 1710 in England. Although the copyright process was launched as a right vested in copies.

However, the act has now shifted to the act of copying itself (Yu Peter K: 2014: 65). These expressions like 'copy' and 'copies' have over the time gradually re-conceptualised itself in the emerging upgradation in technology while also expanding the horizon of copyright protection (Matthew and Halbert; 2014: XXXiii). Much debate addresses the distinctiveness and potential convergence on the legal frameworks that assert the 'moral rights' of authors.

This whole ensuing scenario started a debate and argument among the involved stakeholders such as the authors, publishers as well as the crown itself over the extent of the copyright and whether it should be perennial or to a certain limit, while also delving into protecting the publisher rights from piracy.

However in contemporary times, from the context of publisher's right to copy the law has expanded and evolved considerably from its earlier manifestation. In today's times, there have been many changes from the earlier period, the concept of copyright is bestowed with a limited extent of monopoly over the rights that would finally last for minimum of 50 years after the author's death. The law is not universal and differs from country to country, for example in the United States the protection provided is the lifespan of the author and 70 years after the death of the author.

The idea of copyright has been to safeguard expressions and not the ideas, thus there has been a need felt for the expressions to be 'fixed in a tangible form', implying that the work must be in written form and or it should be attached in some or the other manner (e.g: memory of computer). The main proprietor of the copyright, who on many instances can vary from the author, is the actual possessor of the rights over the copies. It clearly suggests that the proprietor has control over authorising as to who will be and who will not be allowed to make copies of the original piece work. The owner of the copyright also has the authority to control and contain the derivative work, the works that have been inspired and influenced by the initial phase of creativity. They also keep their control by tracking public performance based on their work. However, in some sphere of their work, the author commands certain level of control and can rightfully claim 'moral rights' in that work, which means that even after the sale of the first copy, the work should carry on along with the artistic integrity with the same zeal as it initially took off.

The concept of copyright does not have absolute monopoly, it can be used by others also but with certain level off constraints, like in the United States use by others is under the restraint of what is termed as "fair use" while the same process in the United Kingdom is called as 'fair dealing'. This exercise indeed provides a certain of flexibility for others to make their comments, cite the work and critique the original piece of work.

Every definition, description, approach and concept that has been mentioned in the copyright law has been comprehensively examined and challenged. Thus it is safe to argue that limitations that constituted of a 'fair use' and the public performance has changed its nature with the span of time. While in the initial phase one does not require to make an official registration of the copyright to make it operational, however after it is fixed one does need to register its copyright process to pursue any legal case of copyright infringement.

The copyright infringement as per law is regarded as illegal and any production of it should be considered as unauthorised. Any activity of violations of copyright either performed deliberately or even by mistake, in both the circumstances there is a legal provision of heavy fines, sanctions and penalties. Since internet made its entry into the mainstream from year 2000 onwards, policy makers, industries representatives and academic commentators have called for attention to tackle the myriad challenges that has come with innovations in digital technology while the genuine need has been felt in expanding the horizon of copyright protection (Matthew and Halbert; 2014: XXXiV).

It reflects the notion of contemporary IP law especially patent and copyright laws are developed and implemented in the developed countries. With this discussion on the independent variable, it is necessary to understand how China would cope with the contemporary IP law.

As China is intermediate variable of one of the hypothesis in this thesis i.e., "China undertook international patent and copyright laws for the development of its technological knowledge and for the protection of traditional knowledge". In this background next section would deal with 'China and its nature'.

China and its Nature

Throughout history China has identified itself as the Middle Kingdom[3]. Recently it has also been branded as a "rising power," which is neo-colonial in its approach. The concept of neo-colonialism highlighted by some scholars like Austin Campbell, Chongyan Cai in China-Africa trade relation. In the preamble of Chinese constitution (1982 as amended in 2018) it has declared itself to be a "developing state", and article 1 emphasis on "socialist state".

The country has often been in dilemma which making policy choice in the legal arena. Thus, Chinese identity has been taken to study and analyse China's position and context of global policies in the sphere law. An array of identities can be referred to such the "identification of identity, and the relationship between identity and behaviour". Social scientists and researchers have been engaged in the study of China as a country who have undergone a process of transformation from that of a traditional socialist state to that of a revisionist one and has been recently engaged in study Beijing as a "rising great power" (Cai, Congyan; 2019: 41).

Identity and Behaviour

The twenty first century has very often been referred to as the "era of identities" (Karina V. Korostelina; 2007: 15; Cai, Congyan; 2019: 47). It has been a matter of assertion by the identity holder and the others, as it is the due to the interactions that have taken place - 'concurrent or conflicting' between both the parties. Thus, it can be stated that the procedure involving of 'identification of identity' is of social learning. For some theorists they have laid emphasis on how 'the identification of the identity of a person is, in some sense, finding how he differs from others.'

[3] Middle Kingdom is a traditional way of Chinese world order with Sino-centrism. There are some features of "Middle Kingdom" i.e. under the haven, tribute system, hierarchical system; believed that rest of the world was Barbarian, No equal treaties with Barbarians. The most vital feature related to multilateralism is tribute system.

This approach has not been accepted universally. Example, Richard Jenkins is of the view that the difference here "misses the utter interdependence, whether in abstract logic or messy everyday practice, of similarity and difference." He further added, "to say who I am is to say who or what I am not, but it is also to say with whom I have things in common" (Richard Jenkins 2008: 21 and Cai, Congyan; 2019: 51). The emphasis on similarity instead of the differences existing between people increases the emotions of solidarity and social intercourse.

Sociologists have reached a consensus that there exist multiple identities in a person. Zygmunt Bauman opines that people face a problem pertaining to choosing an identity in this century. The assumption states that a singular identity needs to be opted. An individual has might assert any particular identity from the array of which they own and might be reluctant to show that due to any reason, abut excepts the other people to behave in a specific fashion because of their specified identity (Cai, Congyan; 2019: 45-51).

Identity changes with time and hence, is not static rather is dynamic in nature. Bauman is of the opinion that a huge problem of the contemporary century relates how an individual changes his/her identity in case it is redundant in a specific socioeconomic ambience (Cai, Congyan; 2019: 41-51). The third opinion is that an individual might totally decline to reshape his/her identity in tune with the circumstances. It must be noted that not all of the identities that conflict with each other get claimed at the same time, while one gets claimed the others aren't. Sociologists have pointed out that though identity manufactures behavioural impact, however, it does not act as an instrument of predicting behaviour.

The course of identification of identity has been ridden with hesitations and disagreements this is due to the fact that identity lies in par with interests and this topic has been a matter of debate by the sociologists for a long time. To some, the concept of identification of interest evokes interests, thus, 'identity merely is

the byproduct of pursing interests'. However, it has often been noticed that an individual might follow interests, those are in conflicting relation with their identity (Cai, Congyan; 2019: 42-51), while, at times the individual might choose to accept and maintain his/her identity at the cost of others.

Evolution of China's State Identity

Keeping in context of the ever-changing international relations and the doctrinal conceptualisation of the origin of China, the identity of state has been taken as the point of initiation to rupture the international legal system advanced by Beijing. The argument advanced by the author in this segment comprises of the evolutionary character of China from that of a traditional socialist state off that of a revisionist power and so on.

An Orthodox Socialist State

The rise of the communist revolution in the earlier period of the 1920s was the continuation of the Bolshevik revolution in Russia. The CCP gained a large amount of support from the erstwhile USSR and the Communist International in all fronts – ideological, personnel as well as financial and guidance. On a vast number of issues there has been disagreements between the CCP and the USSR and Communist International. However, such disagreements did not act as an impediment for chain to join the cold war power politics in the socialist bloc led by the erstwhile Soviet Union (Cai, Congyan; 2019: 42).

'The Common Program of Chinese People's Political Consultative Conference ("Common Program"), was adopted on September 29, 1949, as the Interim Constitution of the PRC. According to the Common Program, China, politically, would be a state under the "people's democratic dictatorship led by the working class", "economically, a state-run economy with a 'Socialist nature' would be the dominant modality in Chinese economy, but other economic modalities (for instance, private capitalist economy and state capitalist economy) were also

allowed". The Common Program stated that China was to become "a New Democratic, namely, People's Democratic state"Cai, Congyan; 2019: 51). During the late 1940s the Chinese proletariat was not strong enough and thus had to work in cooperation with capitalists in the society.

The first constitution of the PRC Constitution was a doctrine with detailed narration on the context of Chinese identity. According to the 1954 constitution, "a period of transition" was essential for the country to transform into a socialist state. Even though at the time, China was a "people's democratic state" (Cai, Congyan; 2019: 51).

A "Revisionist" Socialist State

During the late 1979, the CCP was compelled to declare the Reforming and Opening-up Policy. And slowly the state moved towards revisionism. The provision of 'class struggle' has undergone change with the 2004 amendment of the Constitution. The incorporation of the market economy provision is suggestive that the initial step might be "for a long period." (Cai, Congyan; 2019: 63). The two constitutional amendments made is suggestive that Beijing's realisation for the need of transformation of the then socialist regime. It is an expectation that Beijing would not be able to follow the full provisions of the global commitments.

In the recent times Beijing has been asserting its socialist identity. "In the Decision Concerning Some Major Issues in Comprehensively Deepening Reforms adopted by the CCP in November 2013, which depicts China's reform roadmap during the presidency, of Xi Jinping", the CCP stresses that "confidence on Socialist Course, Theory, and Regimes with Chinese characteristics" ("Three Confidences") should be always maintained. President Xi Jinping have emphasised on "confidence in the Political system of Chinese socialism." Time and again. "The amendment of the Constitution (1982) in March 2018 represents the latest fundamentally legal measure". The Amendment (2018), for the first

time, explicitly provides that "the leadership of the CCP is the most essential feature of the Socialism with Chinese characteristics." (Cai, Congyan; 2019: 51).

A Special Rising Great Power

Year 2003, holds tremendous significance in the path to China's state identity. In November of the same year Professor Zheng Bijian, stated that China was on the path of "Peaceful Rise." He further stressed that in its quest China "strives for rise while pursuing peace and not seeking hegemony." (Cai, Congyan; 2019: 102). After a month the then Premier Wen Jiabo, made a declaration at Harvard China is "a rising power dedicated to peace" and would pursue the "road to peaceful rise and development." (Cai, Congyan; 2019: 56)

In 2010, Wen Jiabo stated in UNGA "China, which has come a long way in modernisation, is fairly advanced in some areas of development but remains backward in others. And it faces unprecedented challenges brought by problems both old and new. Taken as a whole, China is still in the preliminary stage of socialism and remains a developing country. These are our basic national conditions. This is the real China." (Wen Jiabo, 2010)

A Rule-of-Man State

Both the Confucianism and Legalism are extremely important in context of reading and understanding China. However, they have diverged in context of how and through what mechanisms the state has to be governed. While legalism was in favour of the statutes, Confucianism favoured rites, and some of them have already been incorporated in the statues (Cai, Congyan; 2019: 56).

It must be noted that both the theories of Confucianism and Legalism are deep rooted in the paternalism (Cai, Congyan; 2019: 116). 'The assumption underlying that paternalism is that an emperor of the Chinese dynasty was a "Son of Heaven," who, on behalf on "Heaven," performed a "Mandate of Heaven."

Thus, an emperor was believed to be imbued with superior moral and epistemic authority over his subjects, who were considered "sons" of an emperor.

Important legal changes were made in 2004. For the first time, China's constitution read the state "respects and protects human rights."[4] (Cai, Congyan; 2019: 59) After President Xi Jinping coming into power in 2012, China declared its endeavour to improve the concept of the rule of law. The Decision on Major Issues Concerning Comprehensively Enhancing to Rule the State by Law ("The CCP Rule by Law Decision (2014)") was accepted by the CCP in 2014. 'This document blueprints a wide range of future measures planned in order to improve the integrity, efficiency, and professionalism of the legal system in China'[5]. (Cai, Congyan; 2019: 59)

Tushnet is of the opinion that the rule by law means "there are some laws in place, whose content is reasonably clear and known to the people to whom the laws apply." Thus, it can be said that a rule by law is there "when the laws in place are reliably applied." (Cai, Congyan; 2019: 61)

A Nationalist state

In the concept of state, especially in the case of nationalist state like China the social conditions allow for the introduction of a developmental state (Bolesta 2015: 129). The direct link between developmental state model and nationalism has been suggested by Johnson (1982) and others. Several studies have analysed Chinese nationalism which fall broadly in areas of foreign, economic and security policy. All of them seem to agree with the notion that the agenda of developmental state is mobilisation of the nation for a collective endeavour. Any sort of security issue, whether it is internal or external have been used for raising

[4] Constitution (1982, as amended in 2004), art. 33

[5] Central Committee of CCP, Decision on Major Issues Concerning Comprehensively Enhancing to Rule State by Law (October 23, 2014) (hereinafter, "The CCP Rule-by- Law Decision (2014)")

and nationalism and mobilisation of the nation. Even the support to Dalai Lama during his visits to other countries is seen as a threat to the Chinese. Zhao (2000) has used the phrase ‘defensive nationalism’ to describe this nationalism. Defensive nationalism means the nationalism which is assertive in its appearance but in its essence it is reactive.

However, it is not particularly aggressive. In the 1990s cultural nationalism rose in China as the negation of the western values were offered as a remedy to the problems of China (Fewsmith; 2008: 121). Gries (2004) gave the term ‘new nationalism’ to describe pragmatism in the approach of China in its policies while advancing national interests both internationally and domestically. However, there were instances of ‘popular nationalism’ too, as there was a mixture of populism and nationalism. In some cases there was criticism of the government for not defending the Chinese interest and in economic area for toeing the lines of international corporations (Fewsmith; 2008: 167).

Economic Nationalism

Economic nationalism has held an important position in the Chinese nationalism throughout the modern era. Apart from involving the mobilisation of the nation, economic nationalism involves application of an economic policy in which all sorts of economic activities are subordinated to the developmental strategy of the state during which the national or domestic economic agents are given preference for the realisation of the developmental goals. In the application of these economic policies, the domestic economy is shielded and against foreigners there is implementation of discriminatory policies (Cai, Congyan; 2019:11).

Economic nationalism started in the 1980s with the process of liberalisation of economy. The liberalisation happened gradually which prevented the foreign entities from immediately penetrating the market and also at the same time gave enough opportunity to the domestic players to consolidate their position. However, in the 1990s economic nationalism acquired secondary status in the

state doctrine to the political nationalism as China was in the final stages of negotiation for its accession to the WTO.

In the 2002 when the leadership changed it also signalled the change in the overall policy. The Hu-Wen regime is associated with the reinstallation of the as during the regime state intervention had increased and there were attempts of reversal of economic liberalisation although it has been accepted that economic liberalisation and economic nationalism does not need to contradict each other. Though Xi-Li administration had supported economic liberalisation, yet economic nationalism would retain its importance as the prime state ideology when the economy is reformed or opened (Bolesta; 2015:135). There has been several criticisms of the mercantilist tactics of Chinese economic nationalism by the US administration. Chinese administration has been alleged to be involved in violation of intellectual property rights, manipulation of exchange rates, blockage of foreign entities from governmental procurements along with many (Bolesta; 2015: 135).

In Chinese economic nationalism domestic agents are given main role while the foreign entities are seen in supportive roles. When China accede to WTO it had to let go of many trade barriers. Though China has advocated liberalism worldwide, however, it has adopted approach which is protective of its domestic industry and internal market. The most apparent example of such approach is the procurement practices. Wholly foreign owned companies which are even registered in China are forbidden from bidding in certain sectors which are reserved for Chinese domestic companies. Sometimes, when they are allowed to bid a tender, they do not seem to have a chance to win because of technical reasons (Bolesta; 2015: 136). The discriminatory attitude of Chinese administration has been acknowledged by the EU chamber of Commerce in China (Position paper, 2013/2014: 16).

Chinese economic nationalism is also visible in the behaviour of its authorities. The authorities are advised to buy Chinese products. There is also adoption of

sectoral approach by Chinese government which limits, prohibits, encourages foreign investment in various industrial sectors as written in the "catalogue guiding investment in industry" (Breslin; 2006: 21).

Even the market access for foreign invested entities are limited or restricted as domestic state controlled enterprises are given privileged position as seen in the case of energy sector. In the case of banking sector foreign companies are not given same rights as domestic banks. In the case of agricultural and food products it is the standardising practises by General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ) which bars foreign companies from participation. This has been seen in the case of European meat products which have not been given access to the market. It must be added here that these sorts of constraints are not unique in China as Chinese companies have similar experience in construction sector in Europe.

Also, ideas like made in America or 'buy American' have co-existed along with 'buy Chinese'. There has been discouragement to buy Chinese in the United States (Bolesta; 2015: 137) and similar trend can be seen in India where Chinese products are discouraged while 'made in India' is encouraged. Thus, it would be safe to say China's economic policy has features of economic nationalism. In order to fulfil two needs which are control over the nature of development and strengthening of the domestic economic agents, some of the sectors are provided access to while some of the sectors of the economy are protective and it is hard to figure out the rationale behind it. (Bolesta; 2015: 137)

When some countries were adopting democracy in the post socialist world, China saw the rise of Neo-authoritarianism with the adoption of 1980s' reforms. Till date China is an authoritarian state as a selected group of individuals from the party effectively choose the leader.

However, there have been certain shortcomings which might affect its economic growth. There has been lapses in the implementation of the legal rules and

regulations at the centre as well as at the local level. A lot of agencies produce rule which result in conflicting rules (OECD, 2009) as seen in the case of anti-monopoly law. Implementation of the law as well as its interpretation has become a concern for state management. Though China's rules and regulations comply to international standards when it come laws such as intellectual property laws, environment protection laws etc. however their implementation and enforcement have been ineffective (Bolesta; 2015:141).

It has been argued in contrast to its perception China became a politically fragile state especially during the Hu-Wen regime. There are possibilities of China exhibiting signs, or a weak state while maintaining its politically hard or harsh state status (Bolesta; 2015:142). It is feared that this may lead to a situation in which distortion or reversal of the developmental phase takes place. Thus, in this context it becomes significant to emphasise that the concept does not reflect the extent of political repression prevalent in the present structure of the state, as is illustrated by the China's example, as neither to be a state that has economically liberal and nor as an interventionist state. It moreover reflects the state's capability of exercising its powers to a certain extent in an effective manner so as to secure and fulfil the desired objectives. Hence, it is worth mentioning that, from the book's context, these powers are directly reflects the developmental policies.

However, Bolesta (2015) cautions that before making final analysis on the basis of legal chaos it needs to be ascertained whether these legal chaos are because of state's failure or because of the toleration of the state as he writes, *"*before the final judgement as to the strength of the Chinese state, one needs to establish how much the alleged legal chaos and economic 'grey zone' activities are the state's failures and how much they take place simply because the state tolerates them or, indeed, supports them*"* (Bolesta; 2015: 142).

It can be assertively stated that the legal chaos help in preventing foreign economic agents from becoming powerful in Chinese market and simultaneously

rise of domestic agents as aimed by Hu's Neo-authoritarian postulates. In the case of weak environmental laws it helps in promoting growth at all costs and through weak intellectual property rights it helps in the diffusion of innovative technology in the society. Though these benefits are short lived as lack of environmental considerations can seriously damage the environment or in the absence of effective competition certain ineffective privileged companied would capitalise the market. Still, it has to be accepted that in short term theses turn out to be successful strategies.

In democratic states leaders enjoy the political or democratic legitimacy which is not enjoyed by the leaders in authoritarian states. Hence, the leaders seek developmental legitimacy (Bolesta; 2015: 143). The leaders have aimed to make China equivalent to the economic superpower by achieving rapid economic development.

This has ensured that there is transformation in the economic environment and improvement in people's well-being translating into high HDI. This ensures that the developmental legitimacy is retained. Furthering this argument, the conceptualisation of the Xiaokeng society has also advocated that to create a harmonious society there is also a need of creating certain level of wealth with in the population. In authoritarian states, freedom is curtailed and there are poor records of human rights including socio-economic rights.

The autonomy of the state remains a fundamental factor backed by the smart and competent bureaucracy that plays a pivotal role in efficiently implementing the policies thus leading to state that can be called as developmental state in true sense. The inter relationship has to be established between political elites, business, society and state bureaucracy. State comprises of state bureaucracy and political elite (Bolesta; 2015: 158). In China the state bureaucracy is centralised.

In the post socialist period, China is transforming its various administrative and economic relations in a developmental state model. Various authors such as Oi,

and Meaney, have claimed that the menace of corruption is the root cause of many problems in the urban as well as rural parts of China and it is said to be the after-effects of the transformations in the post socialist China. The corruption has erupted into the system in many forms and one of the most significant among them is the idea of institutional corruption in which mechanisms such as arbitrary fines are imposed, levying of fees or forced appointment of funds. Institutional corruption has negative impact on the market as it reduces investment as well as competition. It also affects the capacity of the state to steer economy in the right direction. It also negatively impacts the integrity of the bureaucracy.

Along with the development, Chinese society is also facing the issue of societal marginalisation wherein large chunk of masses are either isolated or are left out from availing the benefits of the developmental achievements of the country. This is the result of the systemic transformation of China. In China with the socialist transformation economy is becoming market economy.

The post socialist transformation is about abandoning socialism and adopting capitalism (Bolesta; 2015: 159). Though China has adopted economic liberalisation, it is seen as an interventionist state. Bolesta argues that "from an economic systemic perspective, China has been very much an interventionist state. This interventionism is clearly seen in the earlier analysis of Chinese economic nationalism. The country has transformed from a state-command economy into a market economy, but has maintained strong interventionism throughout the period of transformation" (Bolesta; 2015: 159).

In short, it can be said that one party ruled state China have utilised people's emotive politics in the name of nationalism and party controls this nationalism in all the front. However, in the last three decades China proclaimed its nationalism in the economics sphere and simultaneously succeed in creating the counterfeit of foreign products. Moreover, the question arises if China is a Neo-authoritarian state then, why it amended its patent and copyright law to fulfill international standard?

Patents in China: A Philosophical and Historical Overview

Since the last seven decade the patent law and industrial development in China are discussed using the method of historical incidents as well as the industrial innovation. It also discusses the law and its mechanism between patent law and its innovation practice and give prospects and for its development.

Historically speaking, China has never welcomed the concept of intellectual property like patent being an individual's property and thus had no legal protection (Jennnifer Wai Shing Maguire; 2012: 895). The Confucian, Taoism, communism ethos were never promoted enough for the development of IPRs (Jennnifer Wai-Shing Maguire; 2012: 895-96). China for about two thousand years have encouraged its citizens to share knowledge, creation, discoveries and invention. The king used to publicly acknowledge and endow the inventor as a reward for the intellectual achievements. So it can be said that Patents are relatively new to the Chinese legal system.

The 'relatively new' indicates proton-patent law of Imperial China. As Chinese philosophy never promoted individualism and it reflects in the history of Imperial China. The Imperial China has had no provisions or law to provide safety for the industrial property. Although, in the year 1898, a proto-patent law ''Reward Regulations for Vitalising Technologies and Crafts'' was issued in the Qing dynasty by the Guangxu Emperor in 1898. In this, regulation different new products and methods monopolies for, 50 years, 30 years or 10 years.

The first Patent Law was not adopted until 1912 (Xiang Wang; 1998:6). Moreover, in 1912 Qing dynasty was overthrown by the democratic forces led by the Dr. Sun Yat-Sen. The newly formed Republican government formed an interim "regulation on the technologies and craft" awarded five year monopoly on patent and offered honorary certificate for invention and improvement made to products but did not include food and medicine (Xiang Wang; 1998: 6).

The law was subsequently revised four times: in 1923, followed by 1928, then in 1932, and finally in 1939 (Dimitrov; 2009: 250). Moreover, copyright throughout Chinese tradition was legitimate process of learning. Students honoured their masters by copying their great works. More the people copied the more successful the master got.

Nevertheless, it was in the 20th century, nationwide acceptance of copyright along with an age old tradition of isolationism made skeptic, towards outsiders have culminated into stumbling block towards IPRs (Jennnifer Wai-Shing Maguire; 2012: 896). The first patent act came into being in 1898. In 1903, the first patent bilateral treaty was signed with the USA. The teary met two goals: Firstly, the USA international copyright system was imported to China; Secondly, China's commitment to set up patent office where the United States invention would be respected. It was in 1910, when the Chinese emperor formulated the first written national statute on copyrights and thus, IPRs gained momentum in China (Jennnifer Wai-Shing Maguire; 2012: 897).

However, none of the revisions of the act provided patent protection for foreigners. Furthermore, the protected subject matter excluded foodstuffs, beverages, and pharmaceuticals. Initially, only invention patents for products were allowed, but the 1923 law extended invention patents to cover processes as well. In addition, the 1939 law granted protection to utility models and design patents. Patents were issued after formal application and examination conducted by the Ministry of Industry and Commerce.

Overall, China's low level of technological development at the time, the patent system was underutilised: fewer than one thousand patents were granted between 1912 and 1944. In 1944, a new Patent Law was adopted by the Kuomintang (KMT) government. In this formal patent law, the Nationalist Republic of China granted invention patent, utility patent and design patent for 15, 10 and 5 years respectively (Xiang Wang; 1998: 7). However, the political turmoil between the communist party and the nationalist party forced nationalist party to shift its

capital several times and culminated in the KMT's final retreat to Taiwan in 1949, it was never implemented in mainland China (Dimitrov; 2009: 250).

As patents have evolved in the twenty-first century, they protect inventions and ffer a more limited timeframe of protection than copyright but with more absolute monopoly control. While the copyright regime recognises that future creativity may build upon, reference or interact with other creative work, the underlying assumption behind patentable inventions is that by extending an absolute protection over a new design or invention, the inventor would have the incentive to share that idea with the public. In exchange, the inventor acquires the right to exclude all others from manufacturing, building, or in any other way using or producing the invention without explicit authorisation. The term for patent protection is 20 years from the date the patent is filed. Virtually all jurisdictions now use a 'first to file system when determining who is to be assigned the patent, instead of the 'first to invent' system that had remained active in the United States until 2011 (Dimitrov; 2009: 250).

When the Communists came to power in 1949, they repealed all KMT laws. The post 1949 period witnessed a gradual decline of patents and their eventual abolition. From 1950 to 1963, there was a system of invention certificates (for major inventions) and patent certificates (for minor inventions), patterned after that in the Soviet Union (Xiang Wang; 1998: 7-8). With the onset of communism, the progress made in the IPRs came to a standstill. The communists took to influencing the Chinese culture and tradition to form Soviet Union like microcosms (Jennnifer Wai-Shing Maguire; 2012: 897). The communist ideology promoted the growth of sharing intellect and was strictly against individual property ownership.

China opted for a two-track approach for patents: the first track was aimed at discouraging individual property ownership in invention. The inventor was awarded with only a certificate for invention. The second track included issue of patent right to the inventor along with the right to receive royalties (Maguire

Jennnifer Wai-Shing; 2012: 897-98). However, the government reserved the right to confiscate the invention if that was threat to the national security and was against the welfare of the majority. Thus, in 1963 property rights was done away with. The cultural movements in China also made the IP related developments immobile. The Cultural Revolution culminated into the rise of imprisonment of intellectuals, writers, doctors, scientists to remove the traces of individualism (Maguire Jennnifer Wai-Shing; 2012: 898). These certificates were abolished in 1963, however, and thereafter China had no patent system for two decades.

As this section traced the history of IP and its development in China and demonstrated its evolutionary changes. This evolutionary changes set up the platform for the IP revolution which took place during the era of Deng in 1979 (during open door policy) The influence of major IP treaties to which China has acceded such as Paris Convention, Patent Cooperation treaty and WTO (Yang Deli; 2003: 131).

Chinese Patent law and its amendment

"With the speedup in economic globalisation, tariffs have been gradually cut and non-tariffs have been substantially reduced. As the role of tariff protection is weakened, IP protection is becoming one of the major issues in international economic development and is of concern to all countries. China by revised its patent law has made impressive progress toward building a good IP system. China has taken number of major steps to fulfil its TRIPS obligation and to become gradually integrated into the economic globalisation process" (Gao Lulin 2015: 34).

In 1984 the first patent law[6] of the PRC's was promulgated and amended in 1992 and 2000. Similar to the competition regime, the IPR system in China has

[6] It entered into force on April 1, 1985. With the help of European, mainly German IP experts, the first draft of the China Patent Law was more or less an "imported" legislation in

experienced a process of improvement and adaptations to international standards. The process of adopting global norms was, to a certain extent, driven by international political and economic pressure. The first revision of the Chinese Patent Law in 1992 was more or less an exchange for better trading terms with the US government during the Sino-US trade negotiations. The US government demanded China to amend its patent law by adding protection of chemical and pharmaceutical products. Further commitment from the Chinese government was to revise its Copyright Law and to promulgate laws to protect trade secrets (Li, Guangjie; 2018: 19).

The second amendment of Chinese Patent Law was being carried out during the rounds of negations to become a member of the World Trade Organisation (WTO). Before it successfully joined the WTO, China had to commit itself to reviewing and revising its patent law in order to comply with the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). Prior to the amendment, Article 62 of the Chinese Patent Law provided a non-infringement exemption, which stipulated that the act of use or sale of a patented product without knowing the fact that the product was produced and sold without the permission of the patent proprietor was not an act of infringement. This made it almost impossible for the patentee to effectively stop infringement acts in China. In the revised Patent Law this exemption of "use or sale" without knowledge was deleted from the non-infringing acts (Li, Guangjie; 2018: 20). Furthermore, preliminary injunction was for the very first time introduced into the revised Chinese Patent Law. Other amendments such as permissibility to appeal decisions to the court on the validity of utility models and designs from Patent Re-Examination Board (PRB), methods for calculating damages were also adopted in compliance with the requirements of the TRIPS Agreement (Li, Guangjie; 2018: 14).

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consideration of the Chinese social, political and economic environment at that time. Since then Chinese Patent Law has gone through three revisions.

The first two revisions of the Chinese Patent Law illustrated how the intellectual property right (IPR) policy in developing economies can be shaped by developed countries and international treaties. With the Chinese Trademark Law, Copyright Law, and Regulation on the Protection of New Varieties of Plants, and other regulations on the protection of layout-de-signs of integrated circuits, and for computer software, China has adopted international norms and harmonised its legal system with rest of the world in the area of IPRs.

The third amendment elaborated that two types of patent law violation as illegal: a) Passing of patents; b) Patent infringements. The first implies when an individual deceptively portray that an unpatented invention is patented. The third amendment increased civil fines for passing off along with confiscation of the profit earned from passing off. The Patent Administrative Department has the power to impose a fine four fold the times of illegal income and three folds of illegal earnings.

The amendment has made the compensation for patent infringement basing on the actual loss incurred or the profit earned by the infringer. Despite all theses it has also made it difficult for the patentees to obtain patents and easier for the infringers to assert defence.

However, between 1985 and 2004, a total of 1,255,499 patents were issued.[7] (Beijing: Zhishi chan-quan chubanshe, 2005: 266). In 2005, China was among the top three countries in the world in terms of invention patent filings (WIPO Patent Report: 2007). These are remarkable achievements by any standard.

There has been a lot of apprehension and unease in regard to the rapid growth of the Chinese economy, at least in the arena of intellectual proprietary rights,

[7] The reason for the improvement in Chinese patent began, in 1984, China's Patent Law ("the Patent Law") has been came into existence and thereafter it faced some changes or amended. For the first time it was amended in 1992 (dealt with pharmaceutical issue; South Tour of Deng Xiaophing), followed by in 2000 (a year before China joined WTO) and lastly in 2008 (during financial crisis). This shows that almost three times it got amended.

globally. Pressures from all sectors have compelled China to develop strong enforcements relating to IP. Several member nations of the WTO are of the belief that the infringements by the Chinese have hampered the global market opportunities and the United States nurture serious apprehensions about the infringements cutting down the American profits in the technology sales in the global market.

The United States Trade Representative has acknowledged China as having one of the least developed and least effective IP regimes in the world. The piracy prevailed in China had cost nearly $2.4 billion in 2006 worldwide to the IP owners. A $1.5 billion loss was incurred globally due to Chinese copyright infringements. 2008 saw around 4000 patent infringement cases to been filed in China. The Chinese IP enforcements is at its infant, with the third amendment China has taken an active step to meet the requirements as mentioned in the WTO (Jennnifer Wai-Shing Maguire; 2012 :895). Present China's Current Patent: a) IP laws were not voluntarily taken up by China but was required by the countries of the West; b) The extent of control retained by China over the patents issued resulting in a decreased sense of ownership along with a reduction in the incentive to invent.

Legal understanding of patent

Article 22 incorporated absolute novelty national standard. This, in turn has made an expansion of the non-infringement defences by codification of prior art defence, allowing the defendant to argue that the invention was revealed by prior article many have argued that China failed to enforce these regulations at the local level. The mechanism that China follows in IP related case are both at the adjudication and the administration levels including civil and criminal context. But these mechanisms have been rendered of little use.

Though China, State Intellectual Property Office (SIPO) works but it is confined to charging monetary penalties that too would hardy demoralise that infringers.

SIPO has been entrusted with the power to destroy the infringed good and even to confiscate them along manufacture mechanisms banning the infringer from continuing to manufacture. As the SIPO lacks financial assistance it also lacks the will and motivation required to work. Local governments might show reluctance in providing SIPO with finance. Staff suffers from insufficient training. Patentees often seek adjudicative relief. The courts too have not developed mechanisms and ways to effectively handle such infringement cases. In China the IP system too lacks effectiveness. The law suggests criminal proceedings only when the circumstances are serious and if found guilty a maximum of three years sentence. Local legislatures might enact their won IP laws which in turn would end up being inconsistent with the IPRs all throughout the country.

The jurisdiction of the IPR structure in China still remains to be in nascent stage in comparison to the countries of European Union, the United States and along with few other nations. However, the rising economic power of China and a list of several champions at national and international level have definitely led China to claim as one of the most significant stakeholders globally with regard to matters of Intellectual property (Li, Guangjie; 2018: 21). In 2017, the State Intellectual Property Office (SIPO) of China had received 1.38 million registration applications for patents, making it the country with highest number of patents registration for the 7th consecutive year in row (White Paper; 2017)

With the enormous amount of registration application being received by the Chinese government, the government decided not to go with the quantity of the application, and thus in the 13th five year plan from (2016-2020), the government emphasised on the innovative aspect to permit registration that could lead to unhindered economic progress (Li, Guangjie; 2018: 2) (In each of its Five-Year Plan Chinese government outlines its major national strategy, clarifying focusing area of its work, mapping strategies for economic development, setting growth targets). Pertinently, the policy is framed to create a

substantive value chain by establishing high tech industries while abandoning the older heavy industries of lesser or no value.

Chinese government had in the same year promulgated the AML and simultaneously announced the "Outline of National IP Strategy" that helped China in preparing a roadmap to make itself a self-reliant country with advance creation of IP, its utilisation and protection by the year 2020. China in its outreach of strengthening and safeguarding its IP rights brought in various judicial reforms included in their IP Strategy. Some of the foremost issues that emerged were to set up specialised courts particularly for IP related issues in major cities like Beijng, Guangzhou and Shanghai. Nevertheless, these cities got the specialised IP courts towards the later period of 2014. These specialised courts are designed to address the cases that involves issues and disputes like patents, piracy of computer software, technical confidentialities, layout designs of integrated circuit, new varieties of plants, and recognition of trademarks among many other issues. The establishment of such special courts for IP related issues has certainly brought a watershed change in China's endeavour of improving its mechanism of IP protection. Furthermore in 2017, Chinese govt established four other IP tribunals in different cities of Chengdu, Wuhan, Nanjing and Suzhou. There were further increase in these tribunals and by 1st March, 2018, the numbers of these tribunals had gone upto 15, covering most parts of the country (Li, Guangjie; 2018: 21)

Interestingly, it is worth mentioning that the IP courts have been consistently taking up cases and has awarded for the damages and this trend has only been increasing every year. As per the available data from IP tribunal court of Beijing for the year 2016, at an average the tribunal has granted damages to an amount of RMB 1.41 million (almost to US $ 210000) for the cases pertaining to patent infringement. This amount was almost the double in comparison to the damages awarded in 2015 when the courts had only awarded for damages an amount of RMB 4,50,000 approximately (US $ 68,000). The increase in damages has only

been increasing as granted by these IP Courts. In one of the cases in Beijing, where on December 6, 2016 the court granted damages in favour of the patent owner amounting to RMB 49 million (approximately an amount of US $ 7.1 million). These are clear cut indicators of Chinese governments resolve to heavily punish the violators and to further strengthen its IP rights in the country.

After the discussion on Chinese patent system now Chinese copyright to be discussed here.

Copyright in China

The root of the concept of copyright in China can be traced back to Japan.[8] The term *banquan*[9] which means copyright in China is however, is not a Chinese term (Wang Fei-Hsien: 2019: 24). "No one truly understood that the exclusive right of publishing work belongs to its authors; this is a form of private property" (Wang Fei-Hsien: 2019: 24). Through Fukuzawa Yukichi work he established that his rediscovery of '*hanken*' to uphold the cause of copyright, he announced that it was not just about a translation of an English word to Japanese but also enlightened his Japanese about an advanced concept of property rights that was hitherto unknown in Japan. The application of using "XX Zohan" "in the colophon or on the title page of a book, as well as stamping a block-owner's seal on top of such statements to indicate who owned the blocks, was invented by neither Fukuzawa nor Tokugawa booksellers" (Wang Fei-Hsien: 2019:33). The words and their practice were both external conventions which the early Japanese

[8] *Fukuzawa Yukichi* who was the most prominent intellectual of the Meiji period coined the term copyright by applying a combination of two terms - *han/ban* along with *ken/quan*, which respectively stands for, printing blocs and right to translate.

[9] In common parlance of the modern day Japanese history *Fukuzawa Yukichi's* role has been highlighted as the major torch bearer of *bunmeikaika* (enlightenment and civilisation). His role has been equated to that of Benjamin Franklin. A wave of western ideas and norms that transformed the country as a strong and independent nation which was modern in essence. He had taken great pride in his translation of the western ideas and its role in revamping Japan as a 'new Japan'. At such as point of time there was no such term in Japanese to explain the meaning of the term copyright. He in his autobiography stressed the significance of '*hanken*' the term that was coined by him.

had incorporated from the Chinese. China had enjoyed unquestionable dominance in East Asia's till the mid-nineteenth century in the sphere of culture.[10]

A lumpsum of Chinese books were regularly imported to Japan via Nagasaki by Chinese junk during the Tokugawa period. Most of these imported books were collected by the wealthy daimyo while, Japanese booksellers and the official institutions reproduced some of the imported ones (either with or without Japanese annotations) (Wang Fei-Hsien: 2019: 35). The Japanese reproduction of the Chinese books also witnessed copying of cover page or colophon, page layout and the typical Chinese style of binding. Gradually, books dealing with the traditional Chinese learning by the Japanese scholars were also copied from the Chinese ones to uphold the traditional Chinese culture.

In early modern era Japan, Chinese books were lauded as the epitome of perfection. A large chunk of the Japanese books published during the Tokugawa period have similarity with the Chinese texts produced during Ming-Qing period, especially in the titles which, included the "phrase Zohan and the block- owner's seal"[11] (Wang Fei-Hsien: 2019: 36). The title pages were for marketing purposes, an advertising technique which, now stands as invaluable possessions helping the historians to understand the "late imperial book trade and printing culture"

[10] The cultural importance of China can be established by the fact that for several centuries there has been a constant import of Chinese literary works, books, Confucian classics along with Daoist and Buddhist scriptures to Japan. These rich sources of literature imported from China was placed at a higher alter not only because it nurtured the Japanese social elites with Chinese classical learning but also, it was seen as a medium which transmitted the ethos of civilisation to the peripheral areas.

[11] Zohan meant a loanword for Chinese *cangban*, which also meant 'processing and printing blocks' and the word *cangban* can be traced back to the early twelfth century where it was used in the colophons and the title pages of the books printed. 'XX *cangban*' is used in the Chinese bibliographical works to signify the publisher however, the contemporary Chinese scholars of rare books have come to a consensus that since with the passage of time the ownership of the printing blocks might change, the 'XX *cangban*' should not be taken as 'infallible' in order to determine the publisher of the book. Instead they agreed that it should be viewed as a statement uploading that it was the 'XX' that retained the blocks after the printing procedure.

(Wang Fei-Hsien; 2019: 38) the title page also constituted a unique importance such as it was used by the Ming-Qing to declare their ownership.

Along with stating "XX cangban" a ritual of stamping seal on the statement was followed by the publishers and book owners. Some of the publishers in order to assert their brand power to express their individuality started using "designed seals or colophons with trademark like-decorative images" or with a thorough information narrating details of the block-owner such as address, the motivation for publishing the book to cite a few. In order to aid the customers to distinguish between the authenticities of a book from that of an unauthorised one the block-owner along with the above-mentioned seal decoration of the title page was used.

According to a Hangzhou publisher, "the printing blocks are retained at studio.... (I)f this seal is missing [from a copy], then it means (the copy) is certainly an unauthorised reprint" (Wang Fei-Hsien; 2019:38). Retranslating "Copyright" *Fukuzawa* being frustrated about the growing rate of piracy of his book, in 1873 decided to raise consciousness about the importance of copyright in his country, he decided to bring forth a new and translated version of the doctrine of copyright. He coined the term '*hanken'* which stood for copyright by a combination of two terms, '*han*/block' and '*ken*/right' (Wang Fei-Hsien; 2019:40). Some scholars have argued that since *Fukuzawa* had used '*ken*/right' for '*menkyo*/license', the neologism *hanken* reflects his understandings of social contacts, rights and liberalism.

In 1868 the introduction of '*zohan* no *menkyo*' which he wrote was aimed to put forward his arguments for countermeasures against the menace of unauthorised reprinting similar to his second translation. By 1873, most of the pirates operated in a legal grey arena and they stopped production of a straightforward copy of Fukuzawa's works. Some of the pirated editions of his works were given different names. *Kairekiben* by Fukuzawa was reprinted with the title *Taiyoreki koshaku* by an Aichi bookseller while, a Tokyo based pirated edition of his work, *Sekai Kunizukushi* was reprinted with the title *Chikyu Orai*.

At times the pirates even resorted to combination of the contents to produce different books as a 'new' volume, e.g. a book titled Meiji *Yobunsho* 'was a collection of texts selected from *Fukuzawa's Kyuri zukai* and *Seiyo Jijo*. However, as their contents and the title were not similar to *Fukuzawa's* works it became difficult to brand them as "standard Juhan editions" (Wang Fei-Hsien; 2019:41). Interestingly, these books were legally protected by the Shuppan Jorei as they underwent both the registration and licensing procedure at the local booksellers' guilds.

To add onto it several of them were published by the local governments under the façade of enlightenment. To substantiate this statement the author states that the governments of Aichi, Nagatsu and Oda had reprinted and published their very own editions of Gakumon no susume for the local elementary school level. He stated that the copyright was translated as an official permission granted to publish however, the translation was not accurate. He then explained this in his annotation and accepted that his first writings on copyright might have resulted in a misunderstanding of the concept of copyright.

He then further elaborated his understanding of the concept of copyright where the author of the book gets a monopolistic right to blocks in order to reproduce it and such rights are reserved for others, which in turn indicates that others would not be able to use them freely. He then stated that it is from that authorship of a book that legitimacy derives its power. The very right of the author to reproduce his writings comes from the fact that the author is the sole creator of the book, thus, "natural owner of the works". Thus, one can say that copyright stands for the exclusive right enjoyed to publish, or can be said that it is the right to *hanken* i.e, printing blocks. (Wang Fei-Hsien: 2019:43).

From Hanken to Banquan

The Sino Japanese war witnessed the backward flow of books in East Asia in such a backdrop the term *hanken* was introduced as the Chinese term to signify

copyright in the 20th century. The 1895 Chinese defeat had been interpreted by the Qing as the successful transformation of Japan into a powerful state by the Meiji Restoration while, the array of changes and reforms undertaken in China were ineffective in nature.

This in turn led to the culmination of a "profound intellectual doubt" about the Chinese "Civilisational" superiority that is the notion of Middle Kingdom was challenged, along with an intense "psychological complex toward Japan" (Wang Fei-Hsien; 2019:48). The demand for radical transformation of institutions in Japan, which was once looked down upon by Chinese elites as culturally inferior emerged as a "potential model" (Wang Fei-Hsien; 2019:48). They believed that the Japanese victory was a prelude for non-European country to catch up with the help of the process of westernisation. Thus, for a change the Chinese intellects acknowledged the significance of western knowledge of the first time ever.

The educated Chinese community started to imbibe and adopt the western ideas to deal with the advancing imperialist challenges and thus Japan became to them a perfect shortcut to European civilisation. Most of the western knowledge was introduced in the land through their translation by the missionaries of America and Europe along with their Chinese assistant. The Qing state had established the *Tongwenguan* (Imperial Language College in 1862) to teach European language and had also sent students to Europe from the 1860s. It had taken them a huge investment to find translator with a command over European and Chinese language. Japanese language learning was an easier alternative owing to the large number of characters/ kanjis in Chinese language.

Those advocating Japanese language stated that educated Chinese could easily learn Japanese in a few months. The *Tongwenguan* had established its Japanese language program. Several individuals and officials of the provincial level also started many Japanese projects which included learning and translation (Wang Fei-Hsien; 2019: 49). As against European languages, they believed that if they translated Japanese books China would exponentially absorb western knowledge.

Radical reformer, *Kang Youwei* in his work *Riben shumu zhi* stated that by reading the Japanese work on western knowledge they (the Chinese) could reap the benefits of what they had cultivated. Very soon the Japanese officials had noticed the incentives laid ahead of Japan in being a broker of the western civilisational ethos to China.

The Japanese consul general, *Odagiri Masunosuke* had stated in an interview in 1898 that he was of the belief that it was an appropriate time for the Japanese publishers to enter the Chinese market. He further added that the war had shaken the Chinese pride and thus, buying Japanese books would enable them to learn about Japan's success story. Several publishing houses such as *Hakubunkan, Fuzanbo* along with *Maruzrn* and *Azuma Heiji* had not only established their branches in China but also exported books to the Chinese market in order to earn hefty profit at such a backdrop (Wang Fei-Hsien; 2019: 49). *Fuzanbo* had sent several thousand copies "of their titles on Western knowledge" for a period of several years, regularly till the Chinese piracy overwhelmed them. The Chinese student community and political activists residing in Japan had played an integral role in circulation of books and knowledge across China and Japan.

Liang Qichao, a disciple of *Kang Youwei* was into forced exile after the 1898 failed Reform. He had set up several publishing houses to propagate their radical ideas and western knowledge. He accessed to the western political ideas were based on Japanese books and journals chiefly. The Chinese student in the 1900 had also started systematic, organised translation and publication groups of 'Japanese titles', such as Yishu huiban she and Hunan *bianyi* she to shower enlightenment upon their fellow countrymen.

These books and journals were exported to China and were mainly produced in Yokohama and Tokyo (Wang Fei-Hsien; 2019: 50). At such a juncture of time, Japan emerged as the main provider of 'new' knowledge in East Asia. The Japanese translations soon emerged to be the majority of the foreign language translated into Chinese. *Tam Yue-him's* survey of the number of title translation

from Japanese to Chinese, he found that 958 titles were translated from 1896-1911 with an average of 63.86 titles. From 1902-1904, 60.2 percent of all translated works available in China, were from Japan. The sea of translation work in Japan had given rise to new terminology, comprising mostly of "two-Chinese-character expressions coined by Japanese" in order to translate the western ideas to Chinese lexicons the Japanese terms transformed the late Qing Chinese with a new cultural infrastructure (Wang Fei-Hsien: 2019: 50). This exchange of lexicons also ushered a new era of writing techniques of Chinese (Wang Fei-Hsien: 2019: 50). *Hanken* was one of these new Japanese terms which the Chinese had picked up in the 20th century.

The term *hanken* was borrowed and used by the Chinese as *banquan*. Since then the term has been in use for the term 'copyright' in China. In the 1860s the terms - copyright and literary piracy had made their appearance in the English Chinese dictionaries. Copyright was translated as *yinshu zhi quan* (i.e. right to print books) and literary piracy as *zei ren shu de* (i.e, one who steals others' books) by William Lobscheid (Wang Fei-Hsien: 2019:51).

The Society for the Diffusion of Christian and general knowledge, a missionary press based in Shanghai was the first institution to start the promotion of the doctrine of copyright in 1896-97 against the unauthorised Chinese printing. Here they used a neutral and pre-existing term *fanke* which meant literary piracy or reprinting as unauthorised. While defining the concept of copyright in their announcements and petitions they clearly mentioned it to be a 'Western custom' that used to prosecute those who reprinted others works to sell them in order to earn profit and they were in par with robbers stealing from someone else's property. However, they had never given a name to the above mentioned 'Western custom' (Wang Fei-Hsien: 2019: 51).

Kang Youwei, was the first person to use the word *banquan* in Chinese texts in order to refer to copyright. In the hope to persuade Emperor Guangxu to initiate a full-scale reform of the Japanese model, he presented Riben bianzheng kao.

Similar to the teachings of Fukuzawa, Kang also laid a great stress upon "the correlation between copyright and the wealth and power of a nation". Emperor Guangxu had also introduced an array of fresh policies during the disastrous 1898 Reform, one of which included an imperial edict which granted the authors of new books the right to earn the profit generated by those books.

However, the actual execution of the edict still remains a question. The seizure of power by Empress *Dowager Cixi* and the conservatives did bring a premature end to the radical reform initiative. Thus, one can state that Kang's ideas about *banquan* might have not circulated at that time (Wang Fei-Hsien: 2019:52). *Riben bianzheng kao* was mainly written a sole reader, Emperor Guangxu. And thus, it remained as an unpublished manuscript for decades at the imperial library in the Forbidden Kingdom. His work had never reached the general audience, even though some handwritten copies were circulated among Kang's coterie and in the court. From 1898 to 1903 the term banquan appeared throughout in China.

A political journal, *Qingyi bao* established by *Liang Qichao* post 1898 Reform, had "translated an article from *Toyo Keizai shinpo*" it dealt with how the absence of copyright in China was creating a problem for the Japanese publishers (Wang Fei-Hsien: 2019: 52). The journal had also published an editorial demanding the Japanese government to create pressure on the Qing court in order to protect copyright.

When the matters of copyright for foreign publishers were brought up in China by the US and Japan after the Boxer Rebellion, the terminology, *banquan* was used by *Lu Haihuan* and *Sheng Xuanhuai*, Chinese treaty commissioners. They used it to refer "to copyright in their imperial memorials and their correspondence with governor generals". Unlike the two treaty commissioners, the top most officials in the Qing court had viewed the American and the Japanese plea as a threat. They argued that copyright was not relevant in China as it would slower their pace of westernisation course as once treaties protected the copyright of the foreign books, there would be a much higher increase in the cost

of translating these works thus, creating an impediment in enlightening the Chinese society with western knowledge (Wang Fei-Hsien: 2019:53).

In 1903 when China signed treaties with the US and Japan - Sino-US Renewed Treaties of Trade and Navigation and Sino-Japanese Renewed Treaties of Trade and Navigation, respectively the clause containing copyright was the one that was compromised. The clause only protected the copyright of books "pertaining particularly for Chinese readers" (Wang Fei-Hsien: 2019: 53) the loophole in the treaty clause gave the Chinese publishers an upper hand in free translation of any foreign work written for the general population. This clause was viewed with a privilege to the Chinese publishers as it could be a disadvantage to the Chinese booksellers. As this clause had ensured that the foreign booksellers "were equipped with a legal weapon against them and Chinese pirates" some resorted to urge the Qing state to give recognition to the Chinese booksellers' and authors' copyright, thereby, ensuring them protection. To cite an example, in 1903 Civilisation Books' proprietor, *Lian Quan* had made a petition for copyright protection to *Zhang Baixi* (Wang Fei-Hsien: 2019: 53). A similar argument can be found in *Yan Fu's* public letter written to *Zhang*. He stated that reprinting though might ensure easy circulation of the works but would end up in discouraging authors and translators to come up with original work.

And thus, requested the Qing state to reward *banquan* to those who usher the Chinese land with "import civilisation" (Wang Fei-Hsien: 2019:54). The very same year Commercial Press had also come up with a publication named, *Banquan kao* (Chinese translation of the 'copyright' entry in the encyclopedia Britannica).

The writings of the early champions of copyright /*banquan* were in same tone that of *Fukuzawa Yukichi*. They also added the technological and intellectual advancements made by European countries in its copyright legislation. They too, were of the opinion that material benefit would boost the morale of the authors, inventors to come up with new ideas and thus make intellectual prowess. The

value of copyright as advanced by these early Chinese advocates of copyright can be traced to their foreignness.

Those who stood in opposition to the introduction of copyright, accepted in as a general law but, they did not believe that it was civilised enough to be accepted. For the foreign countries that main reason behind them requesting for copyright was to let China join the international legal regime and thus, enabling protection of trade.

However, *Zhang Baixi* had made arguments against copyright stating that if the western books could be copied and translated in China without cost then it would have enabled China to make rapid progress and catch up with the west (Wang Fei-Hsien; 2019: 55).

After portraying the cultural and political development of China's copyright, it is to bring the subject of traditional and technological knowledge which would further assist the analysis of the hypothesis.

Why the developed countries have been skeptical of China on IPR?

Generally, the term technological knowledge indicates that information on anything that assist in the modification of anything or make ease of living in the physical world. In the pre-modern era, the concept of modification in the physical world was characterised by the development of any skill by the artisan or the craftsmen based on the notion of trial and error (Ferguson; 1985:90). However, during the renaissance of Europe the science became the key factor of ease of living. Science provided the accuracy in the invention. This science and invention further provided the platform for the industrial revolution. Science, invention and industrialisation modernised the people.

The key features of modern era were guided by the principle of rationality and accuracy. The concepts of 'trial and error' were replaced by the 'observation, experiment, logic and new inventions'. The meaning of technological knowledge

in the modern era is associated with a wide spectrum of information that comes out of scientific innovation to the "model of technical design". It can be said that "differences separates a scientific theory from a technical blueprint or a product design" (Ferguson; 1985: 90).

However, the information that carries the technological knowledge are finally refined through the process of innovation. The innovation plays an important role in the process of modifying the life of human beings. So, the question is how to make the technological knowledge universal or global? Many scholars, policy makers argue on the concept of transfer of technology or sharing or technological knowledge among countries. The purpose of transfers of technology is the universal development for all.

However, it is considered as a major challenge on the matter of transfer of technology. As one that the world has been divided into Global North and Global South. This division has also taken place with the technological knowledge of the west, which led into the innovation and industrial revolution. This industrialisation was key behind colonialism and which further destroyed the global south by implementing their own rule and regulation in the name of civilising mission of some of the European countries. Therefore the global south is still lagging when it comes to science and technology and as well as in the international law. The concept of technology was introduced into the United Nations system in the early 1960s. In 1961, the United Nations General Assembly brought legislation on patent right along with the transfer of patented and unpatented to the developing countries.

"Developing countries, in particular, see technology transfer as part of the bargain in which they have agreed to protect intellectual property rights. The TRIPS Agreement aims to achieve the transfer and dissemination of technology as part of its objectives, and specifically requires developed nation members to provide incentives for their companies to promote the transfer of technology to least-developed countries" (WTO)

As Article 7 emphasises the TRIPS Agreement's objective which states that “the protection and enforcement of Intellectual Property rights should contribute to promote the technological innovation and to the transfer and to dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to the balance of rights and obligations”. The developing nations’ duty to provide incentives for technology transfer, is laid down in Article 66.2. The need to make this requirement more functional has been expressed by the least developed nations. In the TRIPS Council, Doha, November 2001, the ministers decided that they must "set up a mechanism to ensure the monitoring and full implementation of the obligation.”

The Council adopted a resolution (IP/c/28) creating this process in February, 2003. It outlines the information to be presented by the developing nations annually, about practical operation of their incentives. This decision was enforced and was reviewed in depth at the meeting of the TRIPS Council in November, 2003. Since then, new reports have been sent by developing nations’ representatives every third year with revisions over the years. Simultaneously, various decisions under the TRIPs Agreement concentrated on the issue of technology transfer and re-emphasised the determination to enforce it. Article 66.2, for example, the Decisions of 2003 and 2005 on TRIPs and Public Health (TRIPS; 2003).

In the current political scenario, both information and expertise have been deemed as a critical resource for developing the nation's economy. In fact, IP rights are considered to be the exclusive right given to the patent holder. However, as mentioned above, developed nations have yet to realise the importance of technology transfer to emerging or least developed nations. While they have signed a variety of agreements, they have not fulfilled their words when it comes to execution.

In PRC's case, which has been one of the leading nations in the secondary sector due to their 'reform and opening up' policy.

China is seeking to concretely propound its presence in the global economy as a technologically developed nation. In the last 30 years, China not only adopted and subsequently updated a number of IP laws to optimise the legal framework, but also introduced administrative changes and initiated a number of special campaigns to improve IP compliance. These actions reflect China's commitment to strengthen its IP protection.

Technology transfer is another topic of great importance to IP protection. Strong IP protection is a required requirement for the promotion of technology transfer flows, which are usually enforced through FDI and licensing (In this case, the focus is only on these two means of technology transfer, namely FDI and licensing). In particular, if a nation wants to improve its technical capabilities by integrating advanced foreign technologies, it should gain a deeper understanding of the relationship between IP protection and technology transfer before formulating its economic strategies.

IP regulation has a direct impact on FDI, as most cases of FDI involve inward flow of technology. While, FDI can be accompanied by an isolated license arrangement, in which, rather than the technology being the subject matter of the transaction, it is a part of the FDI portfolio. Then again, in the FDI's case, a transaction involving research and development (R&D) facilities and technology-intensive equipment could be involved. In this respect, it is not startling that the IP protection has become a required deliberation for foreign investors.

Empirical studies also indicate that IP legislation and implementation play a major role in FDI, as strong IP protection offers an impetus for FDI. This means that foreign corporations prefer to avoid investing in nations with poor system of IP protection. Moreover, surveys by US multinational corporations indicate that they are inclined to invest in nations with IP framework that can effectively

ensure the protection of their investment (Wenqi Liu; 2014:11). Apart from technology-intensive sectors, research indicates that poor IP protection also has a negative effect on ventures in other sectors.

In addition, Maskus and other scholars impart some deeper insight into the IPRs-FDI link. They discuss the fact that the impact of IP protection on inward FDI ought not to be overestimated due to the fact that the composition of inward FDI depends on multiple variables. Apart from the IP regime, inward FDI is also affected by the status of the recipient nation, firm attributes, channels transfer of technology, and so on. Primarily, the local reproduction ability and labour skills of employees in the host nation are essential elements for FDI. There is a general reluctance in multinational corporations when investing in nations where piracy or imitation is common. In this situation, they opt for an IPR license (Liu, Wenqi: 2014: 12).

In the meantime, there is less desire for a nation with a lag in productivity compared to a nation with a large number of skilled and semi-skilled workers. Secondly, the prospect of licensing and the setting up of joint ventures decreases the impact of IP protection on inward FDI. Stronger IP protection might lead multinational corporations to 'shift away from FDI and toward licensing at the margin', in high-technology.

IPR licensing is subject to IP protection which is similar to FDI. There is, however, a clear distinction between these two methods of technology transfer. FDI is a long-term undertaking to a particular location, requiring higher fixed costs compared to licensing. As a result, it can reasonably, deduced that the IP protection's level which is FDI's requirement would be higher than that of licensing (Liu, Wenqi; 2014: 12). In addition, FDI typically creates high-skilled and high-paying work, for host nations, e.g., management positions, quality control and, engineering, which may affect the approach to higher studies and focus of local laboratories. Ultimately, the technological capabilities of developing nations will improve due to FDI.

Although there is subtlety in the relationship between technology transfer and IP protection due to a number of complex elements, there has been valuable understanding for policy makers in the design of the IP system, provided by previous studies.

Since the 1990s, implementation of FDI and other types of technology transfer has been paid significant amount of attention to, by China. (Liu, Wenqi: 2014: 13). With its economic improvement, China has become one of the largest technology absorbing economies in the world.

The increasing number of patents applications in China every year. On the whole, the total number of foreign patent application in China and various types of patents have shown a steadily increasing trend. From the implementation of China's Patent Law in 1985 to 1993 foreign patent applications in China have been in a steady growth stage.

Later, due to the development of the domestic and foreign economic situation Improving the business environment as well as the further revision of China's Patent Law, foreign patents in China have gradually entered a stage of rapid increase Statistics from the State Intellectual Property Office, after China joined the WTO in 2001 The total number of foreign patent applications in China and the number of various types of patent applications have shown an increasing trend year by year (Liu Xia and Qu Ruxiao: 2020: 140)

The total number of applications has gradually increased from 3.78 million in 2001 to 11.12 million in 2008. After reaching its peak, it was affected by the global financial crisis and it declined slightly in 2009. With the recovery and development of the world economy since 2010, the total number of foreign patent applications in China once again shows a rising trend. In 2018, the total number of applications reached approximately 17.63 million, an increase of 56.25%.

The reason, why the total number of foreign patents in China has shown a stepped growth trends for several consecutive years since 2010. This is closely related to the improvement of China's intellectual property protection system and the continuous improvement of China's business environment.

All types of foreign patent applications in China show a similar trend to the total number of patent applications For invention patent applications Gradually increased from 3.32 million in 2001 to 14.82 million in 2018 It also reached a peak of about 9.53 million applications in 2008. In the following years, under the influence of the global financial crisis The number of invention applications in China remains relatively stable Since 2011, the total number of foreign invention applications in China has increased rapidly from 11.06 million to 14.82 million in 2018 (Liu Xia and Qu Ruxiao: 2020: 140).

The number of foreign applications for utility model and design patents in China is relatively small however it has shown steady increase since 2001, from 447 and 4187 in 2001 to 8,451 and 19702 items in 2018 respectively. From 2001 to 2018, these two types of patents both declined slightly in 2009, after which they also showed a period of plateau, until 2011, when it began to increase rapidly (Liu Xia and Qu Ruxiao: 2020: 140).

The total number of patents granted in China has increased in a fluctuating pattern. The total amount of the three types of foreign patents granted annually in China shows a fluctuating increase, and this trend is mainly reflected in invention patents. This is related to the fact that foreign patent applications in China are dominated by invention patents. The total number of foreign patent applications in China is similar to the number of invention patents, and both show a fluctuating increase (Liu Xia and Qu Ruxiao: 2020: 142).

Statistics from the State Intellectual Property Office show that before 2007, the total number of authorised foreign patents in China and the number of authorised invention patents increased only slightly, showing a steady trend of change. After

2007, the total number of authorisations and invention authorisations began to increase rapidly, with three peaks in 2009, 2012 and 2016 respectively. In 2016, the total annual number of foreign patents granted in China was as high as 124,900, of which the total number of invention patents was about 102,100, accounting for 1.75% of the total number of granted in 2016.

Since 2001, the number of foreign utility model and design patents granted in China has maintained a relatively stable growth trend. Before 2007, the number of annual authorisations for utility models remained at about 1,000, while the number of annual authorisations for designs remained below 9,000, showing a slow increase. In 2009, the number of authorised utility models and designs of foreign countries in China exceeded 1,500 and 15,000 respectively, and there has been a steady increase since then (Liu Xia and Qu Ruxiao: 2020: 142).

Whether it is the total number of foreign patents granted in China or the number of various types of patents granted, the above trends are in line with the further revisions of China's 2008 and 2009 Patent Laws, the promulgation of relevant laws, and China's patent system and the further improvement of the patent environment is closely related. In 2008, the "Outline of the National Intellectual Property Strategy" formulated by China was formally implemented, elevating the protection of intellectual property rights to a strategic level and promoting the further improvement of China's intellectual property system. At the same time, China's Patent Law was revised for the third time in 2009.

Not only did the revision range be relatively large, the protections of domestic and foreign patents were greatly improved, but also the procedures and systems for patent application, examination, authorisation, and litigation. Reforms have been made to simplify the process of certain links, improve the efficiency of examination and authorisation, and further increase the attractiveness of foreign patent applications in China (Liu Xia and Qu Ruxiao: 2020: 142).

Is there a contrast in stand of China with respect to various forms of IPR laws?

China is pleased with the achievement made in the intellectual property rights law, since the 'reform and opening up'. To clarify the institutional orientation of the IP law of China, understanding the development of the IP law in China, and the mode of coordination of conflicts of interest, is necessary. This also provides reference for the future development of the IP law in China (Wu, Handong; Liu Xin; 2018: 76).

The Development and Growth of China's Intellectual Property Rights Law

The IPR Law evolves with the progress of science and technology. It is based the scientific and technological revolution. Due to this, its institutional history is itself, a process of mutual promotion between the innovation of legal system and the innovation of science and technology.

Since the emergence of IPR Laws in the 17th century, there have been four scientific and technological revolutions, from the industrial revolution to the information revolution, each major development change of the intellectual property law is closely related to the development of science and technology. In the 1980s-1990s, the initial establishment of China's Intellectual Property legal system, coincided with a new scientific and technological revolution in the world, represented by network technology, gene technology, etc. The numerous scientific and technological achievements triggered many social changes. It has also made China's intellectual property system constantly face the challenges brought about by the development of new technology.

The IPR Laws changes with the development of economy and society and is highly dependent the country's economic background. Judging from the development course of IPR Law in various countries developed and in different

stages of economic and social development, there is quiet a difference in the institutional design of IPR Law.

At the beginning of the ‘Reform and Opening Up’, China's intellectual property law adopted a protection standard higher than that of economic development, but in order to protect the local disadvantaged industries, it has reservations in many areas in their specific domain. With the establishment of China's socialist market economic system, the economy and society developed rapidly, and the level of intellectual property protection has constantly improved. The IPR Law has become a legal guarantee and institutional support for economic transformation, and upgrading, social innovation development of legal security.

The IPR Laws change, while adjusting to public policies, as an important legal norm, to stimulate technological innovation and promote economic growth. This is also an Intellectual Property Policy in the public policy system. From the 1980s to the 1990s, China’s ‘Trademark Law’, ‘Patent Law’ and ‘Copyright Law’, were successively promulgated. From the policy making perspective, these legislative activities are practical needs for China to carry out the basic state policy of ‘Reform and Opening Up’ and to build a socialist market economy. At the end of the 20th century, the ‘Trademark Law’, the ‘Patent Law’ and the ‘Copyright Law’ were successively amended. The formulation of new IPR laws and regulations such as the “Regulations on the Protection of New Varieties of Plants” and the Regulations on the Protection of Layout-Designs of Integrated Circuits”, is to a certain extent, the policy arrangements made by China for its accession to the World Trade Organisation. Since the implementation of the “Outline of the National Intellectual Property Strategy” in 2008, a new round of amendments to various IPR Laws of China has been an important response to policies such as, the innovation-driven development strategy, the building of a powerful intellectual property nation, and so on (Wu, Handong; Liu Xin; 2018: 77).

Fundamental institutional positioning of China's IP Rights Law

IP Rights Law is an important part of the civil laws. IP laws have Roman origins in their concept of intangible property. It is an important product China's Intellectual property revolution. The "Intellectual Property Agreement" clearly emphasises that intellectual property rights are private rights. The 'General Principles of the Civil Law' promulgated in 1984, have clearly stipulated Intellectual Property Rights in Chapter V "Civil Rights", in Section 3, which shall be parallel to other civil rights such as 'Property Ownership and Related Property Rights' (Section 1), Creditor's Rights (Section 2), and 'Personal Rights' (Section 4). In 2017, China issued Article 123 of the Law, which governs the future Civil Code, it stipulates "Civil entities enjoy intellectual property rights in accordance with law", clearly declaring the civil rights attributes of intellectual property rights (Wu, Handong; Liu Xin; 2018: 76).

IPR Law is a legal system which is closely related to market competition, IPR laws came into being with modern capitalism's commodity-based economy. In the market competition, products which have the protection of intellectual property law have legal monopoly, gaining competitive advantage. In this economy, these products have gradually become the decisive factor for the success or failure in the market. The role of IPR laws in promoting market competition is becoming increasingly obvious. In 21st century, the development of internet has produced Internet IPR Problems. Simultaneously, unfair competition has also emerged online. Co-ordination between IPR laws and online market competition has become a new topic for analysis.

The IPR Law is the basic legal guarantee for the implementation of the relevant national strategies. It serves as an incentive for innovation and protecting innovation is the basis and guarantee for the effective implementation of the China's IPR strategy. In 2008, the promulgation and implementation of the "Outline of the National Intellectual Property Strategy" marked the beginning of the rise of intellectual property in China from a legal system to a national

development strategy. Over the past 10 years, China's intellectual property strategy has been continuously advanced, its strategic planning has been increasingly improved, its implementation has been effective, and a series of achievements can be noted. With the issuance of the “Several Opinions of the State Council on Accelerating the Construction of Great Power in Intellectual Property Rights Industry under the New Situation” in 2015, China's intellectual property strategy has entered a new stage. The role of the policy tools of the Intellectual Property Law needs to be more fully played, to realise China’s transformation from a “big intellectual property nation” to a “powerful intellectual property nation” (Wu Handong; Liu Xin; 2018: 76).

The Conflict Co-ordination Mechanism of China’s Intellectual Property Laws

The conflict between the IPR Laws and the protection of basic human rights; and the coordination of the IP law's institutional goals of encouraging innovation and protecting the rights, and interests of creators, are in essence, compatible with the content of the basic human rights, such as freedom of literary and artistic creation and freedom of scientific and technological creation. In the actual operation of China's intellectual property law, the conflict between the intellectual property law and the protection of basic human rights, has also appeared from time to time. In order to resolve this conflict, international conventions such as the “Universal Declaration of Human Rights” and the “Intellectual Property Rights Agreement”, has been used as a basis in long-term practice. The principle of “legal interest priority protection” has been applied to determine the order of protection of rights according to their values, and explore a series of effective coordination mechanisms.

The dispute between the IPR Law and the “public health protection”; and the conflict in coordinating the IPR Laws and the public health protection, have become increasingly prominent with the significant improvement of the international level of protection of intellectual property rights in the “Intellectual

Property Agreement". The World Trade Organisation opened the Doha Round of negotiations in 2001, and in the "Doha Declaration" it reached, it clearly recognised the inalienable right of the state to take measures to maintain public health. As the largest developing country in the world, China lags far behind the developed countries such as the United States in drug research and development, and public health problems are particularly prominent in China. In order to resolve the conflict between the "Intellectual Property Law" and "public health protection", China introduced a compulsory licensing system when the "Patent Law" was amended in 2008, to guarantee the supply of essential medicines.

'Intellectual Property Rights Law' and 'protection of traditional knowledge' are in conflict, this conflict and the problems in coordinating them arises from application of intellectual property to traditional knowledge, such as, traditional medicine and folk literature and art. In order to promote the coordination between IPR Law and protection of traditional knowledge, opening up the general provisions of China's Civil Law. This is an introduction to the theoretical and practical exploration of intellectual property protection of traditional knowledge.

Regarding the protection of intellectual property rights of traditional medicine, scholars have put forward several protection models, such as, patent protection, geographical indication protection and special rights protection. With regard to the protection of intellectual property rights in folk literature and art, there are two main points of view: copyright protection and special rights protection (Wu, Handong; Liu, Xin; 2018: 77).

At the WIPO's General Assembly in 2000, it was decided to institutionalise an Inter-governmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC). During the early years, most of the IGC's work pertaining to traditional knowledge and folklore was in relation to defensive protection. The concept of positive protection is increasingly gained attention and thus is being discussed. The transition towards this direction first

took place ‘at the third session of the IGC in June 2002, for which WIPO prepared a paper called “Elements of a *Sui Generis* System for the Protection of Traditional Knowledge”. It was given a boast in the year 2003 when the WIPO General Assembly declared that the IGC’s would focus. Its attention to the international sphere of important issues and acknowledged that “no outcome of its work is excluded, including the possible development of an international instrument or instruments” (Dutfield and Suthersanen; 2008: 342-343). The IGC has come up with dual set of provisions - “the Provisions for the Protection of Traditional Knowledge, and the Provisions for the Protection of Traditional Cultural Expressions” (Dutfield and Suthersanen; 2008: 342-343) these were presented first at the eighth session of the IGC and were carried on at the following session.

The developed countries, have hardly anything to gain economically from a legal regime based “on traditional knowledge or traditional cultural expressions” (Dutfield and Suthersanen; 2008: 344). Thus, they have not shown much interest when it came to their participation in the negotiations and deliberations even when they have agreed about the existence of the IGC. The traditional knowledge holders and representatives harbour some serious concerns - WIPO’s mandate would give rise to conflicts in intellectual property and their wish for a roll back of the intellectual property regimes which they tend to find intrusive in nature. It also tends to reduce a highly complicated issue, “to the technicalities of the formal intellectual property rights of patents, copyright, trademarks, trade secrets and geographical indications” (Dutfield and Suthersanen; 2008: 342-343).

The world trade organisation (WTO) “noting the relevant provisions of the Bonn Guidelines, proposed that TRIPS be amended to provide that WTO member states must require that an applicant for a patent relating to biological materials or to traditional knowledge shall provide, as a condition to acquiring patent rights: (a) disclosure of the source and country of origin of the biological resource and of the traditional knowledge used in the invention; (b) evidence of

prior informed consent through approval of authorities under the relevant national regimes; and (c) evidence of fair and equitable benefit sharing under the national regime of the country of origin" (Dutfield and Suthersanen; 2008: 344). The WTO might not be the most appropriate forum for institutionalising new codes on positive traditional knowledge protection which would in turn necessitate "the insertion of additional text in the TRIPS Agreement or the possible deletion of existing text" (Dutfield and Suthersanen; 2008: 344).

What is the difference between property and liability regimes?

A property regime tends to give exclusive rights to the owners, "of which the right to refuse, authorise and determine conditions for access to the property in question" is integral.

"A liability regime is a 'use now pay later' system according to which use is allowed without the authorisation of the rights holders" (Dutfield and Suthersanen; 2008: 347). But it is not free to access as the former post compensation is important. "A sui generis system based on such a principle has certain advantages in countries where much of the traditional knowledge is already in wide circulation but may still be subject to the claims of the original holders" (Dutfield and Suthersanen; 2008: 347). This approach has been taken up by Peru in 2002, and has since then be known as the Regime of Protection of the Collective Knowledge of Indigenous Peoples.

Cultural heritage comprises of both tangible and intangible elements. Its urgency of protecting the tangible cultural heritage has already been established. It is only in the recent times, intangible cultural heritage and the need for its protection has garnered lime light. ICH is a wealth that is common to everyone that a direct relation to the culture and spirit of the state. Thus, protection and inheritance of the ICH has emerged as an urgent issue that the governments need to take into consideration. China is one of the richest countries in the world in terms of IHC and levies tremendous significance in the realm of protection of ICH. The United

Nations Educational, Scientific and Cultural Organisation (UNESCO) Convention for the Safeguarding of Intangible Cultural Heritage, declares the ICH as the "practices, representations, expressions, knowledge, skills–as well as the instruments, objects, artefacts and cultural spaces associated therewith–that communities, groups, in some cases, individuals recognise as part of their cultural heritage" (UNESCO : 2003).

As of June 2017, 39 properties in the UNESCO list of 'Intangible Cultural Heritage' belonged to China, and it constitutes the highest, the representative list of the intangible cultural heritage of humanity contains 31 properties, the 'List of Intangible Cultural Heritage in Need of Urgent Safeguarding' contains seven, and the Register of best safeguarding practices has one. The intangible cultural heritage can be categorised in the following, as elaborated by the Convention for the Safeguarding of Intangible Cultural Heritage adopted by the UNESCO: "a) oral traditions and expressions, including language as a vehicle of the intangible cultural heritage; b) performing arts; c) social practices, rituals and festive events; d) knowledge and practices concerning nature and the universe; and e) traditional craftsmanship" (UNESCO - ICH Convention 2003).

What is traditional knowledge?

Knowledge in simple term means to known about something, it may be some skills or practices that are developed, sustained and passed on from generation to generation within a community. According to WIPO, "Traditional knowledge often form the part of its cultural and spiritual identity" (Anderson, Jane and Kimberly Christen; 2013 and WIPO - Traditional Knowledge). However, so far, this definition has not accepted by most countries. But in general sense traditional knowledge is understood as content of knowledge as well as traditional in the form of cultural expression, including the distinctive sign and symbol associated with traditional knowledge. It can be found in a wide variety of contexts, including: agricultural, scientific, and medical, technical, medical ecological as well as biodiversity relayed knowledge. Being the oldest

civilisation in the world, China is full of diverse ICH and a colourful history. The ICH in China is the embodiment of activities performed by all sections in China comprising of all ethnicities and is "embodiment of the wisdom and civilisation of the Chinese nation" (Qing Lin and Zheng Lian; 2018:2). With the rapid advancement of the forces of globalisation and the growth in China's socio-political arena, varying degrees of threat is experienced by all the ethnic ICH groups and this threat comes from the mainstream culture. While some important ethnic cultures have started to disappear, the folk skills of China are slowly fading away.

While there were around eighty types of folk art at the Unity Yao Village alone in the 1990s, at present only ten are only remaining. The history of Zhihui Temple Beijing Music ages more than 570 years tracing since its inception when it was introduced by the imperial court to the society at large. However, due to the unwanted circumstances such as warfare and lack of demand, a mere number of 45 out of the 300 pieces of music have survived.

Benxing and Fuguang are keeping the dying music alive, who are the 26th generation to inherit the precious ICH while, the 27th-generation inheritors would not be able to reach the sample level of precision and technique as that of the original band original band did and their numbers are also increasing day by day. As a consequence, the matter of inheritance of Zhihui Temple Beijing Music is facing a dire crisis.

In context of Gu embroidery, whose historical linkages can be traced back to the Ming Dynasty, the 'inheritors intrepidly merged it with the literati painting and integrating their unique ideas into the complex needling skills, while also ensuring that it would leave an overwhelming influence on the generations to come'. It is imperative to mention that it was mandatory for the potential inheritors to be well skilled in the art of painting and calligraphy which in turn takes a substantial amount of time to master, Gu embroidery has been facing a crisis relating to lack of talent. In the contemporary times, the undergoing crisis

faced by the ICH in China might be a result of the insufficiency of popular understanding in context of protection of national culture and its importance (Qing Lin and Zheng Lian 2018: 2).

The UNESCO Universal Declaration on Cultural Diversity (2001) Article 4 states: "The defence of cultural diversity is an ethical imperative, inseparable from respect for human dignity. It implies a commitment to human rights and fundamental freedoms, in particular the rights of persons belonging to minorities and those of indigenous peoples." Handong Wu argued that as rights are interests which turn is not just constitute the pillar of rights but also create a target that focuses on which of the rights are pointed and for which specific law and institutionalised setup has been formed (Handong Wu; 2005: 63-64 and Qing Lin and Zheng Lian; 2018:3). The ICH has all throughout accepted the traditional IPR as the main and formal institution framed for safeguarding the rights over knowledge (Oguamanam, C; 2004:135-69 and Qing Lin and Zheng Lian 2018:3). ICH constitutes an intangible type. Knowledge thus, protection of the ICH as intellectual property suits the interests of the ICH. Most states and international organisations have tended to place ICH 'under protection as intellectual property'. Countries like the US and Australia have opined that usage of the IPR mechanism in order to protect the ICH as both the IPR and ICH are of similar nature. They further stated that by the simple expansion of the IPR regime and by the incorporation of orthodox knowledge the age-old knowledge can be protected.

Aimin Qi contended that content of the ICH is of extreme significance and the protection of which is dependent of a systematic approach based of the IPR mechanism based on an active innovative IPR model. He further held that the "he also suggested that anti-unfair competition law still plays an important role in underpinning the commercial exploitation of ICH and that preventing unfair competition can help realise undisclosed ICH" (Qi Aimin 2007: 15). Anling Fei stated that the laws should be protected and maintained by the people in texts,

models and so on and the ownership in context of civil and property and the IPR mechanism can be applicable in relation to the ICH (Fei Anling; 2006 15). While, Zonghui Li stated that a huge percent of the ICH receives sufficient protection from the existing IPR law along with that several administrative statutes and local regulations have focused on the protection of the ICH (Li, Zonghui: 2005: 54-57).

The contemporary IPR mechanism are not able to afford a comprehensive and scientific protection of the ICH, several states and international organisations have made attempts at exploring the possibilities of an established a *sui generis* regime in order to protect the ICH. *Sui generis* regimes that have been incorporated into national legislative bodies of specific states are the following: "registration and database, prior informed consent, benefit-sharing, disclosure of the country of origin, authorisation contracts, and respect for customary laws". Developing states in the world such like India, Turkey and Namibia have come up with a proposition of "abandoning the practice of protecting traditional knowledge under the existing IPR system and seeking special forms of protection instead" (Osei Tutu, J.J. 2011: 15).

Yuying Guan stated that for the ICH properties "who's subject and object can be ascertained", an establishment of a systematic model dealing with legal protection is an ideal however, such a model cannot be materialised in a short period of time. The diversity of the ICH makes it complex an affair to introduce a unified system of legislation. Shunde Li opined that along with the usage of the existing IPR system, introduction of a *sui generis* law for ICH might be a necessity which, would directly lead to the integration of the legislation in line with the age-old cultural expressions in traditional knowledge, 'and that for the protection of genetic resources and traditional knowledge in the narrow sense of the term', a separate law or statute may be introduced (Shunde Li: 2006: 11-12). Kangping Xu and Le Cheng stated that China should execute a sui generis law in order to protect its traditional folk literature and art, instead of the sole reliance

on copyright law. Tao Li pointed that the Intangible Cultural Heritage Law of the People's Republic of China does not include cultural relics (Tao Li; 2018: 135-45).

Is traditional knowledge a right? In sharp contrast to the economy of modern societies being knowledge based the earlier societies were completely based on resources. There has often been much discussion about the obsolete notions of traditional knowledge, culture and technologies. However, these are highly evolutionary in nature. They form the glue that binds together social cohesiveness as well as the cultural identity. People in the traditional social settings not only nourished and nurtured knowledge, they cherished them and exchanged them. The benefits arising put from trade has not only thrived on the available legal rights but also the abilities of the traditional communities to bring into their advantage both the national and international law including - access to property, intellectual property and natural resources (Dutfield and Suthersanen; 2008: 327).

Why to protect traditional knowledge?

Being the oldest civilisation in the world, China is full of diverse ICH and a colourful history. The ICH in China is the embodiment of activities performed by all sections in China comprising of all ethnicities and is "embodiment of the wisdom and civilisation of the Chinese nation" (Qing Lin and Zheng Lian 2018: 2).

The protection of traditional knowledge can be classified into - a) has a commercial value attached to it both in the local and the larger economic spectrum. b) Huge profits being made by the pharmaceutical and bio prospectors by misappropriation. Corporate biopiracy[12] require a legal action thus emerges

[12] The term 'Biopiracy' has emerged in order describe the various ways in which corporations from Western world "free-ride on the genetic resources and traditional knowledge and technologies of the developing countries." Even though these corporations often raise complains

the need to preserve the traditional knowledge. A clear-cut objective and polices and law are required to protect traditional knowledge (Dutfield and Suthersanen; 2008: 328).

With the rapid advancement of the forces of globalisation and the growth in China's socio-political arena, varying degrees of threat is experienced by all the ethnic ICH groups and this threat comes from the mainstream culture. While some important ethnic cultures have started to disappear, the folk skills of China are slowly fading away.

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about intellectual piracy against developing countries, the latter nations have countered their arguments with "their biological, scientific and cultural assets are being 'pirated' by these same businesses" (Dutfield and Suthersanen; 2008: 333).

amount of time to master, Gu embroidery has been facing a crisis relating to lack of talent. In the contemporary times, the undergoing crisis faced by the ICH in China might be a result of the insufficiency of popular understanding in context of protection of national culture and its importance (Qing Lin and Zheng Lian; 2018:2).

A traditional knowledge regime not only encourages conservation but also, boasts continuous use of knowledge in the sphere of health care and production of food to improve the lives of millions. According to the WHO, about 80 percent of the global population is still dependent on traditional medicine to cater to their primary health requirements. The high price of the pharmaceutical products might be a factor leading to this phenomenon (Dutfield and Suthersanen; 2008: 329).

Traditional agriculture is also low in terms of input and has been successful in nurturing lives for millions of years even in the most inhospitable climate. However, the factor that culminates to its diminished usage cannot be limited to them being obsolete rather an array of things such as - market economies, commercialisation of agriculture, export crops and the Green Revolution can be cited as a few reasons. Such traditional techniques of agriculture are still prevalent in most parts of the world. This continues to play a prominent role and forms the base of innovation. The tremendous range of medicinal discoveries, development and preservation can be lauded to the traditional communities from plants, forest products and herbal formulations. However, there exists a gap in the policies which could help the traditional communities and their respective nations to “capture more of the valuable” along with encouragement in the commercial sphere. Modern industries often use the traditional knowledge as an input, for example, botanical medicines, agricultural pesticides and pharmaceuticals.

“IPR, medicines, arts and crafts through guiding rules, and that to promote local legislation for ICH, it is crucial to grasp the legislative spirit and intents of the

Intangible Cultural Heritage Law of the Convention for the Safeguarding of Intangible Cultural Heritage and the Intangible Cultural Heritage Law of the People's Republic of China" (Li Tao; 2018: 135). The Intangible Cultural Heritage Law of the People's Republic of China stated that ICH comprises of all the age old cultural expressions which would be regarded as a fragment of the country's cultural heritage and have been taken forward by various generations from different ethnic identities and "physical objects and places related to such expressions" (Qing Lin and Zheng Lian; 2018:6). China boasts of 56 ethnic groups with their own unique values and cultural structure. As the ICH has been gaining more attention, the ICH marketisation is also increasing rapidly. The Chinese laws in protection of the ICH is also lagging behind, thus, the ICH infringements are also rising leading to IPR and ICH problems surfacing in the scene.

The Japanese businessmen had stolen the techniques of production of cloisonne from the Beijing Art Factory, they then had filed a patent for it culminating into a big loss for China. The Chinese medicine holds the high value in commercial terms in ICH. Some of the traditional Chinese herbal recipes which have been there for over thousands of years are now been used by several foreign pharmaceuticals and research institutes in the pursuit of developing new medicine, without any elevation of the original recipe. And thus, have managed to secure patents and mage huge profits without owing any compensation to Beijing. To cite an example, 74% "of pure medical prescriptions widely used in Western countries, such as quinine, morphine and turmeric, were discovered through ICH disclosures" (Qing Lin and Zheng Lian; 2018:7).

With the rapid strides in the arena of science and technology, reproduction of the cultural commodities has become increasingly convenient. Thus, the ICH is no more confined within the boundaries of the community of knowledge being confidential and exclusive for a specific community. Example, the Mulan which an animated picture made in the US was on the "basis of a Chinese folktale and

grossed USD 2 billion at box offices around the world. This is a typical example of unpaid use of ICH" (Qing Lin and Zheng Lian; 2018:8).

In 1986 and 1990, Paul Simon had celebrated the released two albums "Graceland" and "Rhythm of the Saints", containing traditional African and Latin American music, respectively. While the "Graceland" topped the charts for 31 weeks, and sold more than 3.5 million copies globally, "Rhythm of the Saints" sold over 1.3 million copies in the first month of release generating a huge profit (Chen W; 1993: 164-65).

The rapid advancement in the sphere of development of transportation and internet have culminated into the rise of ICH been easily available and accessible all across the globe. However, it needs to be mentioned that during such transmission the ICH holder might have to undergo a series of mental agony inflicted by insults and the 'mentally offensive uses of their ICH items', these might not only just hamper the economic interest of the holder but also undermine the confidence of the communities due to the cultural barriers and the hostility faced.

However, the authors warns that one must never overestimate the role of traditional knowledge in the sphere of industrial demand. The new abilities to screen large bulk of the natural product and then to analyse and fashion their respective DNA to suit their own preferences may leave us a thought the rising prospects of bioprospecting. However, it also seems that with the growth of biotechnology and drug discoveries the "industrial interest in the natural research" suffer. Again, interest in researching genetics does not imply interest in the traditional knowledge. Many companies have opined that they lack any such interest in the sphere of traditional knowledge (Dutfield and Suthersanen; 2008: 329-30).

Here, it is important to point out that a government in the world must take steps to utilise traditional knowledge for the cause of sustainable development. It

appear that the protection of traditional knowledge has the potentials to improve the conditions of several of the developing countries in the world by enabling greater commercialisation of their 'biological wealth' and also increasing the rate of exports of the products related to traditional knowledge. Traditional cultural expressions are also a great source of wealth not only for the communities living there but also, for the country's economy.

According to Fowler, handicrafts by artisans estimate about US$30 billion in the global market. However, they are often threatened by disappearance of the traditional set of skills required. Copying and mass scale production of such skills and handicrafts by the outsiders has emerged as a serious menace as the artisans are deprived of their fair share of earnings. Example: the native music industries in Mali and South Africa have often complained that they suffer from serious loss as due to infringements (Dutfield and Suthersanen; 2008: 331).

Convention on Biological Diversity (CBD)

Majority of countries have recognised that the "cross-border exchange of genetic resources and traditional knowledge should be carried out" according to the principles enshrined in the CBD. Reasons for rising awareness of the intellectual property rights, especially patents are the following: " a) the conviction - widely held among developing countries and NGOs - that biodiversity and associated traditional knowledge have tremendous economic potential; b) the fact that patent claims in various countries may incorporate biological and genetic material including life forms within their scope; c) the belief, also shared by developing countries and NGOs, that this feature of the patent system enables corporations to misappropriate genetic resources and associated traditional knowledge or at least to unfairly free ride on them; d) the ability of modern intellectual property law to protection the innovations produced by industries based mainly in the developed world and its inability to protect adequately those in which the developing countries are relatively well- endowed; e) the perception that as a consequence of reasons, the unequal distributions and concentrations of

patent ownership and the unequal share of benefits obtained from industrial use of biogenetic resources are closely related" (Dutfield and Suthersanen; 2008: 332).

The term Intellectual piracy has a political connotation and thus is inaccurate in nature and form, maybe deliberate. "The assumption behind it is that the copying and selling of pharmaceuticals, music CDs and films anywhere in the world is intellectual piracy irrespective of whether the works in question had patent or copyright protection under domestic laws" (Dutfield and Suthersanen; 2008: 333). Biopiracy as a term is vague and hollow and holds hardly any good in the international legal arena. 'Biopirates' thus, are the individuals and firms who are accused of one or both of the following: a) "the misappropriation of genetic resources and/or traditional knowledge through the patent system; b) the unauthorised collection for commercial ends of genetic resources and/or traditional knowledge."

Biopiracy: Since biopiracy is not confined to law but also related to morality and of fairness. "Collection and use: the unauthorised use of common traditional knowledge; the unauthorised use of traditional knowledge only found among one indigenous group; the unauthorised use of traditional knowledge acquired by deception or failure to fully disclosure the commercial motive behind the acquisition; the unauthorised use of traditional knowledge acquired on the basis of a transaction deemed to be exploitative; the unauthorised use of traditional knowledge acquired on the basis of a conviction that all such transactions are inherently exploitative (all bioprospecting is biopiracy); the commercial use of traditional knowledge on the basis of a literature search.

Patenting: a) the patent claims traditional knowledge in the form in which it was acquired; b) the patent covers a refinement of the traditional knowledge; c) patent covers an invention based on traditional knowledge and other modern/traditional knowledge" (Dutfield and Suthersanen; 2008: 334).

The answer to the question in biopiracy should depend upon how one can distinguish between the legitimate and the wrongful exploitation. The difference made has not always been obvious. Here, the answer should also incorporate the nature of the resource - whether wild or domesticated and owned or unowned. Most of the companies do not bother to give recognition as compensation to the communities which provide them with "genetic material for intellectual contributions", even if such materials are assumed to wild in nature. As thus, these resources are considered to be "gifts of nature". Here the author makes a point that the failure to recognise the contributions of the "traditional communities is a form of intellectual piracy". However, industries have responded to this allegation stating that this is not piracy as the contemporary generations have contributed very little to both conserve and develop these resources in context. The lack of nay clearly understand of the term has proved to be counterproductive in nature. If biopiracy causes sufficient harm then the country in context should take adequate measures to ban them.

Traditional knowledge and the public domain

The formation of traditional knowledge regime represents the dismissal of the public domain of practical knowledge regarding the biosphere which includes solutions on health, agricultural and environmental problems affecting many people (Dutfield and Suthersanen; 2008: 335). Traditional knowledge holders and communities have their regimes to regulate access and use of knowledge

Several traditional societies have their own "intellectual property" systems, which are at times complicated in nature. Customary rules relating to the access of and use of knowledge does not differentiate widely from the Western intellectual property formulations (Dutfield and Suthersanen; 2008: 336). Recognising, existing rights and not creating new one. The demands for traditional knowledge protection do not necessarily seek creation of new rights. Not everything in the public domain should be in the public domain. The public domain has been promoted as an opposition to the forces of privatisation - a part

of debate about intellectual property rights, where interests and claims of non-Western societies are not easily accommodated. Several representatives of the indigenous population have expressed their concern about the pro-public domain rhetoric, as it might culminate in threatening their rights.

'There's no such thing as biopiracy . . .' since one cannot arrive at a define conclusion of what biopiracy is, some sections have stated that the fears about biopiracy is an exaggeration several countries have taken up an initiative to document the cases pertaining to biopiracy and thus, to present them in international forums for debate. Peru has taken a most notable initiative and has established a National Anti-Biopiracy Commission. Its working has been reported at the WIPO IGC.

However, the author states that "one should make clear that if there is such thing as intellectual property piracy then there is certainly such a thing as biopiracy". The distinctive effect "Industry commonly expresses the view that ethno bioprospecting, and natural product research more generally, are scientifically and commercially unproven drug discovery strategies in the present era however effective they may be in the past".

In order to comply with complicated order of "traditional knowledge protection regimes and benefit-sharing, their scepticism about traditional knowledge and bioprospecting could well increase further and alternative drug discovery strategies may look even more promising" (Dutfield and Suthersanen; 2008: 337).

Traditional knowledge and international diplomacy:

The Convention on Biological Diversity (CBD), which was cemented in 1993 constitutes three objectives "the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the

benefits arising out of the utilisation of genetic resources" (Dutfield and Suthersanen; 2008: 338).

Article 8 (j) requires parties to "respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilisation of such knowledge, innovations and practices" (Dutfield and Suthersanen; 2008: 338)

"The international negotiations on the CBD that deal with legal solutions to traditional knowledge protection have considered, inter alia, the following:

a) national and international *sui generis* regimes; b) legally and non-legally binding instruments and agreements including contracts, guidelines and codes of conduct; c) specific protection measures such as traditional knowledge databases and disclosure of origin of genetic resources and associated traditional knowledge in patent applications; d) principles such as prior informed consent and respect for customary law; e) the incorporation of traditional knowledge protection provisions in the International Regime on Access and Benefit Sharing that is currently being negotiated" (Dutfield and Suthersanen; 2008: 338). The Conference of the Parties meets biannually in order to review the process of implementation of the CBD. In the 6th Meeting of the Conference of the Parties (COP-6), in The Hague in 2002, "the Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of their Utilisation were officially adopted" (Dutfield and Suthersanen; 2008: 338-42).

In order to implement the provisions of the CBD, the elements that have been considered as basic fundamentals for the requirement are : Firstly, the provision that are useful for intellectual property rights primarily includes a joint research

and also obligating to implement rights on the possession of the invention while also issuing the required licence with the mutual consent. Secondly, 'any prospect or likelihood of joint proprietorship of Intellectual property right will be firmly on the basis of extent of contribution made'. It is not be mentioned that the decision in COP -VI/24 wherein the Bonn guidelines were also annexed, calling for accumulation of information and analysing it with regard to several other issues that included : a) The role of set of laws on the customary traditions and its practices with regard to safeguarding of the genetic resources and the knowledge of tradition and customs, innovative skills, and their interconnection with the intellectual property rights; b) effectiveness of the country of its emergence and a prior disclosures of informed consent in order to assist in examining the applications of intellectual property rights while also re-scrutinising the already granted rights of intellectual property; c) practicability of globally recognised certification structure of origin as an authentication of the terms mutually agreed as well as the prior consent of information; d) the role of oral evidence of preliminary art in examining, granting and, maintaining of IP rights. These set of decisions led to inviting WIPO, to prepare a technical study, and to report study findings to the "Conference of the Parties at its seventh meeting, on methods consistent with obligations in treaties administered by the World Intellectual Property Organisation for requiring the disclosure within patent applications of, inter alia": "(a) Genetic resources utilised in the development of the claimed inventions; (b) The country of origin of genetic resources utilised in the claimed inventions; (c) Associated traditional knowledge, innovations and practices utilised in the development of the claimed inventions; (d) The source of associated traditional knowledge, innovations and practices; and (e) Evidence of prior informed consent" (Dutfield and Suthersanen; 2008: 338-42).

Conclusion

To sum up, this chapter defined the concept of patent as well as the copyright and its evolution in detail. In the concept of patent, it is said that the inventors who patented have exclusive rights to receive the financial rewards for their inventions for a given period. Generally it is considered for twenty years and after it completes its time circle, it becomes a part of the public domain. However, within the concept of patent it possesses a different category, for example, invention patents, utility model patents, and design patents and their patent time limit also differs from one another. In international patent law, the Paris convention of 1883 is considered as the basic law from where all the patent laws are deliberated. According to the Paris convention (1883) which in broad sense applies to industrial property, includes patents, and utility patents. The substantive provisions of the Paris convention is classified into three main categories: a) National treatment; b) right of priority; and c) common rules.

On the issue of copyright law, WIPO defined it as a right of author or any artist which is safeguarded by law of the land, work that falls under copyright music, painting, films or any maps, data base, advertisements and technical drawing. As mentioned above about the Paris convention which provides the basis to the patent law, the copyright derives all its legality from the Berne convention of 1886. Both patent and copyright emerged in the West, universalised through the TRIPS agreement. This agreement ensures the enforcement of minimum standard of international level to the signatory country. As mentioned in the international law, the WTO member nation-states are required to pass new legislations, so that minimum requirements laid down by the TRIPS agreement are followed. In addition, the TRIPS also demand the legal mechanism for the enforcement of IPRs.

China, for a long period of time, identified itself as a ‘Middle Kingdom’. However, after the Opium wars, China faced another realities and came under the control of colonial powers. However, in 1949, when China liberated itself

through the revolution of Chinese Communist Party, it identified itself with the socialist ideology and not promoted the notion of private property so it remained aloof from the concept of copyright and patent law. Deng Xiaoping introduced the reforms which led to the rise of China. So in the Twenty-first century - it identified itself with a peaceful rise. In this time period, China invested in research & development, and joined the international patent and copyright law. But, politically it did not let go of its old identity, as mentioned in the preamble of Chinese constitution (1982 as amended in 2018). It has declared itself to be a "developing state", and article 1 emphasises on "socialist state". The country has often been in dilemma regarding making policy choice in the legal arena. Thus, Chinese identity has been taken to study and analyse China's position and context of global policies in the sphere of law. An array of identities can be referred to as the 'identification of identity, and the relationship between identity and behaviour.' The chapter highlighted that China, in last two decades, has behaved as a nationalist state. Several studies have analysed Chinese nationalism which fall broadly in the areas of foreign, economic and security policy. All of them seem to agree with the notion that the agenda of developmental state is mobilisation of the nation for a collective endeavour. Any sort of security issues whether it is internal or external, have been used for fanning nationalism and mobilisation of the nation. Even the support to Dalai Lama during his visits to other countries is seen as a threat by the Chinese. Zhao (2000) has used the phrase 'defensive nationalism' to describe this nationalism. Defensive nationalism means the nationalism which is assertive in its appearance, but in its essence it is reactive. So this identity of China has been reflected in the context of IPR.

Over the period of time, China revised its law on patent & copyright and has taken a number of major steps to fulfil its TRIPS obligation that allows gradual integration into the economic globalisation process. On the question of traditional knowledge, WIPO defined it as a concept that is often considered as a part of spiritual and cultural identities. In general sense, it is understood as content of

knowledge as well as traditional in the form of cultural expression, including the distinctive signs and symbols associated with traditional knowledge. It can be found in a wide variety of contexts, including: agricultural, scientific, medical, technical, ecological as well as biodiversity related knowledge. As the hypotheses highlighted that if China is protecting the traditional knowledge, it has two broad reasons behind it - a) has a commercial value attached to it, both, in the local and the larger economic spectrum; b) huge profits being made by the pharmaceutical and bio prospectors by misappropriation. Corporate biopiracy require a legal action, thus, emerges the need to preserve the traditional knowledge. Clear-cut objectives, policies and laws are required to protect traditional knowledge. On the issue of technological knowledge, China who had suffered 'a century of humiliation' by foreign powers, no longer wishes to repeat the same and therefore, it promoted innovation and welcomed new technologies that are monopolised by the developed countries. At a period of time when the public domain is threatened by IP protection, creation of new rights would only accelerate the "enclosure of the public domain". Biopiracy claims have been exaggerated, as it is not a threat to traditional knowledge. When commercial users have to use knowledge which has not been available freely, they simply would not be able to use it and hence, no benefits are there to be shared with the traditional knowledge.

"China undertook international patent and copyright laws for the development of its technological knowledge and for the protection of traditional knowledge". The hypothesis had been classified into independent, intervening, and dependent variable. a) International patent and copyright laws as independent variable; b) China as intervening variable; and c) development of its technological knowledge and for the protection of traditional knowledge as dependent variable. These variables were further tested separately, and the following results were found; a) International patent and copyright law developed in the western European countries; b) it is influenced by the capitalist ideologies; c) China assessed it with TRIPS agreement.

In the part of intervening variables, what identity did China carried was tested; an orthodox socialist state, a revisionist state, a rising great power, rule based state, a nationalist state are few characteristics of Chinese state. Between 2001 and 2018, it is considered that China is identified as an economic power with nationalist characteristic, which is behaving like a revisionist state in international law. “Development of its technological knowledge and the protection of traditional knowledge” as dependent variable: a) China, as defined in the intervening variable, remained a socialist state until Deng’s reform and opening up; b) China required technology to develop its manufacturing sector, therefore its joined the TRIPS agreement; c) China was enthusiastic about the transfer of technology which happened slowly and steadily; d) in order to protect the traditional knowledge, China ratified the Convention on Biological Diversity (CBD) on 5th January 1993. As, China historically safeguarded its traditional knowledge, ratifying CBD has buttressed it position internationally.

Chapter-4

Innovation and image of China

Chapter 4

Innovation and Image of China

About Chapter: The title of the chapter, "innovation and the image of China", dealt with one of the two hypothesises. The hypothesis is "IPR law provides benefits to China's economy and further help to create the image of an innovative country". In order to articulate this hypothesis, researcher classified the hypothesis into three variables, i.e. independent, intervening and dependent variables. Chapter has analysed each variable, along with some research questions. Research questions that are discussed in this chapter are based on WTO, creative industries and China's IPR laws in relation with TRIPS agreement. Furthermore, the chapter highlighted the data on BRICS along with developed countries like the US and Japan to put vivid picture of China's innovation and highlighted its impact on the image of China.

Structure of the chapter: Background - China's IPR law - TRIPS agreement - China and WTO - Chinese economy - Beijing Consensus - China's peaceful rise - 16th Party Congress - China's investment in innovation - China's new image - Conclusion

Background

In this chapter it would be interesting to learn about China's access to the international organisations. As mentioned earlier, China had amended its certain laws, in advance, before it joined the WTO in 2001, such as the patent law 2000, its trademark law was revised in 2001; Copyright law was further revised in 2001, along with other IPR laws were amended according to the international norms (Wu Handong and Liu Xin; 2018: 76). In addition to these laws, there were other laws too, that included the laws on 'Safety of New Plant Varieties Guidelines'; protection of 'Layout Schemes of integrated Circuits'; 'Guidelines on the Protection of Geographical Indication Products', etc., with some other IPR

laws were also issued in 1997, 2001, and 2005. So far, China has established an intellectual property legal system (Wu Handong and Liu Xin; 2018: 76). Simultaneously, in the political arena, the peaceful transition in the 16th Party Congress symbolised a new beginning and exhibited the newly formed leadership's role and determination of endorsing the theories of Deng Xiaoping and the "three represents", while making the agenda of development as administration's priority in the existing Chinese political system. The smooth transition of power at the top levels of leadership is the illustration of a new change in the political environment of the country and it is only expanding its roots far and deep (Zheng Bijian; 2005). According to Chen Denming, the former Commerce minister of China, in 2001, the Chinese political leadership "facing multiple difficulties and grave challenges... made a broad commitment regarding trade in goods, services, and intellectual property rights". In this background, this chapter would highlight the following aspects- China's IPR law, TRIPS agreement, China and WTO, Chinese economy, Beijing consensus, China's peaceful rise, 16th Party Congress, China's investment in innovation, and China's new image. The purpose to deal with these aspects is to verify the hypothesis - "IPR laws provide benefits to China's economy and further helps to create the image of an innovative country". This hypothesis would be classified into three different categories. The classifications are: independent variable, intermediate Variable and dependent Variable. Here, independent variable would be "IPR laws", where as "IPR laws provide benefits to China's economy" would be considered as intermediate variable and dependent variable: "create the image of an innovative country".

Development of IP law in China

The first section followed by the background dealt with the independent variable. Almost four decades of expeditious growth in the Chinese GDP brought some changes in almost all aspects of life in China. Be it a legal aspects, political aspect and its relations with the world. In legal system it could be said that it

evolved gradually, and amended itself to cope with the international law of patent and other IP law. China has entered into the fast track of intellectual property law since reform and opening up. Trademark law, patent law etc. Rules and regulations on intellectual property have been promulgated successively, and reasonably complete intellectual property has gradually been developed. However, as mentioned in the intermediate variable the framework of intellectual property rights has provided platform for economic growth along with scientific and technical advancement in China.

The TRIPS Agreement and IP safeguard in China

China in its task of advancing with the open reform policy with very limited options further is in necessity of strengthening and establishing a robust protection system for its Intellectual Property Rights. Ever since 1982, the Chinese leadership has enacted and publicised a chain of laws and regulation on IPR, while also adhering to more than 10 international conventions along with one protocol in the field of intellectual property (Zheng Chengsi, 1998: 219). As per the 'General Principles of Civil Code', all the international treaties and conventions that China signs, it becomes a laws of the land as per the Chinese domestic rules and regulations in accordance with the treaty, barring those provision where the country in print has objected or had addressed its reservations. China legislative body has no obligation under the treaty to publicise any kind of act or convention as its domestic law unlike in the case of conventional type of Anglo-American legal arrangement (Zheng Chengsi; 1998: 220).

There are three different arm of the Chinese legislative body. The first among them is the powerful National People's Congress and Standing Committee. It is one of the most powerful bodies in the Chinese political structure. Legislation passed by this body will automatically overrule any other legislation passed by any other body if the particular legislation is on same issue or matter. After this all powerful body comes the State council. The primary role of State Councils is

to publish the ‘administrative statues’. The courts in the country derive their arguments and decisions of the cases based on the legislations by these two bodies. The third position is of the departments that operate under the supervision of the State councils. This body also has more or less the same kind of role to play as it also publishes the rules and regulations, government orders and the various government circulations. At the local level, it is the administrative authorities who along with their all other responsibilities also are supposed to register these rules in order to successfully enforce the IPR’s. At the level of courts, they are not obligated while deciding the fate of the case to solely rely on these rules and regulations, however the courts can certainly make reference of these set of rules as and when the need arises.

The Implementation of Certain TRIPS Agreement before joining WTO:

China was not the member of the World Trade Organisation (WTO) (GATT, 1995) until 1990’s, however it made sure through its delegations to be part of all its debates and discussions related to the TRIPS agreement till 1991. Towards the end of 1991, the While China was in the process of bringing amendments in its patent laws it was then only that the ‘Dunkel Text’ of the TRIPS was declared. At this moment, there was wide anticipation among the Chinese nationals that Chinese leadership would rejoin the GATT by 1992 or latest by 1993. After China’s entry into the group, the Chinese legislative body in order to avoid another amendment process in its patent law, recommend that any further the law be amended as per the provisions laid down in the TRIPS pact.

In September 1992, when the first modification to the Patent Law was approved by the Standing Committee of National People’s Congress, it came quite close to the TRIPS Agreement. Hence, it was decided to modify the law according to the same agreement with the following points: a) In the Article 11 of the newly amended law the Importation right will be further included. The earlier Patent law passed in 1984 did not have the provision of such rights; b) In the earlier law passed in 1984, under the provisions of Article 25 the pharmaceutical products

and various of its materials that were acquired by chemical processing were excluded, have been under the new amendments in the patent law been included; c) In the Article 45, as per the new provisions, the time duration with regard to invention patent has been extended for larger period from 15 to 20 years. While the change of duration has also been extended for design patent which has been extended from the period of 5 years to (maximum renewable period of 8 years) 10 years without the need of renewing; d) There would be limitations fixed in the process of granting of the compulsory license apart from those mentioned in the Chapter 6 of the patent law passed in 1984. It would be worth mentioning that Rules 68 and 69 while the articles ranging from 51-58 of the implementing regulations have too many that are almost very common to TRIPS Agreements Article 31 (Zheng Chengsi; 1998: 221).

Furthermore, it was in January 1993 that the Pharmaceutical Product Administrative Protection Guidelines, along with chemical substances that were used in Agriculture Administrative Rules were individually put to publication and was enacted by the Ministry of Agriculture under the State Council and also by the Medicine Bureau, respectively. The major portions of these regulations: what are mentioned in the TRIPS Agreements Article 70 (8th-9th clauses). The major dissimilarity between the two is that the Chinese regulations provides the rights of selling, producing, using among others, while the TRIPS Agreement only provides its members to allow the legal holder to have the special rights to place its products and materials in the market place.

The Trademark Law of 1982 was modified during the same time as the Patent Law. The amendment was passed and issued in the year succeeding the modified Patent Law's publication. Certain necessities specified by the TRIPS Agreement were encompassed in the amendment. The Standing Committee of the National People's Congress issued the Special Rules for the Criminal Sanction on Counterfeiting of Registered Trademark in March 1993, which met the prerequisites of Article 61 of the TRIPS Agreement.

Under its directions and command the State Industrial and Commercial Administration fulfilling its responsibilities had safeguarded various notable trademarks in accordance with the Paris Agreement and the provisions mentioned in the TRIPS Agreement, way before the presence of WTO. For instance, since the 'marlboro' remains as a major cigarette smoked globally, its illegal use of its mark by a Chinese company manufacturing wine was terminated. The argument that follows was that the marlboro is a cigarette while could potentially mislead the consumer perceiving that the particular wine was being manufactured by the same 'Marlboro' that produces cigarette. The circumstances like these are comprehensively covered by the Article 16 (3) of the TRIPS Agreement.

Article 10 of China's Unfair Competition Law 1993, that mentions the provisions of protecting the trade secrets is very similar to the TRIPS Agreement's Article 39 (Clauses 1 and 2). Though China does not have the membership of the WTO, it has undeniably made various clauses of the TRIPS Agreement as the model of its various rules and legislations almost a year in advance of the conclusion of the TRIPS and WTO agreement took place.

In July 1995, the "Guidelines for the protection of Intellectual Property" by the Customs Authority was released by the State Council of China. The provisions of these regulations are mentioned in Article 51-60 of the TRIPS Agreements. Then, in 1996, China's State Industrial and Commercial Administration announced some actions in order to safeguard and administer certain notable trademarks in a more efficient manner in accordance with the provisions of the TRIPS Agreement and the Paris Convention.

There have been various instances of arguments and the following judgments by the Chinese courts that have directly been drawn from the guidelines of the TRIPS Agreement. For an instance from 1995 where the Beijing Intermediate Court, while dealing with the matter of Walt Disney Production vs. Beijing Publisher and Co. solely extracted famed principles of the Sino-U.S. agreement

on Intellectual Property Right. This agreement also has too many provisions from the above mentioned international treaties and simultaneously various parts of it also consists of national laws of China. In the same context, it is worth mentioning that the agreements on Intellectual Property Rights between Sino-U.S that took place in the following order 1992, 1995 and 1996, culminated after agreement based on Berne Agreement, Paris Convention and the TRIPS Agreement (Copyright World; 1996:19-20).

China and WTO

WTO is a vast organisation with 164 members that sums up to an approx. of 98% international trade. It functions with the help of three pillared mechanisms of "trade negotiations, transparency and notification, and a binding dispute settlement mechanism not seen in any other international organizations" (Lu, Xiankun 2019: 29), it also operates with a vast array of rules and regulations that widely cover diverse aspects of international trade. Thereby, creating an amiable environment of hustle free trade and transactions and running the world economy smoothly.

One of the key features of WTO is its Dispute settlement mechanism. The process of dispute settlement at the WTO also calls for the institutionalisation of dispute settlement at the local level. The function of the WTO is not confined to laying the code in the realm of international trade but in fact prescribes the institutionalisation of dispute settlement mechanism for the unhindered implementation of the code. The WTO Trade Policy Review Mechanism (TPRM) is responsible to review the entire procedure. Thus, it can be argued that the WTO dispute settlement mechanism also brings clarity at the domestic level (Quereshi; 2019: 142).

Has China been facing discrimination in the WTO in the last two decades?

PRC has experienced rapid economic growth in the last three decades which is a product of export-oriented economy relying on FDI, low labour cost and input along with government subsidies. However, this economic growth has earned China the fame for manufacturing and producing low-quality commodities without recognising the concern for the environment and production standards. The Chinese government has penetrated to almost every aspect of the country by applying the governmental - interventionist model. Such mechanisms could be seen in the country's policies relating to its currency, exchange rates, FDI, subsidies in exports etc. However, the country has pursed policies that stand against the norms of international organisations such as the WTO and the IMF (Mercurio; 2012: 23).

Standing as this juncture of time (China in 2006), China has now realised the importance of innovation in order to maintain its growing economic pace and development. China has thus accepted that it must take initiatives to protect and enforce IPRs to boast production processes. China joining the WTO has acted as a positive catalyst in this regard and to make the Chinese law in line with the TRIPS (Mercurio; 2012: 24).

China has emerged as the leading IP infringer in the world. Patents are also infringed by China both industrial magnets and technological. Membership to the WTO has ironically has liberalised the policies regarding trade along with the growth of e-commerce and internet this is turn has culminated in the rise of piracy. While some state that piracy consists of 15 to 20 percent of all products produced in China. Also, that about 90 percent of software used in China is pirated in nature. Interesting to note that around 85 percent of the infringed products seized at the European Union borders trace their origin to China which includes 90 percent of goods booked under trademark infringement (Mercurio; 2012: 24).

China and WTO: The First Decade

A decade old membership of China in the WTO in which number of laws incorporated and several changes were made to abide by the clause of its Protocol of Accession (Lisa Toohey: 2011; 788). However, irrespective of the new changes were introduced, China has always been at the centre of all debates - ranging from that of currency control to equal access of foreign companies.

The Beijing's participation over trade related disputes in the organisation in the last 10 years and aims at assessing the broader significance of the trade disputes in the backdrop of China's evolution in the global adjudication system. Thus, the disputes between Beijing and its trade partners are not only symbolic in nature but also pragmatic in approach.

The first case of Chinese involvement in the WTO was the 2002 *Steel Safeguard Case* (Lisa Toohey: 2011; 789). The analysis on Chinese involvement in the case have endorsed the perception the dispute settlement mechanism of the WTO was immensely important. The VAT Case of 2004 initiated by the USA, was China's first-time experience in the WTO - DSM as a respondent. The prompt settlement of the case along with the mutually agreed upon solution was informed to the WTO. This led to several indication that the prompt action was taken to save Beijing's face, also in order to avoid confrontation with Taiwan. This in turn reflects the Chinese culture, "Confucian reluctance to engage in litigation" (Lisa Toohey: 2011; 790).

Chinese participation in the WTO dispute settlement mechanism as third party is a striking feature. Art. 14 (11) and 10, of the DSM along with the Art. 17 (4), makes room for direct third-party involvement in proceedings. According to the Chinese government, China's direct participation in the dispute settlement proceedings as third party have given trade lawyers and officials 'first hand experience', "without legal and diplomatic risks of direct involvement" (Lisa Toohey: 2011; 790).

Since the publication of 2006 WTO Trade Policy Review, there has been an intensification of foreign pressure on the subsidy system upheld by the WTO. Several members of the organisation expressed their dissatisfaction with the published report, which was viewed by them as Chinese failure to meet several of the obligations as given in clause by the WTO. With the publication of the 2006 report, many countries have taken a strict stance on Beijing and brought forth the subsidy problem to the WTO Dispute Settlement mechanism (Jessica Chia-Yuehliao: 2013: 1165). The Chinese leadership on one hand aims at adopting a laissez faire economy and on the other intends to draw the advantages of state-owned sector. The subsidies generated also owe to the non- economic reasons. The devolution of power at the administrative level in China has caused problems for the country in its application of the WTO's rules and regulation at the sub-national level (Jessica Chia-Yuehliao: 2013: 1165).

However, it has been noted that since 2008, the organisation has been faced with a lot of difficulties creating an "existential crisis" and has been falling into pieces. "Before we realize it, the WTO is already being stretchered into the ICU" (Lu, Xiankun 2019: 29).

The WTO has been actively engaged in shaping and moulding Chinese foreign trade policy. The frequent usage of the dispute settlement mechanism by China bears testimony of the fact. Especially since 2008, the usage of WTO dispute settlement litigation by China has increased as the tension due to trade friction between China and the USA hit off, slowly culminating into trade war. It has been recorded that in 2009 and 2010 all the litigations initiated in the WTO 50% and 40%, respectively. China was a proactive actor either as a complainant or a respondent. Though it was suggested then by many that China would be relying aggressively to the WTO DSU against it trading partners such as the US, however, a closer look at the Chinese involvement and usage of the WTO DSU suggest otherwise (Jessica Chia-Yuehliao: 2013: 1159).

The Doha Round witnessed the existing fissures and cracks in the organisations when the certain members accepted the Doha mandate while others did not and opined the requirement of "new approaches" (Lu, Xiankun 2019: 29).

The WTO has failed to live with the dynamics of the 21st century as the rule book has not been revised since 1995 which in turn leads to the negotiation function not been able to cater to the global economic order in the contemporary times. The constant blocking of the WTO bodies by the Trump administration the USA has led to adverse impacts in the organisation's workings, such as the dispute over the Appellate Body (AB).

In matters relating to transparency the situation is grave. In matter pertaining to subsidies, the notes by the organisation's Secretariat (G/SCM/W/546/Rev.10) points that from the year 1995 to 2017, there has been a sharp fall in the member states making notifications. "To date, 77 WTO members have not submitted subsidy notifications for 2017, 62 members still have not submitted subsidy notifications for 2015, and 55 members still have not submitted subsidy notifications for 2013" (Lu, Xiankun; 2019: 30).

Amongst all the members of the WTO, the spotlight for reforms and changes is on China. Beijing's role has gained tremendous importance in the backdrop of "unilateralism and protectionism". In the two papers - "China's Position Paper on WTO Reform" (November 2018) and "China's Proposal on WTO Reform" (May 2019), the government of China has reaffirmed its support for the required changes and reforms in the organisation (Lu, Xiankun; 2019: 30).

The WTO holds tremendous significance when it comes to China - a) Since 2001, China's access to the organisation, China has benefitted hugely; b) To uphold its "Two Centenary Goals"; c) US-China trade war

The *Punta del Este* Group noted that the "general convergence since 1947 took place among countries" which market economies by nature, liberal democratic

states with very high rate of per capita income, all these states are determined by strategic security dimensions. They further state that the relation between the US and China is unique and "poses a central challenge."

Another challenge faced by China and the other WTO members is the severe treat faced due to development and "level of contribution". With the United States aiming to end the development status of the countries along with the "special and differential treatment", while Beijing and New Delhi stands for the special and differential treatment (Lu, Xiankun 2019: 31).

Central State of Policy

The tremendous success achieved by the Dispute Settlement Mechanism of the WTO has rightfully earned it the title of the 'crown jewel' of the organisation. (Quereshi; 2019:146). Since June 2017 the mechanism has been going through tremendous strain. The strain caused is due to the US's determined refusal in allowing the vacant seats of the AB to be fulfilled in. As the decisions of the dispute settlement body's decisions needs to be in consensus in context of the appointments of the AB, the US has been freely flexing its muscles. The AB was working with less members (Quereshi; 2019:147). Provided the members of the AB does not increase by year (according to the year), the body would not be eligible to function. With the half of the AB's functioning capabilities the entire mechanism of DBS shall freeze. In such a scenario a party at the losing end could drag the case by lodging and pending appeal, as the Panel Discussion of the appeal would have no power without the AB.

Existing Explanations for China's Litigation Activity in the WTO

The Chinese reluctance to use the WTO's institution of DSS have been studied and interpreted by scholars from diverse angles. Several legal scholars opine the short span of Chinese membership in the organisation, from 2001 is the cause. Ji Wenhua noted that with China's recent accession into the organisation the state is

still at a learning procedure of the DSU mechanism (Jessica Chia-Yuehliao: 2013: 1162). Ji noted that prior to the initial phase of 2007, China participated as third party in the dispute settlement panel in order to learn and gain experience about the working of the WTO and the DSU mechanism. He further elaborated that only after gaining certain degree of clarity and experience China started filing independent complaints against the member states and thereby, took a proactive role in the litigation procedure (Jessica Chia-Yuehliao: 2013: 1162).

According to the realist perspective, China being a rational actor is aiming to maximise its interests. According to this school of thought, being a beneficiary of the liberalisation of trade, aims at keeping a low profile in order to maintain stability and avoid the occurrence of confrontations. Focusing on policy choice to cater to their national interests, they compare China with the countries - Japan and Korea of the 1980s.

Others view Chinese involvement in the WTO litigation from the perspective of culture. They contend that litigation does not stand in line with the Chinese culture. In order to maintain harmonious relation as propounded by its traditions the country prefers mutual agreement. To some, the state rule-based approach taken by china is viewed with suspicion (Jessica Chia-Yuehliao: 2013: 1163). However, all the studies fall short in explaining the importance of the domestic factors and their importance in shaping policy decisions of the country. As against the western democratic states, Chinese policy decisions are taken by the top-level leaders.

China's Subsidy Regime: Challenged In The WTO Era

At present, Chinese grand subsidy program has made it synonymous to subsidy programs. The subsidies given by China are used to attract state-owned sector and foreign investments (Jessica Chia-Yuehliao: 2013: 1164). A vast array of subsidy plans has been drawn up by China from the major companies and industries in order to provide indirect support in the form of land use rights, tax

exemption, and discounted energy. SOEs, holds tremendous significance and constitutes a major beneficiary of the country's subsidy mechanisms. However, subsidy backed Chinese economy makes itself vulnerable to the actions taken by foreign governments in the WTO Dispute Settlement mechanism as well as at the level of administration.

The international environment further poses another threat to China as it faces a sterner and stricter environment when it comes to regulations. The Treaty on Subsidies and Countervailing Measures (ASCM), is responsible for the regulation of subsidies and takes required action against the countries subsidising export as a part of the WTO organ. The Chinese access to the Accession Protocol of the WTO makes it problematic. a) It pledges to accept and maintain in line with the ASCM, it imposes restrictions on state-owned sector are not in direct involvement in export activities; b) Beijing's acceptance of the status of being a non- market economy, this gives enough space to the WTO members in identification of "dumping and subsidy margins" in surrogate countries.

Instilling Effective Dispute Settlement Instruments in Domestic Structures

In numerous ways and means the WTO has emerged to be an effective mechanism in the arena of dispute settlement when it comes to the domestic level. An elaborate array of transparency measures helps to look into the unhindered flow of domestic trade by ensuring just and speedy administration and judicial decisions in the domestic realm. The institutionalisation of adequate competent authoritative bodies mark transparency and prompt administrative decisions reviews in relation to customs. The WTO's most favoured nation ensures the cause of non- discrimination in relation to the trade flows (Quereshi; 2019:151) the WTO looks into the following:

1 in the context of intellectual property rights (IPRs), there exist a commitment to effectively manage the crisis arising out of IRPs

infringements. These processes require to be equitable along with the provision of judicial review of the decision on administration.

2 competent authorities are to safeguard and deliberate the aspects of AD/ASCM and Safeguard Agreement in respect to the trade remedies.

3 the "features of enforcement and judicial practice" is being constantly scrutinised by the member nations in the "regular trade policy review" (Quereshi; 2019:152).

Capability of the WTO Dispute Settlement Scheme in Handling the 'Trade Wars'

Trade wars during the Trump administration are of central focus. Historically speaking, trade war is no new an occurrence such as the Opium Wars. The subject matter of trade wars has been diagnosed from diverse angles such as political economy, diplomacy, economic analysis. Trade war is not only about trade conflict. The origins of the trade war might lie in a trade conflict and the interplay of trade wars take place in and outside the confinements of the WTO. Speaking about the existence of trade wars within the boundaries of the international organisation can involve multiple arrays of disputes, which also involves 'violations' of the agreement of the WTO. Trade War involves a disregard for the normative frame of the international policy goals.

In a trade war beyond the WTO, it takes a bilateral turn without any regards for the international trade orders and the economies of the other countries. From the perspective of the architect of the WTO, they have been considerate to incorporate circumstances of trade grievances culminating into trade wars. In scenarios where the existing trade wars might create some impact on investments made by foreign countries, the investor country falls within the bilateral agreements made (Quereshi; 2019: 153-4).

In extreme circumstances, the UNSC can be consulted, but contains a political underpinning, especially when the trade war actors are the UNSC permanent members. The dispute between the parties can linger outside the organisation such, "raising unbound tariff". Since the year 1995 the organisation in context has dealt with the problems of trade wars at a record level, especially in relation to the major trading states.

In context of developing an efficient dispute settlement system, both within the domestic and international realm the question and parameters of the concept of national security needs to be clearly defined and elaborated (Quereshi; 2019:154).

China Perspective

Reasons for Beijing's eagerness to enter the WTO:

Chinese leaders realised that China was performing much below its potentials. China was dealing with structural issues also and thus, China accepted "myth of Asia's miracle" theory as propounded by Paul Krugman (Lesage, Kerremans and Orbie 2003: 122). In order to keep the Chinese economy running to compete with the other superpowers globally, China had to evolve and modernise to a larger extent to boost its economy that undoubtedly remained as the quintessential need of the times. China's entry in to the organisation became even more essential "by transforming Chinese communism to a genuine free-market economy" (Lesage, Kerremans and Orbie; 2003: 123). The pro-reform leaders were thus, looking for global aid. Rational calculations coupled with strong ideological underpinnings formed the basis of China's entry into the organisation.

According to the Chinese government, membership to the WTO would help the country to reap economic benefits. Had not China joined the WTO, it had to anti-dumping rules, trade barriers and such. The US's decision whether to give China

"normal trade relations" or Chinese accession to the WTO means stability would prevail in the realm of trade (Lesage, Kerremans and Orbie 2003: 123).

Chinese membership to the WTO - through the lens of overall Chinese foreign policy:

In recent times China has demonstrated a willingness to improve relations with other countries and to get involved in the sphere of multi-lateral cooperation. In relation to the UN Peace Keeping missions, China has accepted and agreed to reduction of the WMDs. With Russia and the NATO too, China has taken a softer approach and sought to resolve border conflicts and warming of relations, respectively. A softer stance has been taken towards Taiwan also (Lesage, Kerremans and Orbie 2003: 124). Accession to the WTO has also given China to participate in the realm of international politics as a powerful and responsible actor. The cause for shift in policy might be two-fold:

Better relations with other countries such as the US and Japan is a prerequisite for economic growth and technological prowess. It is essential for the external threats to diffuse in order to achieve economic restructuring and cohesion in the domestic order.

Terms of the Agreement: Asymmetry

The controversial agreement created a sea of discontent at home. The President, Jiang Zemin and Prime Minister, Zhu Rongyi had to face severe resistance by the conservatives. In order to struggle against the criticism levied at home President Jiang Zemin personally led the deliberations and negotiations and also by-passed some important actors also.

China's determination is well demonstrated by its agreeing to the terms with the WTO and the pre-accession agreements with the United States. According to Lardy, "that the fourteen years of difficult negotiations reflect as much the reluctance of the industrialised world to let China in as the alleged slowness of

China to embrace free trade principles" (Lesage, Kerremans and Orbie; 2003 :125). It has been noticed in general, the industrialised countries of the west have time and again resorted to the usage of protectionist measures against Beijing, which stretch to an array of provisions that expand beyond those of the WTO. The "WTO-plus terms" highlight the existing biases and discriminatory treatment in two sphere - safeguards and anti-dumping.

Safeguards - The provision of WTO safeguards allows the member states to "improve quantitative restrictions on imports under certain conditions. The safeguards are executed on by the most favoured nation. The exporting state is also given enough space to retaliate against it and thereby, allowed to withdraw an equal value of trade concession. As China had been faced with immense pressure to give into the transnational safeguard clause, the agreement gave an upper hand to the US and other countries to impose a safeguard against Chinese exports" (Lesage, Kerremans and Orbie 2003: 125).

"Firstly, the criterion of "serious injury" is replaced by the weaker qualification "market disruption". Secondly, the safeguard can be imposed exclusively on Chinese products, which is a major departure from the most- favoured nation clause.

Thirdly, the procedure up to the use of safeguards against China is simpler and includes the possibility of voluntary export restraints, another exception on common WTO rules.

Fourthly, the ability to retaliate is limited compared with the normal WTO rules.

Finally, contrary to the common WTO provisions, a safeguard against China is not submitted to the normal eight-year time limit and no progressive phasing- out is required" (Lesage, Kerremans and Orbie 2003: 126).

Anti-dumping - China was also made to agree with and accept the WTO - plus terms and conditions in relation to anti-dumping. A member state has the power

to impose anti-dumping duties on the imports provided the state proves that the product is sold overseas at a price lesser than its 'normal value', the import and if it leads to serious problem to the industry. For countries in transitory stage, it essentially becomes difficult to calculate the normal value. It is however, disadvantageous for China, because "sometimes third countries are chosen where wages are higher than in China. Anyway, China accepted that for fifteen years after accession the U.S. and other WTO members can use the non-market economy methodology" (Lesage, Kerremans and Orbie 2003: 126). In context to subsidies on agricultural export, a huge concession has been made by Beijing that overshadows both the US and the EU.

Adaptation of the Trade-Related Investment Measures (TRIMs): To enhance the freedom of operation of the multinational enterprises, several rules had to be removed such as trade balancing requirements and local content requirements to mention a few. Beijing has also agreed to put an end to its age-old tradition regarding demands of technology transfer from direct foreign investors and importers.

China's agreement to adhere by the TRIPS also implies that "also in this realm it is not considered as a developing country" (Lesage, Kerremans and Orbie 2003 : 127). In order to make market access smooth, China's entire trade mechanism was intended to become tariff based. Beijing had committed to further reductions on "tariff and non-tariff barriers (mostly by 2004-2005)". This implies that the sectors protected by tariff and non-tariff barriers, by 2005 would be liberalised, such as automobile sector.

Impact on China: Some Elements

The existence of a vast range of compilations made it difficult to assess and analyse the impact on China's membership to the WTO. The assessment of the impact is based on a number of variables, which also include some variables which stand unknown till date. Membership to the WTO has boasted the already

existing procedure of restructuring, which would lead to millions losing their job. In a similar fashion, those laid off workforce, would seek employment opportunities at the expanding agricultural, manufacturing and servicing sector.

Much before joining the organisation, China had been gradually reducing the trade barriers. There was a drastic reduction in Chinese import tariffs and non-tariff barriers in the 1990s. Thus, a small range of industrial commodities was given strong protectionism such as automobiles. During Beijing's accession to the WTO, its level of trade barriers imposed was much lower than developing countries like India and Brazil. Several scholars have argued that the entry to the organisation did not call for additional concessions except that of banking and automobiles. They further stated that the potentials for China's gain due to the concessions is also vast as the "other WTO members would have to make concerning important export sectors for China such as clothing and textiles, other low-cost manufactures and a range of agricultural products" (Lesage, Kerremans and Orbie 2003 :128). In context to this, Chinese access to the WTO did not create major upheaval in important sections of the Chinese economy. However, it needs to be mentioned that due to some specific arrangements on rule-based details, for China to fully reap the benefits of market access a few more years is essential.

In comparison to other countries, China's committed effort in liberalisation of imports in the agricultural sector is much broader than that of the developing countries in the WTO. Lardy has pointed out that about 11 million lay-offs would take place in the agricultural sector alone as a result of China's entry to organisation (Lesage, Kerremans and Orbie 2003: 129). Thus, in turn would result in China's endless involvement in the transfer of the laid off agricultural workforce to labour intensive mode of production. There has been a rapid elimination of several inefficient firms and Lardy expects that a lumpsum of 500000 layoffs in the much-protected automobile sector. Those enterprises under state control were also to face massive layoffs. Steel, papermaking, automobiles,

and chemicals falls in the section of vulnerable one, Shaoguang Wang has estimated that more than 20 million industrial workforces would lose their job because of "intensified trade openness" (Lesage, Kerremans and Orbie 2003: 129). It has been predicted that a social wedge between the provinces of inland and coastal areas would take place, with the latter having an upper hand.

It has been noted that China has not been doing well and losing business in WTO's developing economies since 1994, this is because of the gradual increase in their quotas. The prospects of access to market is likely to improve in sectors such as light manufacturing, textiles and clothing, electronics, toys, computer parts, footwear, furniture, washing machine and bicycles to mention a few. An increase in foreign direct investment coupled with new employment avenues is expected in those sectors where Beijing holds comparative advantage.

The opening of Chinese market to the service sector:

Massive investments by firms in Japan and the West opportunity for Beijing to export services through, "Mode 4" GATT provisions (Lesage, Kerremans and Orbie 2003: 130). Foreign countries would gain tremendous control over the Chinese service industry, thereby making the process of restructuring difficult. Improvement in Beijing's production and service

Impact on the Global Trading System

Chinese consent to the WTO would boast might of the developing countries in the organisation. In all possibilities China is to emerge as a leader of the emerging countries in the WTO and will give a renewed vigour to the agenda of the Third World countries. China has asserted itself in the Doha Development Agenda as the flag bearer for the cause of the developing countries.

With the rise of China as the "factory of the world" it holds the potentials to hurt the economies of the industrialising states such as Mexico. "EU trade policy discourse seems to raise doubts about the compatibility of the interests of China

and the developing world within the DDA. Two issues could be highlighted: textile and labour norms" (Lesage, Kerremans and Orbie 2003: 130).

Lamy points, developing countries that are competitive in nature like India and China, enjoy unhindered access to LDC "textile and clothing to their markets, as LDCs have a comparative advantage in this sector (Lamy 25/03/2004)" (Lesage, Kerremans and Orbie 2003: 131). In relation to Beijing's entry in the G20, it can only harness the potentials if developing states such as Brazil and India, lower their comparatively high rate of tariff on textile.

"A second issue, which is related with China's export of textile and clothing, concerns the Union's traditional insistence on the insertion of core labour norms into the WTO trade regime. In Doha the EU vainly attempted to put this question on the itinerary of the new trade round. More recently, however, the trade Commissioner suggested that developing countries may actually become allies of the European Union on this issue" (Lesage, Kerremans and Orbie 2003: 131).

"The end of the quota system is bound to sharpen competition and radically change the picture. Attention will focus more on the rules governing international competition. I think the question of compliance with ILO (International Labour Organisation) conventions on fundamental social rights - banished from the arena of trade issues at Doha despite my efforts on behalf of the EU - will be back on the agenda, this time probably at the request of the very developing countries who successfully resisted it at Doha. This seems a likely prospect, given that most of the smaller textile and garment exporting developing countries will try to block the Chinese steamroller" (Lamy 25/03/2004) (Lesage, Kerremans and Orbie 2003: 131).

2. The Perspective of the United States

The United States have taken a comparatively difficult approach while dealing with China's entry into the WTO, in relation to issues such as agricultural

subsidies and anti-dumping to mention a few. China's accession in the organisation has created much upheaval in the US's economic sectors as China is viewed as potent threat.

Permanent normal trade relations (PNTR) that took place before China's entry in the WTO was highly contested by the American trade unions, notably the AFL - CIO. The agricultural sector engaged in exporting (meat, cereals, soybean to mention a few) and servicing sector (express postal, civil aviation) gained tremendously from China's entry. It was also perceived by the retailing sector that Chinese integration of textile and clothing would usher benefit to the US exporters. "The U.S. attitude towards the negotiations with China - where the U.S. took the first pitch - clearly reflected these different concerns" (Lesage, Kerremans and Orbie 2003: 133)

A Cautious Approach

The US has been lethargic in confronting the Chinese government, while there has been a rise in domestic pressure on the US government to confront Beijing. The pressure was fuelled on Bush government in the domestic arena as a by-product of the increasing US trade deficit with China and thus creating an overall trade deficit in the country. According to the author, the US government has taken cautious steps to make China fall in line with that of the WTO terms and conditions. "And up to a certain extent, China reciprocated, especially vis-à- vis the United States, as was shown by the agreements reached during the April 21, 2004 ministerial level meeting of the bilateral Joint Commission on Commerce and Trade (JCCT) in Washington DC" (Lesage, Kerremans and Orbie 2003: 133).

Along with this, commitments made by both the parties were well reflected in their stance taken both within their individual and domestic sphere. "In doing this, China could be seen as rewarding the U.S. for its caution on China's

obligations during its first two-and-a-half years of WTO membership ” (Lesage, Kerremans and Orbie 2003: 133).

Domestic Pressure in the U.S. on China's WTO Obligations

Evidently the WTO members who had raised objections to China’s access to the organisation kept a close watch as China struggled to meet the provisions of the WTO after joining it. Also, some member states have made significant contributions in creating pressure on China to accept the expansion of market access.

The Chinese law of June 6, 2001 was one of the first issues that has been raised. It was regarding the requirement of safety certificates for genetically modified organisms (GMOs). The announcement about the certificates and about the pending issuance of new rules on the conditions GMOs needed to meet in order to get them (including field tests conducted in China) caused panic among U.S. agricultural exporters - especially of soybeans. Concerns were in the first place, that “in the period in which China was determining these new rules, no GMOs would be allowed to the Chinese market anymore”. (Lesage, Kerremans and Orbie 2003: 134).

Another element in this context is regarding the time frame of issuing the new rules. “The Bush Administration succeeded in convincing the Chinese to postpone the issuance to September 20, 2003 in the hope of getting permanent approvals for several American GMOs so that export opportunities for these GMOs would not be jeopardised by the new rules” (Lesage, Kerremans and Orbie 2003: 134). This is in similar line to that of the case of application of procedures in regulatory transparency, anti-dumping. There has been an array of complaints levied against China’s acceptance to the WTO’s provisions at both the local and provincial levels.

China had missed to meet its deadline to follow the WTO's tariff quota on a diverse range of diverse primary sector products by four months. Problem in the Cotton Sector - this was in relation to the demands raised by the cotton association due to the allocation of ex-exporting processors in China. The efficiency in controlling the IP laws in China

The U.S. Response: Negotiation and Calibration

The US has undertaken the negotiated and calibrated approach in solving the problems. The approach in context is similar to that of the age-old carrot and sticks. However, in this approach there has been an over reliance of carrots (Lesage, Kerremans and Orbie 2003: 138).

The 2002 and 2003 reports of the USTR highlight the emphasis of the approach in context. This approach of negotiation and calibration the US has been a conscious actor, who does not aim at stressing Beijing too much to abide by the regulations of the WTO, as it may have some adverse influence on the Chinese government**.** The author uses USTR Robert Zorllick's statement of March 5th, 2003 in the Senate Finance Committee to substantiate this argument. The argument was on the mounting pressure created on Beijing due to the agricultural quota issue:

"But I think we also have to be careful, because they have got some protectionist interests that these could be manipulated and used. My own view is while we're never eager to go to WTO dispute resolution, we realise China is just starting the process. We want to try to work it out. We will not hesitate, if need be" (Lesage, Kerremans and Orbie 2003: 138).

He states that the United States must be careful as there is an underlying threat of their protectionist interests being used as a weapon against them. He is of the opinion that the US though never eager to use the DSU, China has been actively participating in the procedure. The US is trying to resolve the issues and would

not hesitate to take stance on it. Strategic importance is given due consideration such as the Chinese ‘preparedness to continue to play a mediating role on the question of North Korea's possible nuclear weapons’. It takes place by “issuing implicit and increasingly explicit indications that the launching of a dispute settlement case or trade remedies (such as safeguards) was imminent” (Lesage, Kerremans and Orbie 2003: 138).

The EU-China road to Geneva

Lamy argues that the problem does not fall in the realm of political problem, when compared to the huge deficit of the United States which is much urgent and broader a problem. United States has a much larger deficit with China in comparison to that of Europe. He further adds that the geopolitical threat imposed by China to the US is much greater than the lurking threat on Europe. Beijing greater role in a multipolar global order has found much acceptance by the policy makers of Europe.

The EU Chamber of Commerce in China has noted in a document that the EU commodities have been facing vast barriers in the form of non-trade tariff. Irrespective of the existing issues, the trade frictions between the EU and China have not been politicised to that extent. ‘It could indeed be argued that in the transatlantic disputes on steel tariffs and on GMOs, China and the European Union were on the same wavelength’ (Lesage, Kerremans and Orbie 2003: 144).

The two issues between EU and China that has been politicised are the following:

Chinese policy on raw materials - in the clothing and textile industry have been a mass bankruptcy in business and disruption in jobs as a product of monopolisation as undertaken by China and also other exporters of textile like Thailand, Pakistan and India. And it too has increased recently.

Intervening Variable: IPR laws provide benefits to China's economy

Ever Since China took its gigantic step of massively restructuring its economy in the period during 1990s, it has undoubtedly managed to achieve the unprecedented levels of growth and output boosting its economy flatly defying several predictions that claimed that the country would slip into financial crises its move. In fact, the country's economy also outperformed the expectations of those who were closely optimistic of its radical reforms (Bottlier; 2007: 33).

According to the Chinese White Paper (2018), for improving the property rights protection system, strengthening of IPR protection remained at centre stage. As the IPR would provide boost to the competitiveness of the Chinese economy. Simultaneously it cultivates the ecosystem for business and serves the China's own development needs. In addition "it is mentioned that China encourages technological exchange and cooperation between Chinese and foreign enterprises in China" (Xiang Bo, 2018)

However, since reform and opening up even began to grow, but Chinese leaders realised that China was performing much below its potentials. The reason behind this was itself in the Chinese structural issue and thus, China accepted "myth of Asia's miracle" theory as propounded by Paul Krugman. In order to keep the Chinese economy running to compete with at the global stage and the modernisation of the economy is essential. China's is required to amend its IPR law and assure the international community that China believe in competition and began to promote the market economy from Mao era command economy. The pro-reform leaders were thus, looking for global aid. Rational calculations coupled with strong ideological underpinnings formed the basis of China's reviving more FDI.

According to the foreign companies that China was hub of counterfeit products and this was remained a major complain against the communist party. Communist party who had idea about the struggle that China was facing on two

fronts: a) how to invite the investors and boost economy and simultaneously protect its political system. b) China, since 1986, after becoming a market economy under Deng Xiaoping's leadership made several attempts to seek the GATT membership.

Both the challenges were at its pinnacle at late 1980s. The episode of the Tiananmen Square created a wedge between China and the 'West'. The successful procedure of reform led to further complications for China.

However, Chinese success in the arena of experts and incoming FDI made the industrialised countries of the western countries to reconsider China's position of a developing state. The 1999, bombarding of the Chinese embassy in Belgrade by the NATO had further eroded the emerging prospects. Irrespective of the fissures created, the strength in conviction demonstrated by the Chinese leaders led to the agreement being signed to the WTO would help the country to reap economic benefits. Had not China joined the WTO, it had to anti-dumping rules, trade barriers and such. The US's decisions whether to give China "normal trade relations." Chinese accession to the WTO means stability would prevail in the realm of trade (Lesage, Kerremans and Orbie 2003: 123).

This segment focuses on main financial challenges in front of China and its capability to cope with these challenges after a brief description of the key features driving China's remarkable economic development over the past quarter-century and its specific approach towards the supervision of financial evolution.

Understanding past Economic Growth

China's economy exceeded optimistic scenarios from reform and opening up (1978) to joining the WTO (2001). Why did the Chinese economy outperform the rest of the world during the financial crisis? "The World Bank noted in its 1997 "China 2020" research that China's GDP in 1995 was roughly double what

the Bank had forecast in 1985." (World Bank, China 2020: Development Challenges in the New Century. Washington, D.C.: The World Bank, 1997). The bank forecasted a reduction in growth from 9.8% (1985–95 average) to 6.9% for the period 2001–10. Actual growth averaged about 10% until the end of 2006, and there are no indications of a significant slowdown in the horizon. Many people also misjudged China's influence to the rest of the world. "China is a small market that matters relatively little to the world, especially outside Asia," noted China specialist Gerald Segal, former director of the International Institute for Strategic Studies in London, stated in 1999 (Segal: 1999: 25). This viewpoint was commonly held at the time - barely eight years ago. In the wake of the 1989 Tiananmen Square uprisings, severe inflation from 1992 to 1995, the Asian financial crisis (1997–98), and the SARS pandemic, many pundits anticipated a serious economic disaster for China (2003). The financial industry was frequently seen as China's Achilles' heel, on the verge of catastrophe. The study of China's banking sector issues in Nick Lardy's 1998 book China's Unfinished Economic Revolution was spot on, but others who forecast a financial crisis based on that book were wrong. Many people underestimated China's ability to recognise and solve difficulties, as well as its commitment to achieving crucial goals. When President Clinton turned down Chinese Prime Minister Zhu Rongji's promising WTO offer in April 1999, for example (this denotes the terms on which China would agree to the WTO as a full member). For several years, China, the United States, and other affiliates of the Working Party on China's Accession had been negotiating these parameters (Bottlier 2007: 34). In April 1999, Zhu Rongji suggested terms that were nearly identical to those demanded by the US. As a result, the Chinese found it difficult to comprehend why President Clinton rejected their offer. The Chinese delegation left the US dissatisfied and perplexed. Paradoxically, the positions that the US and China eventually agreed on in December 1999 were marginally more favourable to China than those given by Zhu Rongji in April. One Billion Customers: Lessons from the Frontline of Doing Business with China, by James McGregor, describes

the final round of bilateral negotiations (New York: Free Press and Simon & Schuster, 2005) where many people feared China will abandon the process. However, by the culmination of the year, a joint agreement on entry criteria had been reached. China was adamant about joining the WTO, even if it meant accepting onerous accession criteria, because it believed it would benefit the country's national interests.

With the advantage of hindsight, the primary factors that added to China's incredible output and productivity increase over the last fifteen years may well be identified. However, there are also other factors that support the primary factor. The revision of IPR laws during the 1980s has been a crucial influence in the rise of Chinese economic output. However, there are also other variables, such as: a) leadership; b) reform consistency; c) significant domestic savings (Bottlier 2007: 33); d) labour power accessible in China; and f) China's decision to learn from other nations' experiences and accept foreign investment, such as Deng Xiaoping's Southern visit.

China's manufacturing sector witnessed average annual (labour) productivity increase of more than 20% from the beginning of China's enormous economic reform (comprising State-run Enterprise or SOE reform) in the mid-1990s until 2003. Fast (8-10 percent per year) real-wage rises, price falls to capture market share (aiding to keep price rises low internationally), and an acceptable return on capital were all possible with this level of growth. For the years 2000-2005, China's national productivity growth rate was 8.7% per year, one of the highest growth rates in the world and roughly 3.5 times the nevertheless remarkable 2.6 percent productivity growth rate in the United States. (The Conference Board's productivity progress figures in the paragraph are based on latest (i.e., published) and recent (i.e., unpublished) research. If there had been more apprehension about the environment, labour rights, and intellectual property rights, China's growth would have been slower.

Foreign observers are frequently overawed by the scope of China's issues yet underwhelmed by the country's ability to recognise and address them.

Despite major macroeconomic disparities, sectorial and local issues, and signs of mounting social disparity and rural discontent, China's national economy is now in fine condition: a) China's productivity development has remained strong since 2003; b) urban incomes are rapidly increasing; c) corporate profitability improved through 2005 (reliable figures for 2006 are not yet available); d) business confidence is high; e) the balance of payments is very robust; f) China's foreign exchange assets have surpassed $1 trillion, and its net global investment position has sharply improved b) Since the 1994 reforms, the country's overall fiscal state of affairs has vastly improved; h) the country has seen decent growth in financial-sector reform; i) recent agricultural development has been satisfactory; j) the privatisation of urban housing (1998–2003) contributed to an unparalleled urban construction boom and superior labour (and social) movement than ever before; k) inflation has been low; l) FDI influx continues to be high (Bottlier 2007: 35); m) consumer spending has been satisfactory in recent years.

Few in China, however, are satisfied with this ostensibly 'Goldilocks' condition. Aware of major environmental issues, mounting rural discontent, and other social strains, President Hu Jintao and Premier Wen Jiabao's government shifted the focus of national development from raw expansion to the quest for harmonious society and sustainable growth. China's new development model intends to increase dependence on home demand and local (independent) innovation, while also netting a larger proportion of global value added. The goal of maintaining high growth has just been added to the list of essential goals.

This whole new model is nothing more than a blueprint for a new transition. The first transition, which lasted from 1978 to 2003, was primarily focused on adopting market principles, establishing market institutions, and increasing growth in order to strengthen the country and facilitate a massive reallocation of labour from agriculture and inefficient SOEs to the non-state urban economy.

Primarily focused on enhancing China's growth quality, this second transition is predicted to result in a decrease in the significance of low-end, low-value-added manufacturing and a rise in the prominence of service industries and high-value-added manufacturing. Making China's economy more energy efficient is a crucial component of the new strategy. As a result, the two key questions are: (a) will Hu Jintao's government be able to fulfil its promise of a second transition, and (b) what would happen if this endeavour fails?

The new development priorities may very well be the right ones for China, but without significant reforms in the 'political economy', the government is unlikely to be able to carry them through. At the very least, China would need to align the incentive framework for the Chinese Communist Party (CCP) and government officials with the new development priorities, as well as grant the court more independence. In a top-down authoritarian state, raw growth is simpler to attain than a peaceful community and long-term progress. Nonetheless, China's authoritarian government has staked its reputation - perhaps even legitimacy - on accomplishing these more complex and demanding growth goals. Is this a trap that the party has made for itself? Is it possible that it has unwittingly created incentives for democratisation? What happens if no progress toward new goals is shown after a few years? Would the political system then become more authoritarian and repressive? (Bottlier 2007: 36). Is it possible that the leadership may split or lose faith in itself? Would a Polish-style Solidarity movement emerge? And just like the former Soviet Union, would a Chinese Gorbachev arise, facilitating the (unintentional) disintegration of China's political system?

China would have to overcome a number of significant challenges in order to accomplish a successful second transition: a) to lessen reliance on net exports and investment for growth; b) to lower the national savings rate and raise the consumption rate; c) to reinforce and extend the social security system to rural areas; d) to implement existing environmental standards and develop new ones; e) to provide full IPR protection to both foreign and domestic owners of such

rights; f) to change the tax system; i) to reduce China's economy's energy intensity (Energy intensity refers to the amount of energy used per dollar of GDP produced.) j) to strengthen judicial independence; k) to change the fiscal system so that lower-level governments are less reliant on extra-budgetary revenues; k) to drastically limit political influence at the business level, particularly in the monetary sector.

Some of these issues were recognised by the previous administration and are not new. What's new is that they've now been added to the list of criteria by which the government's success will be judged, not just by the world community but also by China's own people.

China’s second transition challenges :

China’s political economy had been characterised by, heavy state involvement in the economy through land ownership and numerous companies, control over the financial system, and lower-level government (Bottlier; 2007: 37) reliance on extra-budgetary revenues - is likely the most significant impediment to the second transition. China’s political economy is unlikely to be able to achieve this transformation without reforms. The current incentive framework for CCP and government officials is incompatible with China’s new development priorities; this is particularly true at the local government level, where a widespread need for extra-budgetary revenues skews development priorities, drives government involvement in local economies, and underpins much local corruption. Incentive structures would need to be tweaked to provide accountability to the people on the ground who are intended to gain from a more peaceful society, a cleaner environment, and more social fairness. To encourage and support original, “out-of-the-box”, thinking, the education system and firm-level incentives must be adjusted to encourage and facilitate more true domestic (independent) innovation.

So far, there is little evidence that the second shift, begun in 2003, is taking shape. China's external surplus has increased in recent years. A latest World Bank analysis found that not only has income disparity in China continued to increase, but also the bottom 10% of the population had an absolute income decrease from 2001 to 2003. On the plus side, there is some indication that investment growth has returned to more normal levels, and that household consumption as a percentage of GDP has stabilised, if not increased. Furthermore, while R&D spending has increased significantly (according to the Organisation for Economic Co-operation and Development (OECD), China's economy is now ranked second in the world behind the United States), genuine domestic innovation, in the opinion of most experts, remains a long way off. Besides this, while R&D spending has increased significantly (according to the Organisation for Economic Co-operation and Development [OECD], China's economy is now ranked second in the world behind the United States), genuine domestic innovation, in the opinion of most experts, remains a long way off.

Trends, hazards, and vulnerabilities: The government's ability to manage the second transition may be hampered by developments over which it has little or no control: Around 2015, China's labour force is predicted to reach a plateau and then begin to fall. In view of the proposed new labour legislation, such a change could result in significant upward pay pressures.

As the huge business restructuring that began around 1995 nears completion, productivity growth is anticipated to slow. When this happens, there will be less room for pay rises and exchange rate appreciation without job losses. Costs will continue to rise as land scarcity worsened, particularly in eastern PRC (Bottlier 2007: 38).

Chinese Economy

Chinese President Xi Jinping addressed the the World Economic Forum's annual gathering in Davos, Switzerland, in 2017 with the following statement:

“It is difficult to take opportunity of the world economy especially when the global economy is facing a crisis. There might take place a shrinkage in the global economy, this would further put stress in the relations, ‘between growth and distribution, between capital and labour, and between efficiency and equity’. He further noted that both the developing and the developed states have faced the brunt of the crisis” (Xi; 2017).

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He added that the international order should not discard the concept of economic globalisation in total. Stating it to be a natural result of human progress and thus, adapting and guiding the globalisation of the economy along with buffering its adverse impacts and usher the benefits to the countries of the world (Xi 2017).

The speech holds significance as the plenary speech given the President of the PRC on first visit to Davos. However, the speech given does not give much insight and draw much prediction regarding the material aspect of the economic policy which itself is a result of the complex dynamics of globalisation and policy making in the country.

Calling for more adaptation and enhanced guidance to the process of globalisation he implied that any change brought forth would be dynamic in nature. The goal stated in China’s broad role in the leadership in globalisation would bring positive advantages to the developing states. Thus, in the Davos address, Xi had particularly focused on China’s role in engaging with foreign assistance and its benefaction to world growth.

According to an estimate the net OECD of China is “equivalent foreign aid disbursement (minus aid received by China) over the period 2009-13 increased annually by some 11 per cent” (Kitano; 2016 and Johnston and Rudyak; 2017: 431). It has been estimated that by the year 2013, US$5.4 billion has been attained by China in its net aid, most of which had been disbursed in both loans and grants in a bilateral fashion (Kitano; 2016 and Johnston and Rudyak; 2017: 432).

There has been a fall in the net foreign aid that was estimated, from 2013-2014, to US$4.9 billion. It must be noted that the fall has not led to any impact in China’s rank in relation to global aid donors, in the 9th position. China has secured itself the position exactly after Norway, Sweden and Netherlands as foreign aid provider (Kitano; 2016), this has given adequate space for China to take an ‘adaptive’ take in the process of globalisation and governance in the economic sphere and also promoting international growth. (Song, Ligang, Ross Garnaut, Cai Fang and Lauren Johnston; 2017: 431).

The Chinese scheme of development can be illustrated in two categories - a) Era of staunch socialism and b) reform and opening up period. The first part is dominated by Mao’s ideology and his ideas with revolutionary zeal and a surge to develop. It is well known that China under the capable leadership of Mao was a product of a successful revolution in 1949. Thus, it opted for an agrarian economy along with five- year plan. It was in the later part of the 1950s, China started promoting the commune system. It was during this period of time, the Chinese authority was intensively engaged in bringing about transformation and to materialise Mao’s vision of the Great Leap Forward in order to develop China by industrialisation.

The main intention of the process of industrialisation was to create stress on the western capitalist sates. The production of steel was chosen to compete and overpower the UK within the period of 15 years. At that phase of time steel symbolised economic power. Thus, Chairman Mao focused on industrialisation

in the second five-year plan which was focused with the production of steel at a higher quantity. However, the policy could not be successful irrespective of the intense hard work. It was also at this point of time China was also faced with disaster, great famine.

Deng Xiaoping rectified the mistakes under the leadership of Mao. Instead of following the step-by-step approach, Deng opted for an approach that was more pragmatic in nature. It was on 5th March 1975, economy was declared as the national interest of the nation. “The Reports on the Work of the Government at the First Sessions of the Third and Fourth National People’s Congresses” both envisaged a two-stage development of economy: The development process had been planned step by step. In the first stage industry based economic system was to be built by 1980. The second stage followed the first one in which China would be a modern agriculture, national defence, industry, and science and technology with socialist country by the end of 20th century. These objectives could only be achieved with the help of entire party. This is a part of national interest.

However, he adhered to the “socialist principle which calls for distribution according to the quantity and quality of an individuals work” (Deng 1978). On 13th December 1978 Deng Xiaoping in a conference said, “Emancipate the mind, seek the truth from fact and unite as one in looking to the feature” mentioned that “the Central Committee has put forward the fundamental guiding principle of shifting the focus of all Party work to the four modernisations” (Deng; 1978).

Within a period of thirty years, China has emerged to be an economic superpower and a signification actor in moulding the international political order. China has at present become the second largest economy in the world and also secured the second position among the trading nations which boasts of trade rate higher than that of the EU; the country has also secured the highest share of “foreign currency reserves, USD 3.217 trillion in December of 2020” (Trading economics 2020). This has been a huge leap from what the scenario was in 1976,

"one-third of industrial enterprises in China were losing money, nation's trade was a meagre US$ 13.4 billion and its foreign exchange reserves US$ 580 million" (Li Lanqing; 2013; 15).

At present, the Chinese exports for a day has reached an equal level that was exported during the whole 1978. It needs to be highlighted that the transformation is not confined to the national economic numbers that it has reached in the last four decades but also how such mass transformation took place without any changes in the political structure of the country. The Marxist-Leninist political understanding have been co-existing in a symbiotic harmonious relationship in China. To understand and analyse the miracle achieved by China, it is essential to unravel how the Chinese Communist leaders have created an integrated system which harmoniously arranged for the co-existence of both Marx and Lenin along with that of capitalist scholars and philosophers like Adam Smith and Keynes (Li Lanqing; 2013; 15).

Learning from History

The Great Proletariat Cultural revolution of 1966 to 1976 gave rise to the economic development of China (Hu Angang: 2014). The Cultural Revolution in China had brought in ideology, political factionalisms and a close of civil war. This resulted into a human and institutionalised massacre which led to static non-agricultural production, disruption in transport sector, a shortage in the raw materials, factories being shut down and banishment of the technical Chinese population to the interior regions to 'participate in labor', where their talents were lost to China's economy (Jeffery Curtis; 2012).

Irrespective of the shortfalls the Cultural Revolution had set up the stage for reforms. Hu Angang argued, that the Cultural Revolution underlined the correct strategic commitment constitutes that biggest success of the Revolution and failing to meet the strategies would end up in a national level calamity. The Cultural Revolution showed China that ignoring the mass decision making at the

cost of the fancies and whims of an individual results in a disaster which at every cost need to be avoid (Hu Angang; 2013: 24 and Andrabi; 2015: 91).

Four Modernisations - 1975

The nation been ripped by hardships craved for a change. It was at this phase in 1975, Premier Zhou Enlai, gave a call for advancement in the technological sector along with liberalisation of the economy. The 1975 January session of the National People's Congress (NPC)[13], weak Premier Zhou stated in his last public speech that the nation should make strides to obtain "comprehensive modernisation" in the following four main arenas:

a) agriculture; b) industry, c) national defence and d) science & technology, before the turn of the century (Zhou Enlai; 1957 and Jeffery Curtis; 2012). Irrespective of Zhou's call for advancement no such steps were taken in the following three years as the old leaders still held power position which in turn countervailed the voice for reform in the system.[14]

Reform and Opening up - 1978

Deng Xiaoping had made his position firm by 1978 and the age old power holders had neutralised.[15] This initiated the start of the "Reform and Opening up" era. By "opening" to the world at large, China was inspired from its foreign experience and the economic and trade cooperation with other countries expanded which led to procurement of foreign technology, funds and expertise in management. Thus, "it blazed a new trail and greatly sped up the process of industrialisation and modernisation", thereby "enormously improving

[13] "NPC is China's top legislative body with membership close to 3000. NPC meets annually while its Standing Committee holds regular sessions in Beijing. NPC was suspended during Cultural Revolution and its session in 1975 was held after a gap of 10 years"

[14] "Four leaders notoriously called 'The Gang of Four', which included Mao Zedong's second wife Jiang Qing (1914-1991) represented the Old Guard. The Gang was purged in 1978, which led to the rise of Deng Xiaoping as China's supreme leader".

[15] "Central Committee, with over 200 members, is a main decision-making body of the CPC".

comprehensive national strength, economic power and people's living standards."

Deng can be rightfully given the credit of being the brain and architect of China's rise in the economic sphere by his vision and translating it into execution. Deng had not just written the policies but also witnessed its implementation. Through his policy programmed he ended the commune system, championed provincial autonomy and maximised output and profits to bring forth what he propounded, "socialism with Chinese characteristics" (Andrabi; 2015: 92).

Deng broke away from the then rigidity of Maoist orthodoxy and gave the call for an urgent requirement to loosen the ideological impediments, to emancipate the minds of the people, to logic, to seek the path of truth from the factual data and to unite in unison. In such a context the reform ushered by Deng was not just economic in nature but also spiritual an endeavour (Kissinger; 2011; 306). His reforms took off with phase wise weeding out the collectivised agriculture and introduced the reforms in the major industrial set up. After this the expansion process was initiated that included the process of gradual liberalisation of the prices, initiated opening to of it market to foreign trade and financing, providing much more autonomous power to the state owned and state backed enterprises, fiscal decentralisation, establishing a more diverse banking structure in the country, further strengthening its stock market and boosting the growth of its emerging private sector. In 1979, under the leadership of Deng Xiaoping, the Chinese govt launched the stringent 'One Child Policy' in order to curb the rapidly growing population and economic planning was made predictable. In the post initial phase of reforms by Deng from 1978-84, the peasants in China earned double. The renewed incentives in individual economic activities gave a boost to the private sector, it constituted almost 50% in the economy's gross national production "that had order entirely by the government fiat. Gross domestic product grew at an average of over 9 per cent throughout the 1980s." Contemporary China with its booming economy that constitutes the second

largest economy and has secured the highest position in relation to foreign interest is a brainchild of Deng. Both Deng and his comrades have left behind an everlasting legacy that is well defined in China's success, where they have pragmatically replaced the ethos of 'perpetual revolution' with 'constant reform'. The interconnection of the two factors: development and reforms have become an unparalleled characteristics of National Development and Reforms Commission (NDRC), that constitutes the main organisation for organised economic planning for Beijing (Andrabi 2015: 93).

The rule though does not comprise all but has been confined to the Han Chinese ethnic community living in urban areas. The harsh penalties such as abortion has been spared to the minorities and those living in the rural areas of the country. The policy initiated has successfully reduced the population growth from 1.3 billion to 300 million through the course of its initial twenty years.

Agricultural Reform

Agriculture was the primary point of focus in the reform scheme introduced by Deng. China was about to experience a famine when Deng can into power. A governmental report cited that about a 100 million Chinese peasants were without adequate food in 1978. Such a grave situation signalled the urgency for reforms without which a large share of China's population would wither away. For its initial step the abolition of the commune system took place in order to make agriculture de-collectivise. By introducing a household responsibility mechanism, they systematically divided the People's commune lands into private plots. This culminated into family farming. The reform measures allowed the farmers to keep their share of the produce after paying off state's share. Plus, the private management in agriculture was also legalised. This not only lifted the standard of living of the farmers and gave a boost to the rural industry but also, increased agricultural output. The initiation of agricultural reform and development led to the country's growth spurt and laid the very foundation stones for the process of "wider urbanisation/export-oriented growth processes".

China had for a longer period time incentivised its development in the agricultural sector through the process of scientism and technological innovation. In the present times, China does not only produces enough to cater to the needs of its huge population but at the same time it grows various products in excess which it then exports it to other countries. China has reported a steady growth in grain production in the last 30 years (in million tons) as per the data available with the country's Annual Grain Production Source: China Statistical Yearbook 2011 (Andrabi; 2015: 94).

The first step of reform in the industrial sector was achieved by the process of 'incentivising surplus production'. The Chinese central government in 1981 had allowed certain companies to sell the surplus produced in the market after the fulfilment of their planned production quota being sold in the price which was set by the state. This had given rise to the system of dual track price, this in turn had given incentives to produce surplus. This constituted the initial step for introducing a market ordinated economy on the country. The concept of price mechanism went hand in hand with innovations. There has been an increase in price flexibility and the service sector also increased.

The primary target for the process of reform in industrialisation, steel, coal and the related industries came under prime focus. Due to the increase in focus, the production of steel and coal had increased four-fold from 1980-2000. Domestic research along with technological advancement and better managerial skills and imported machinery led to improvising of the steel technology. 'By 1995, China became the largest producer of steel'. China being the largest reservoir of coal, optimised the usage of coal as the main source of energy, which in turn would led to economic development for the next thirty years. It was important as coal was both easily available and was cheap in price. Along with the increase in production, deep seaport and a huge network of railways to connect the interior coalfields was developed, this underlines comprehensive planning.

The process of industrialisation in the country developed through the investments being made in the main generative and connected industries. By the promotion of the generative sectors and increase in the energy requirements, the economic growth was given a boast by the enhancement of material input. Following the Japanese model, at first had installed the "production units along coastal belts (Pearl and Yangtze Rivers Deltas)" (Andrabi 2015: 95). The foreign capital which was attracted by the industries play an intrinsic role in the import of technology and restructure of the industrial economy of PRC for a sustained economic growth.

Foreign Direct Investment

In the beginning phase of reforms, China had taken an important strategic decision which showed preference towards "attracting foreign investment through running equity joint ventures than to procure foreign loans, on the ground that such ventures could effectively forestall debts by way of joint investment and management, which allowed both partners to share the interests and risks" (Andrabi 2015: 96). However, in a later phase such limits became restricted in order to let all types of FDI totally foreigner owned companies as-commercial lending along with portfolio investments.

Special Economic Zones (SEZs) were created in order to use FDI. Along with foreign investments, comparatively free regulations of the bureaucratic interventions were introduced. For instance, Shenzhen and Zhuhai were the regions that experienced the establishment of two such zones, industries was formed on the deltas of the Pearl and the Yangtze rivers. This in turn promoted the growth of Southern and Eastern China as the economic growth of the state. The SEZs in Shenzhen led to a system of chain-based code of industrial learning; soon this code was pursued to the other SEZs in the country and the various clusters of industries. During the 1980s the inflow of the FDI was humble. The surge for FDI was started during the 1990s this feature can be further elaborated by the context of stability in the political arena under the leadership of President

Jiang Zemin and Premier Li Peng, they were chosen by Deng Xiaoping aftermath of the massacre of the Tiananmen Square. There has been a record of steady growth in the FDI records, except during the years of 1998 - 2000 owing from the Asian Financial Crisis. It reached a peak in the first decade of twenty-first century. (Andrabi 2015: 96).

Impact of FDI on the framework of Chinese industries:

China's economic growth was influenced by labour force, total factor productivity and economic growth theory, this has significantly contributed towards the transformation in the industrial structure, institutional change and technological development. To examine the FDI spillover effect and its significance in the growth of China, industrial structure constitutes an integral component.

Theoretically speaking, FDI, being a beneficial supplement for developing China's economic capital, holds a pivotal position in the promotion of its financial power. The rise and growth of its financial capabilities along with the national strength, the relevance of the FDI in filling up the gap of the state's economic development capital is slowly weakening. As propounded by the structural theory on economic growth, resource reconfiguration of the factors of production in diverse sectors of industry such as structural change holds more importance than that of increase in total input of production factors like that of capital and labour for ushering in development in the economic sphere in developing countries.

Thus, FDI's contribution in securing China's economic growth is not confined to the capital effect and the transfer of technological spillover effects, it might also usher in a promotion for the country's economic development and bring forth an effect on then industrial structure by direct or indirect structural adjustments in the industrial sector. "Based on the above thoughts, primarily uses the empirical method to explore the influence of FDI on China's industrial structure adjustment

from the aspects of FDI scale and FDI industrial distribution structure" (Zhao Qiong, and Niu Minyu 2013: 1015-16).

Keeping in view with the economic progress/rise, country's economic development emanates from technological progress. FDI comes with an array of ways to create an impact on economic development as according to the research framework in relation to the economic growth theory. FDI has a wide-reaching effect on the country from diverse arenas such as technology, capital, human capital, trade and natural environment as have been mentioned according to the UNCTAD framework analysis of 1992, 1999. FDI has emerged to be an essential source of changes in the technological sector of the developing states.

FDI from the MNCs have the ability to transfer advanced managerial skills, technology and marketing experience, improving the efficiency of production and factor productivity of the local firms, to the developing states. Technological advancement, similarly, plays a pivotal role in the industrial structural adjustment of the concerned country. "Industrial structure changes resulting from technology progress is considered the most lasting, vibrant and effective pathway" (Zhao Qiong and Niu Minyu; 2013: 1016).

Regression method has been taken for certain analysis as the data of FDI in sub-industry level prior to 1990 is missing. At first, the total productivity of the factor since 1978 is measured, then, an estimate is calculated based on the FDI inflows on China's Total Factor Productivity (TFP) with the help of data from 1990-2000, and lastly, the effect of FDI spillover on China's three industries is estimated by utilising the data available on sub-industry (Zhao Qiong and Niu Minyu; 2013: 1016).

As propounded by the theory of economic structuralism, the role of structural changes in economic development of the country is tremendous. L. L. Pasinetti was the first person to put forward the "structural dynamic economics" representative figure on the concept of "structural changes cause economic

growth" (Zhao Qiong, and Niu Minyu; 2013: 1018). "Rostow's development stage theory (1988) also holds that economic growth is not a single economic process that separates from industrial structure but rather a result of the changing industrial structure which make its function improve continuously" (Chilcote; 1994: 223). Robinson and Feder have also added the "structure variables to neo-classical economic growth model in their study, the result of which also confirms the importance of structural factors in relation to the growth" (Zhao Qiong, and Niu Minyu; 2013: 1018). Without an iota of doubt the major achievements made by China in its reform and open policy are very much interlinked to the continued FDI inflow, earlier empirical analysis too highlights this. In context of, question of whether FDI has similar spillover impact on all industries. "Does the industrial investment structure of FDI have effect on China's industrial structure adjustment?" (Zhao Qiong and Niu Minyu; 2013: 1016).

Theoretically speaking, in order to totally describe FDI's contribution in the success story of China's several industries and the influence on structures, specific analysis of particular industry has to be made. The secondary industry has been selected in this section as the research and the study scope of the paper is narrow due to two major factors:

1. The FDI industrial investment is quite strong in China, the MNCs have been Firstly, China's FDI industrial investment tendency is strong, multinational companies have been regarding the secondary industry as the major investment industry in China, and industry in China, and the investment in secondary can basically reflect the whole picture of the investment effect of FDI.

2. The data availability. The age-old data of the foreign firms of sub-industries are available in the statistical yearbook records. This is a good source of empirical analysis. The analysis of the FDI's impact on the structural development of secondary industries in China based on the conceptions of Model Feder (1983), "who divides a country's economy

into export sector and non-export sector and establishes a theoretical two-sector model when studying the impact of exports on a country's economy" is studied.

From the regression results one can see:

1. The diverse economic impacts of FDI in three types of industries. "From the view of coefficient W representing direct effect, the coefficients of three industries are 0.094621, 0.059142 and 0.423611 respectively, illustrating that the role FDI inflows has played in promoting China's industrial development is obvious and the degree of influence on three types of industry is successively capital-intensive industry, resource-intensive industries and labor-intensive industry, which is in line with China's economic realities". The focus point of China's FDI investments have always been the capital-intensive industries. By opening of the capital-intensive industries, it solves the problem of capital shortage and China's industrial competitiveness is also enhanced.

'From the view of coefficient D representing indirect effects, the coefficients of three types of industry are 0.100047, 0.061564 and 0.349878 respectively, and are all significant at the 1% level, indicating that there are some spillover effect of FDI on industrial development in China, and the capital-intensive industries still get maximum returns through absorbing foreign investment, illustrating that FDI inflows accelerate China's industrialisation process, and play a certain role in promoting China's industrial structure adjustment'.

In the future China should increase the magnitude of its strength in absorbing capital and foreign investment in technology intensive industry for the cause of better promotion of China's structural adjustment of the industry and to upgrade it through the process of some indirect manner such as technology spillover of the FDI, both for the backward and forward linkages of demonstrations and industries.

2. “In the regression results, the improvement of labor growth rate plays a positive role in the growth of three types of industry, indicating that labor is an essential element of industries development”. It was found in the study that the three types of industries, the impact of labour force on labour intensive industries does not constitute the largest one. The result of this might be related to the saturation of the labour demand in the industry and the policies relating to industrial adjustment in the country. In industries that are resource and capital intensive, the ration of “investment to output value and the growth rate of output value present an obvious negative correlation, which does not mean that domestic investment does not promote economic growth, but shows that the increase of economic growth rate is not necessarily accompanied by the increase of I/Y”.

International Expertise

The initial reforms yielded splendid results, the country progressed toward opening to the world beyond. It was by 1980 that China became a part of the Bretton Woods system and began to accept the loans from foreign countries on the ground of, “borrow hen to lay eggs”.

The first major amount of loan went to improve the sector of “education, laboratories and teachers training. Around this time, the United Nations Development Programme (UNDP) started operations in China”. The first projects initiated by the UNDP included the institutionalisation of overseas “on-the-job training and academic programmes, set-up of information processing centres at key government units, and the development of methods to make informed decisions within the Chinese context based on market principles”. With the help of such measures, China had successfully filled the gap of long process of isolation that it lived in away from the international community “outmoded universities, and an overall lack of access to advanced scientific equipment, information technology, and management know-how”. This constituted the main

element of modernisation in the field of science and technology - which forms the fourth of "Four Modernisations". China's entry into the WTO and the following negotiations in the process of run up to that entry led to a wide range of discussion and learning in China regarding its engagement in the world economy, which in the later phase helped its "swift integration to international trading system, and later, rising as a key player within that system" Zhao Qiong and Niu Minyu; 2013: 1016-18).

Transformation of State Owned Enterprises

The main bricks that held the Chinese economy were the huge State owned Enterprises (SOEs) which were institutionalised in the initial periods of the Mao rule, especially the transport, machinery, energy and service sectors. According to a research, the SOEs controlled centrally in 1978 accounted for about three-fourth of the production in the industries. Most of the SOEs were noted to be under performing as they were confined within the centrally planned output targets. The initial impetus from the reforms in the SOEs were inspired from liberalisation of the industrial markets which gave way for the entrance of a large number of non-state actors. "Expanded role of these non-state companies pushed the drive within SOEs to reform and stay competitive. On its part, the government also pushed for reform of managerial control rights, including the strengthening of managerial incentives through the enterprise contract responsibility system". The later phase of reform in China in relation to the SOEs involved the system of change in the asset structure which resulted from "non-state investment in the state sector. With growing non- state investment, many SOEs were reclassified as State-holding Enterprises (SHPs)". In short, few factors are - "new entry and competition, strengthened managerial control, and the accumulation of non-state assets, created the conditions for formal conversion of SOEs beginning in the latter half of the 1990s in China".

By the year 2003, the Chinese SOEs had evolved into big multinationals and thus, it an urgent requirement was felt to supervise them by the state. State

owned Assets Supervision and Administration Commission of the State Council (SASAC) was thus established in 2003.

"By assuming investment oversight of the state-owned assets, SASAC creates the institutional framework that separates the fiduciary responsibility for the state-owned assets from the government's social and public management functions" (Andrabi; 2015: 98). SASAC, similar to other centrally controlled institutions in China was replicated both at the provincial and city (region) levels. "The establishment of SASAC and related statutes and regulations creates the institutional framework to oversee SOE management reform and restructuring" (Andrabi; 2015: 98).

Model of Economic Growth - A Shift

With the launch of 12th Five Year Plan (FYP), China moved towards another phase of economic development. It stressed on the concept of 'perpetual reform' and stressed on encouraging increased domestic demand and lessen dependency on exports in coming years. The 12th FYP highlighted the priorities of Chinese leadership for pursuance of 'harmonious and peaceful development', [16] 'improving governance', 'fighting corruption', adhering to the principle of "putting people first"[17] ,and most importantly encouraging consumer demands and promoting innovation.

As per Stephan Roche (Morgan Stanley), "12th Five-Year Plan is a watershed event in the economic development of modern China. It has caused a major shift in the country's economic outlook by moving away from strong

[16] Concept of Harmonious Social Development: adopted by the Communist Party in 2006 as President Hu Jintao signature initiative.

[17] Concept of Four Comprehensives: presented by President Xi Jinping in February 2015, it spelled out to comprehensively build a moderately prosperous importance, guidelines, goals and principles of building a socialist harmonious highlights the society; coordinated development; social equity and justice; cultural harmony and the ideological and ethical foundations of social harmony; and the need to improve public administration to build a vigorous and orderly society. society, comprehensively deepen reform, comprehensively implement the rule of law, and comprehensively improve governance of Party discipline.

export/investment led development to a domestic consumers" demand triggered economic development. Since economic reforms, it is third significant shift in country's economic development plan. The 9th FYP laid the stage for ownership transition of economic resources in China. It paved the path for reforms in state owned enterprises and corporatisation of its increasingly marketise economy.

This study is not concerned with China's future economic challenges or "how far planning and reform measures" address these issues. However, by gradual shifting of its economy towards a consumption-led growth model, China has yet again showed its capability to change with changing realities and demands.

Jiang Zemin's - Three Represents

Economic success during 1980s-90s, led to unleashing of strong corporate and mercantile forces in China. In an attempt to establish relationship between CCP and newly appeared capitalist class in Chinese society President Jiang Zemin in 2000 propounded "Three Represents" theory. As per 'three represents' theory, CCP should always represent the development trend of China's advanced productive forces, the orientation of China's advanced culture, and the fundamental interests of the overwhelming majority of the people. Theory of three represents contained Jiang's belief that "economic practice and political theory were partners, that China's development needed both policy and ideology to be real world, up to date, and enabling."

Theory Three Represents paved the way for inclusion of entrepreneurs and business-persons as party members. It also helped in expanding CPC's membership. Moreover it redefined CCP's societal role, modified its core interests, and institutionalise its rule. "Three Represents were enshrined in the CPC's constitution in 2002 and in the State Constitution in 2003 (Andrabi; 2015:103).

Anti-corruption measures enhanced CPC's legitimacy. Since 1978, China has launched four anti-campaigns with distinct themes: "economic crimes, consolidating party organisations (a large number of party members who had violated party discipline or engaged in corrupt activities were punished), self-regulation of senior officials; strengthening the investigation/prosecution of large- size corruption cases and forcefully curbing unhealthy tendencies within government departments." During his tenure, Premier Zhu Rongji launched crusade against corruption, once famously remarking: "I have prepared one hundred coffins for my anti-corruption campaign- ninety nine for corrupt people, one for myself."

Convictions of former State Councillor and Minister of Public Security Zhou Yongkang and former Commerce Minister Bo Xilai, both being high-ranking CPC members shows party's conviction to end corruption. The main argument in ongoing anti-corruption movement is that "there is no member in the CPC who is above the Party's discipline; and that official and Party members will eventually pay the price if they unscrupulously pursue selfish ends or abuse their power."

Chinese government officials and scholars stress that their system is different from 'Westminster model' i.e. different from 'one vote one person' system. However its government system inherits the features of an inclusive and populist government. According to Hu Angang 'four collectives' explains the longevity of a political system despite its economic changes. These are:

(1) "Collective Collaboration - the process of collective decisions at the top-most level."

(2) "Collective Power Transition - the system of collectively selecting, evaluating, and grooming future leaders and sequencing their careers in provinces and later at the Centre."

(3) "Collective Learning and Research - a multi-faceted practice that entails expert consulting, information-sharing, international exchange, and learning from best practices."

(4) "Collective Decision-Making- a system of information exchange and consensus seeking that promotes collective decision-making".

China's model of Development

China joined the WTO in 2001. Since then remarkable achievements have been noted in both the social and economic sectors that could be classified into various factors such as : a) over the period of time it has become as one of big power in the field of economy which is terms of Gross Domestic Product (GDP); b) it has attained the position of largest exporter of merchandise; c) simultaneously it has also counted as second importer of merchandise in the international system; d) it has managed to achieve the fourth position for exporting the largest amount of commercial services in the world; e) and has been at third position globally for importing of the commercial services; f) China is also on the top notch destination choice among the developing nations for inward flowing of FDI; and g) it also remains the top investor among the developing nations for outward flowing of FDI.

However, there are number of negative aspects of China rise: a) rise of economic inequalities within country; b) pollution is another challenge for the country; c) gap between the living standard of urban and rural China; d) rise of crony capitalism e) developmental gap between coastal and western China. Meanwhile, China model of development has been categorised as a Beijing consensus by Joshua Ramo. Let us elaborate the idea of Beijing Consensus? It primarily comprises of theorems that is classified into three parts that focuses on steps to reinforce the capacity building of a developing nation in to the international sphere. a) The first part of theorem works towards reinforcing the value of transformation and innovation (Ramo; 2004: 11-12). b) The primary focus of

second theorem is to purse the model that is development centric where there is high level of considerations for factors like equality and sustainability rather than the mere luxuries. Since Chinese society is built on a structure that is shaky and mix of ambition, fear, hope, politics and misinformation, these type of chaos-theorems can contribute certain extent of meaningful organisation in the country (Ramo; 2004: 12).

This section has focused on the initial two points as propounded by the Beijing consensus which focuses on innovation and throughout development of China. During the present times, China has shown inclination toward a "Harmonious World" and securing a "well off society" with the aim to balance the problems pertaining to environment. President Xi Jinping's "New Normal Economy" have furthered a shift towards an eco-friendlier economy. The present phase is not just a model for development in China but a new strategy for international development in the areas of socio-political- economic sectors.

While, the United States pursues an unilateral policy to safeguard its interests, China on the other hand is accumulating more and more resources in order to contain the existing influence of United States in various spheres of global matters while it is also working rigorously on creating an environment where China would be able to make it very strenuous for U.S to maintain its global hegemony. In order to find answers to the question like the incompetency of instruments like engagement and when it comes to China. Instead the researchers have made sufficient attempts at driving on the basis of China's emerging power structure and asserting the arguments that in terms of comprehensively measured national power, China has remained one of the staunchest competitors of the United States in many areas of crucial sectors. They have also taken up the potentials of the implications of the approach in case it continues. The rise and development of Chins is not just limited to its territorial boundaries but is now expanding its impact in the larger sphere of global world. China has become a torch bearer for the other countries to lead them to the path of not just

development but also to be independent and fit in the global world order, to protect its own decisions and choices. To a certain extent the evolving development of China is important for the country: “I call this new physics of power and development the Beijing Consensus” (Ramo; 2004: 3).

In 1990’s period there was an economic theory known as Washington Consensus, it was highly discredited for its substance. It spoke about the “end-of-history arrogance” and nurtured the essence of bad feelings throughout the globe and the destroyed economies. Through new development model China has portrayed itself to be striving towards a more peaceful, equitable, focus on quality of growth. To put this explicitly, this entire traditional model of free trade and privatisation gets a bit into their heads. The model has shown enough flexibility to be barely called a doctrine. It does not show a simple uniform solution to the complex everyday situations. There has been firm determination in the Chinese establishment to explore more and more experiments and innovative concepts, to create a robust defence mechanism of the country and protecting its territorial boundaries, and assembling of the “tools of asymmetric power projection”. These steps can be termed as pragmatic with a touch of ideological basis too as it reflects the age old ideas of Chinese philosophy which hardly has any dissimilarities in theory and practice. While this structure has been institutionalised in the post-Deng period, the Beijing Consensus based on this pragmatism formulates the best way for the process of modernisation which is like “groping for stones to cross the river,” rather than making attempt to go for massive shock therapy. It cannot merely be termed as a product but is also a reflection of how there is a change in the country that “it is so rapid that only a very few number of people have been able to keep a track of it that includes people within China”. There has been a construct of certain guiding terms such as innovation, change and newness. These terms have very often resonated through the debates, articles and even conversation. It must be noted that the major portion of the discussion have been comprehensively debated in the think tank circles of China while also becoming a major issue of discussion in various

other government institutions especially in the time period that happened post Asian crisis. However, this framework was implemented comprehensively almost a year before the crisis. The primary idea of social change revolving around as economic change was a major conceptualisation of brain behind the Beijing Consensus. The aim of Beijing consensus was to bring in societal advancement with the help of both the governance as well as the economic factor which remained as the end objective. However, it had lost its track due to the sinister designs of the Washington consensus. The footprints of China's determined resolution in its track to development power will not be any easy task for any other nation to follow in the contemporary times. Nevertheless, even China's rise has its own share of contradictions, rigidity and various level of obstacles. Yet, it has managed to pull the attention of the developing world towards its rising global stature. Some been embedded in the commercial influence while, some appeals to the spirit of Chinese physics. There are two essential implications. The first being that if the reforms initiated by China either fails or becomes successful, the Beijing Consensus is about whole different ideas as advanced by the Washington. The second being the resurfacing of the Beijing Consensus marks an integral change in the country, transition from a young and susceptible reform process to that of a self-sufficing one, which owes determination from its internal dynamics than that of the external factors like that of the WTO membership, viral epidemics and nuclear proliferation.

The China's writing represents a combination of its self-reasoning and the understanding it has developed from after observing the limitations of globalisation around the world, and thus this phenomenon has only benefitted China as the countries are now looking towards studying the works of China. In the 'Beijing Consensus' there are many factors more like the 'Washington consensus' that do not essentially consists of issues pertaining to economic factors. These primarily consist of power and politics, quality and standard of life along with the scope of global balance of power.

As Jayanta Roy observed that, “I was happy to see that there is a hope for a developing country to outstrip the giants, in a reasonably short period of time.” In can be summarised from the Chinese perspective as, “In the contemporary times, the biggest challenges one perceive is the unequal level of gap among the north and south, these are further enumerated by the worsening situation of the environment, the issues of internationally illegal trafficking of drugs, and the rising menace of terrorism at the global level. There has been an urgent need felt to move from the agenda of power politics and switch to the more humane concept of moral politics. Apart from learning from the failures of United States to making a sustainable move to address these pertaining issues would only lead to more and more acceptance of the objectives of Beijing Consensus. The Chinese establishment has already announced the upcoming 20 years as the phase of “Great strategic importance” for the country (*Zhongyao de zhanlue jiyu*). However, it would be an exaggeration to argue that China has been using this doctrine to contest the U.S hegemony and attempting a shift in the power structure. Instead, there is widespread opinion and belief among the Chinese leaders that they would make every possible steps for a peaceful rise of the country (*heping jueqi*). However, given the times we are living in, even this approach would be needing some alteration from time to time given the needs and evolving environment in global affairs. The shift presumably seems to be in process (The Beijing Consensus: Notes on the New Physics of Chinese Power Joshua Cooper Ramo 2004: 6). Li Keqiang’s reference to innovation was quickly analysed, as stated in his 2014 speech with the aim of promoting the idea of growth and development globally through the established institutions like “South-South Climate Fund, Asian Infrastructure Investment Bank Investment (AIIB) and Silk Road Fund. It has also ensured to make substantial amount

of investment in another set of existing institutions such European Investment Bank (EIB) and the African Development Bank (AfDB) along with cooperation funds like China-Africa Industrial Capacity Cooperation Fund (CAICCF)" (Kamala and Gallagher; 2016).

China aims to expand its leadership role in global world through its 'adaptive' approach, which can certainly be derived from its earlier notion of Chinese characteristics. Firstly, it was the concept of 'trinity' that included trade, aid and investment that always existed among the core ideas of China's construct of its foreign aid policies that was framed into a structure with the "chain of knowledge creation" (Wang and Shimomura; 2015: 16) which has its origin in the Soviet and Japanese aid to China, the Chinese experience and the country's fifty years of experience in the South–South cooperation. Secondly, China, has become world's biggest economy in the terms of purchasing power parity - has been suffering from a growing labour scarcity and hence, in 2005 there has been a higher labour costs. The fall in cheap labour availability can directly be related to the growth and development of number of primary schools and the working age group population in Africa, that is certainly presenting the possibility of "demographic dividend" presently prevailing in society. (Johnston 2015a, 2015b,). (Song, Ligang, Ross Garnaut, Cai Fang and Lauren Johnston; 2017: 432-433)

Sr. No.	Countries	2013	2014	2015	2016	2017	2018
1	Brazil	36.3	36.3	34.9	33.2	31.1	33.4
2	Russia	37.2	39.1	39.3	38.5	38.8	37.9
3	China	44.7	46.6	47.5	50.6	52.5	53.1
4	India	36.2	33.7	31.7	33.6	35.5	35.2
5	South Africa	37.6	38.2	37.4	35.8	35.8	35.1
6	Japan	52.2	52.4	54	54.4	54.7	55
7	The U.S.	60.3	60.1	60.1	61.4	61.4	59.8

Source: Global Innovation Index (2013-18)

In the above mentioned table, the rise of China's economy is categorically defined over the span of years in comparison to other nations to other nations such as Brazil, India or South Africa. Among these BRICS members nations only China's economy has seen a sustainable level of rise throughout taking it economy in direct contestation with the United States rise.

Conclusion

Initially, the need of improving the technological content of the FDI constitutes the most important thing for Beijing in order to make investment, especially with regard to industries that were technology driven as well as the high-tech new age industries in the country. Then, there was a need to endorse the balancing of the distribution of the FDI, especially in the tertiary sector. Meanwhile, there was also a need to bring in more foreign capital to be placed in investments like in finance, insurance sector, consulting and to actively work for international flow

of fund in the services sector. This move would help to rationalise the industrial sector in China. Lastly, there was a necessity to enhance more and more autonomy to restructure the overall industrial sector. The Chinese establishment would have created a mechanism at both micro and macro level in order to supervise the policy work that would bring in more foreign investment.

It would be an exaggeration to argue that China's economic rise was in some way or the other accidental in nature and the external factors had too much role to play in it. After several decades of internal turmoil and invasion of its territory, followed by years of trials and tribulations in the early period of 20th century, China was determined to value the significance of freedom and its hard earned independence. However, China had to face a harsh reality and got exposed with its ideological notions and sloganeering during the Great Proletariat Cultural Revolution. This setback awakened the Chinese establishment, where, after introspection of its flawed policies during those times, made it amply clear that decision making must not be a unanimous work, rather a great deal of collective decision and discussion must go into drafting a policy for the overall development of the country. Nevertheless, China did make a comeback from its horrendous past and embarked on an economic rise in a steady and sustainable manner as the country was successful in replacing the notion of 'perpetual revolution' and instituted the idea of 'perpetual reform'. The process of reform in substance took off after identifying the fundamental issues and thus, adopting the restorative measures. After the reforms began to be implemented, the process could be concluded as rational and logical. It would also ensure that there would be no scope for any half-hearted attempt in execution of the reform process.

So, PRC moved from communist ideology to no ideology. The then leader, Deng Xiaoping was not shy in accepting that China is a poor country and therefore, was never reluctant in bringing the foreign funds. He emphasised that China should not repeat the same mistake of 1958 and develop the economy. As a pragmatic leader, Deng Xiaoping acknowledged that China do not have adequate

resource and funds. So the policy was to bring more funds and technology in the country. On 4th October 1979, Deng Xiaoping discussed the present and future economic work in which he emphasised that "we must concentrate on economic work for a long time to come" (Deng Xiaoping, 2013). Economy seemed to be means of achieving "four modernisation" of China. He compared the 'gross national product' (GNP) of China with the United States, Kuwait, Switzerland, Sweden and Norway and found that PRC stands nowhere, so the long term economic growth was required for China. He also mentioned the role of people in the economic development. "Economic work should be done in accordance with economic law. We must follow scientific methods without practising fraud or chanting empty slogans" (Deng Xiaoping 2013). Here, he also put emphasis on the realist ideas, rather than empty slogans. On 26th November 1979, Deng pointed out that "We can develop a market economy under socialism" (Deng Xiaoping, 2013). In 1982, Deng Xiaoping again emphasised that "we shall concentrate on economic development".

China's rise can be classified into three different categories. a) 1978 reform and opening up; b) 1992 Southern Tour of Deng Xiaoping c) 2001 accession to WTO. 1978 reform and opening up was a shift in China's economic policy from Mao Zedong's communist ideology to no ideology. The Slogan was "the colour of the cat does not matter as long as it catches mice". 1992 Southern tour of Deng Xiaoping was an important phase for China's development. The country had suffered trade embargo for using tanks in Tiananmen Square in 1989. In order to build trust within international community, Deng made the southern tour and after that, overseas Chinese started to invest in China.

The above modernisation scheme had been based on specified categorisation of new ideas accompanied by innovation. However, the concept of innovation had been intrinsically associated with the developed countries.

The Paris Convention is one such glaring example where monopoly had been asserted on the industrial property by the developed countries. Out of the thirteen

signatories of the Paris Convention (1883), eleven consisted of the industrialised nations. The period undergoing the process of decolonisation, particularly in 1958, though the original manuscript of the Paris Convention was revised, the overpowering dominance of the developed countries bore an imprint.

The 1967 Stockholm conference witnessed the revolutionary demand of the developing countries for revision of the imperial rules. They propagated the cause of the Global South. The campaign was joined by PRC in 1984 at Paris Convention which was a successor to the 1967 Stockholm Conference. At the same time, the country experienced an unprecedented level of production and growth, proving the predictions of financial crisis false due to the economic restructuring that was ushered in. The enormous level of production even outshone the positive predictions. This marked the era characterised by opening up to the broader world and reforms. This period also witnessed the promotion of economic nationalism in China. Economic revamping was ushered in diverse arenas, such as that of heavy industries, defence, agriculture and knowledge economy to mention a few.

“IPR laws provide benefits to China’s economy and further helps to create the image of an innovative country”. Here, independent variable would be “IPR laws”, whereas “IPR laws provide benefits to China’s economy” would be considered as intermediate variable and dependent variable: “create the image of an innovative country”.

The independent variable “IPR laws”: China had amended some of its laws before it officially joined the WTO in 2001, so that it could cope with international law. These amendments would enhance the trust among the countries, who have FDI in PRC. In other words, it is to enhance the confidence building measures in the arena of trade. Some laws were amended like, patent law of 2000, its trademark law was revised in 2001, and Copyright law was further revised in 2001 along with other IPR laws.

Simultaneously, in the political arena, the peaceful transition in the 16th Party Congress, symbolised a new beginning and exhibited the newly formed leadership role and determination of endorsing the theories of Deng Xiaoping and the "three represents", while making the agenda of economic development and political stability as administration's topmost priority in the existing Chinese political system.

However, as mentioned in the intervening variable, - 'IPR laws provide benefits to China's economy', the framework of IP rights has provided platform for economic growth along with scientific and technical advancement in China.

Ever since China took the gigantic step of massively restructuring its economy in the period during 1990s, it has, undoubtedly, managed to achieve the unprecedented levels of growth and output boosting its economy, flatly defying several predictions that claimed that the country would slip into financial crises owing to its move. In fact, the country's economy also outperformed the expectations of those who were closely optimistic of its radical reforms.

According to the Chinese White Paper (2018), for improving the property rights protection system, strengthening of IPR protection remained at centre stage. The IPR would provide boost to the competitiveness of the Chinese economy. Simultaneously, it cultivated the ecosystem for business and served China's own development needs. These aspects of intervening variable - reflect the development of dependent variable i.e., 'the image of an innovative country'. The rise of Chinese economy led to the rise in the innovation and these developments enhanced the image of China as an innovative country. This point has been proven with the data given in the global innovation index. Global innovation index shows the rising graph of China in the field of innovation. This graph of innovation has a symbiotic relation with that of the rise of Chinese economy.

Chapter-5

Conclusion

Chapter 5

Conclusion

This thesis has focused on the theoretical aspect of IPR along with the classification of each major term. The major terms here are intellectual, property and labour. The aim of the theory and classification is to articulate the concept so that it would be lucid to understand the hypothesis and the research questions. In order to understand these concepts, ideologies or different school of thoughts are also discussed in detail. These ideologies are not only taken from Western countries, but also from the ancient Chinese philosophies. Some of these schools of thought are libertarian, Confucianism and Marxism and Mencius has been dealt with while focusing on the theoretical aspect.

For instance, Marxist theory emphasised on labour. It has highlighted the concept of manual and mental labour or the intellectual labour. Indeed, the imperative point is that there lies no possibility of human activity or labour to take place without a coordination of the 'head and hand'. It is of immense significance for human beings to differentiate between the arena of both societal and personal unison of strength of manual as well as intellectual labour.

As Marx illustrated the example of spider to define the concept of labour, i.e., mental and manual labour in the Capital Volume I. He explained, in simple terms, how idea being already constructed in the virtual world needs to be translated into reality through erecting the virtual into reality by manual labour. The communist society has been characterised by a synchronised social unison of head and hand when it comes to labour. The application of manual and mental labour are also analysed by John Locke. Locke pointed out that based on labour one can create the private property.

The application of the concept of Locke's property applied on the notion of IPR. This has also brought to light few queries such as, 'Do intangible property hold

similar rights to that of tangible rights? Are there any laws (at China or international level) to safeguard intellectual property as a right?'.

From the legal aspect, several treaties at the global level surfaced mostly in the 19th and the 20th centuries. These brought with themselves a conceptual clarity of property that had been very often related to intangible property. These treaties had brought with themselves a new parameter to conceptualise the world history. The Berne Convention that focused on the concept of copyright and the Paris convention that related itself to TRIPS and industrial properties bring forth the signatories to address the problem of IP laws and thus, seek to harmonise the laws.

The very conceptualisation of property is not a new phenomenon in the study of social science and international politics. Thus, it has taken an inevitable shape in both political theory and philosophy. The historical approach of property upholds how the concept of property has undergone changes through diverse historical phases and has both inculcated and adopted such changes with the passage of time. Such changes are broad in their characteristic features and are in a continual process of evolution, never static as they are being derived from the ever changing socio-political and economic realms. Thus, it has been established that the intrinsic relationship between theoretical and practical concept of rights have moulded and reshaped the understanding of property.

However, in theory, as well as, in practice, it needs a thorough analysis, as neither the study of property is static in approach nor the generalised attitude in relation to the desirability of any specific form of property has been established.

Moreover, China on the concept of property has, throughout, rejected the idea of intellectual property being an individual owned property or private property. Thus, no legal protectionism was enjoyed by the same. Nonetheless, the ethos of Confucianism, Daoism, and Communism has never culminated into the development of IPRs.

As some of the instances, are mentioned that in ancient times China had inspired its citizens to ‘share knowledge, creation, discoveries and invention’. In the case of Zhou dynasty, the first trademarks surfaced in China nearly 3000 years ago, during the reign of the Zhou Dynasty. However, the first recorded case involving trademark did not appear until 1730s during the rule of Qing Emperor Qian Long.

At the same time, China dealt with the mechanism of Copyright which is major part of IPR. The concept of copyright can be traced back to Japan. The term copyright emerged with the combination of the terms - *han/ban* with *ken/quan*, which, respectively, means printing blocs and right to translate.

However, no one truly understood that the exclusive right of publishing work belongs to its authors; this is a form of private property.

At international level the question on copyright laws are mentioned in Berne Convention. WIPO has outlined as author’s right and is backed by the land’s law such as, films, painting, music, advertisements to mention a few. The concept of copyright traces its legal connotation to the Berne Convention (1886). Procedure and expression are the issues that distinguish a patent and a copyright. Both the concepts have resurfaced in the West and have been propagated throughout the world through the mechanism of TRIPS agreement. The agreement has culminated into ensured agreement among the signatories with the aim of ensuring minimum standard of enforcement at the global level.

According to the norms of international law, there lies a necessity for the WTO member states to legislate new laws. Enabling the TRIPS agreement encoded minimum requirements are pursued. Also, there has been a demand by the TRIPS for IPRs’ enforcement through legal measures.

Another important aspect of IPR is patent. Patents deal with the concept of intellectual legal framework. They are an instrument that safeguarded the new

inventions such as the new chips. The inventors owning a patent are given absolute right to generate remuneration that has been generated by their inventions for a specific time frame. In general, a patent stays valid for 20 years. Once the time frame allotted for the patent has been completed, the invention becomes a public property. The 1883 Paris Convention has been regarded as the root from which the patent law thrived.

According to the Paris convention (1883), which in broad sense applies to industrial property, includes utility patent (type of patent). The substantive provisions of the Paris convention is defined into three main categories: a) National treatment; b) right of priority; and c) common rules. a) As per the national treatment provision, each contracting state is bound to grant similar safeguards "to national of other contracting states that it grants to its own nationals" (Paris Convention 1883). There are also provisions for the non-contracting states' to get national treatment if one shows their domiciled and present commercial establishment in the contracting state. b) In case of patent and utility model patent, the Paris Convention provides for the right of priority. The right indicates that if first application is in any of the contracting states then the applicant might get 12 months for patent and utility models, and apply for the protection in any of the other contracting states. c) The Paris convention have common rules that all protecting states must follow: For instance, in the case of patent on invention of some common product in different contracting states, each contracting states are free to grant patent on the same product.

Having discussed on the nature of labour, development of property, and their application on IPR, it is appropriate to discuss the nature of international trade. Trade at international level are guided by WTO. The WTO has come forth with a dispute settlement mechanism for cases erupting out of counterfeit product's sales and production between different countries. The role of the organisation does not confine itself to laying of codes in the arena of trade in international

politics but also has assumed the key position of dispute settlement for implementation of the specified codes without any hindrance.

In the twenty-first century, where development is considered as the multilevel growth in science and technology, guided by innovation, and new ideas and technology. From the standpoint of innovation when development is measured, its largely connotes the western world as well as Japan (an Asian country) as developed states. On this note, it becomes a challenge for the developing countries like China to compete with the global north countries.

However, China followed the same path of economic development through FDI and transfer of technologies. When foreign investors invested in China it found that number of counterfeit products are made and sold in the same country. One of the reason behind these counterfeit product lies in the culture of Chinese i.e., copying and learning from others. Another reason is that, the lack of awareness in Chinese society regarding the IPR and rule of WTO - DSM. Last reason behind the copying is that domestic laws were not so strict, when it comes to IPR.

Moreover, in the first two decades of 21st century, the PRC is in par with the transitory phase of ‘made in China’ to ‘created in China’. Such a transitory measure from ‘made in China’ to ‘created in China’ has significantly enhanced China’s representation in the global arena. Even in the earlier days of reform and opening up, China had faced competition from the developing countries in the world, its enhanced image with the growth of power and prestige has made it a global power in the international political arena and is, thus, being compared with developed countries of the world. If reform and opening up was the overpowering policy of the Chinese government during the 1980s and 1990s, government, led by Hu Jintao, has shifted to reform and innovation, thereby, focusing on the importance of innovation and the new wave of production.

Simultaneously, it was also viewed that there was a significant fall in the FDI in the manufacturing sector of China largely due to the counterfeit production in the Chinese local market. Though in actual financial terms, China has noted a rise, a drop in the projects have occurred around 27 percent. This, in turn, culminated into the development of local creativity industries which constitute an attractive alternative. The creative industries require a lower cost of investment that brought a high profit margin, along with lesser quantity environmental degradation. An economy thriving on innovation ensures effective mechanisms to escape the surge for international dominance by the developed world. In addition, to the development of creative industries Chinese leaders amended its IPR law to cope with the TRIPS agreement with aim to attract more FDI, and further enhanced the innovation. Thus, amended IP laws reduced the counterfeit measures and attached more investment in country which further boosted the investment in research. The graph of Chinese innovation kept on rising between 2013 to 2018 as mentioned in the innovation index of TRIPS. The innovation index shows that PRC kept on increasing its ranking among the BRICS countries. Before, joining the WTO in 2001, China amended some of its IPR laws and attracted FDI's and replaced Germany as a third largest economy in 2007 and Japan in 2010 to become second largest economy. Since, 2010 it has maintained its position as an economic power. It shows that IPR laws in China work as a confidence building measures among the investors which aid in the smooth development of Chinese economy and innovation.

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