
INTELLECTUAL PROPERTY LAW PROTECTION: WHETHER TOOL OF DOMINANCE FOR DEVELOPED COUNTRIES OVER DEVELOPING COUNTRIES & LEAST DEVELOPED COUNTRIES

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ABSTRACT

Human minds have the unique ability to create new things using their intellects, making them the most intelligent creatures. The legal regime has evolved to the point where the human mind's creations have gained the status of 'property' due to inevitability. 'Intellectual Property Laws' grant exclusive rights, i.e. 'Intellectual Property Rights,' to the inventors or creators of that property, and an international organisation, i.e. WIPO, has been dedicated to maintaining the IP globally. Due to today's capitalist society, IP is more closely linked to and focused on trade and commerce. Although there have been disagreements over how best to define national rights within international frameworks, the World Trade Organization (WTO) adopted TRIPS (Trade-Related Aspects of Intellectual Property) Agreement to resolve this issue.

Harmonising national intellectual property rights with global recognition was critical for developing countries, as the primary objective was to regulate IP-related trade relations, enabling some developing countries to attract foreign investment, benefit from international trade and capital flows, and thus accelerate economic growth and progress. However, differences between developing and developed countries were also created due to an increased emphasis on international trade, economic development, and monopoly, which resulted in inequality between the two types of countries. Due to the persistent gap between theory and practice, the debate between developing and developed countries, and the excessive monopoly created by IP, it is frequently argued that IP law protection is a myth rather than a reality. Thus, the question arises as to whether IPRs are genuinely protected by international instruments dedicated to IP protection on an 'equal footing' or whether they are now being used as a tool by developed countries to accelerate their business and economy, with developing or least developed countries being explored as potential markets for trade expansion, given that IP-created monopolies benefit developed nations more than developing

nations.

A practical scenario and existing myths about intellectual property protection will be examined in this article, emphasising the ongoing debate between developing and developed countries about intellectual property protection. This article will also discuss the relationship between intellectual property rights and human rights.

Keywords- Intellectual Property, Rights Protection, Reality, Myths, Trade.

I. INTRODUCTION

The concept and recognition of IP can be traced back to the ending of the 19th Century, though the origin of the concept can be found in different regions; 'Development of IP law in European continent', 'Influence of Italian Renaissance and Industrial Revolution', 'Role played by England and France carrying IP to the colonies', 'Development of IP laws in England, France, Italy, Rome and Germany'¹ etc. are the proper justifications of the statement. Over the centuries, demand for new inventions and creations has reached such an astounding level and meeting such demand IP has undergone rapid expansion, which has caused greater usage and exploitation of IP. Due to enormous implications in the field of economy and technology, IP demands for better protection and such protection has been expanded to the international arena as well. Both developed and developing countries have provided protection for IP through national legislation, which has further been harmonised with an international framework through several international legal instruments, as IP is no longer a domain limited to individuals, rather it possesses enough significance which has involved the policy and legislation; for having a prodigious impact upon the economy, trade, technology and social development.

Moreover, trade and commerce have been globalised due to the development of transportation, communication, and technology, which have also contributed to IP's international character, as now IP can pass through from one corner of the world to another without restriction.² Unprecedented developments in the field of IP and growing attention have effected international relations, cooperation, trade and commerce and IP has become a subject matter

¹ SAYEED RAAS MASWOD AND KHAIRUL ISLAM TAJ, A HANDBOOK ON LAWS OF INTELLECTUAL PROPERTY 1-5 (6th ed. 2016).

² *Ib.* at 7.

of international concern, which undoubtedly denotes IP's importance in the international regime.³ It's assumed that IP laws encourage individuals' creativity and works by incentives, as these laws afford a number of exclusive rights to the inventors or creators of the IP, which allow them to acquire profits from their creative efforts or creations of mind and confer rights to the owner of IP to take necessary steps in preventing any sort of infringement or trespass. IP being the creation of mind or intellect, which itself is a complex subject matter and rights related to or granted over those properties are more likely to be incomprehensible- resulting in complexity to enforce. IP laws and IPRs have a significant bearing on trade and thus effect commerce. These rights create a monopoly over the IP, by which owners acquire benefits from the products or services created or invented by utilising the intellect. For such reasons, IP law and IPRs are trade centred which has turned more focus into commerce, as international trade seems to respond positively towards IPRs.

The benefits derived from IP laws and IPRs differ greatly between developing and developed nations, resulting in significant differences in IPR protection in these two groups of countries. Developed countries tend to have IP laws that provide robust protection, allowing them to obtain the maximum profit from IP. In contrast, developing countries (DCs) or least developed countries (LDCs) prefer to have comparatively weak IP protection in order to allow the general public to benefit from inventions, creations, and technologies, as well as to use IP and relevant monopolies as a source of attaining status equivalent to a developed country by accelerating the economy. However, developed countries leverage international organisations such as WIPO and WTO to put pressure on DCs and LDCs to pass and improve IP laws to safeguard developed countries' rights since such protection would end up making both DCs and LDCs more appealing places for trade and foreign investment. These disputed aspects emerging from IP, IPRs, and IP laws frequently create ambiguity as to whether IP laws are genuinely designed to protect IPRs exclusively or are more likely to be used as a tool by developed countries to improve their economic well-being by expanding IP-related trades in DCs and LDCs.

In the real world, developed countries and multinational corporations gain directly from IPRs and IP regimes rather than DCs and LDCs. They insist on strong IPRs for all nations, particularly for DCs and LDCs, which results in wealth transfer from DCs and LDCs to rich countries, widening economic divisions, which is undeniably an unequal practice that

³ Shima Zaman, *Development and Necessity of Intellectual Property Laws: Bangladesh Perspective*, 9 BILIBD 109, 109, 111 (2005).

raises serious ethical concerns.⁴ In this case, developed countries are using IP protection and the international IP system to transfer money from poor or developing countries and thus accelerate their own economic growth under the pretence of harmonising IPRs, stimulating foreign investments, capital flows, and so on.

First-world countries have structured the global IP system to include an enormous number of complicated regulations that are better suited to advancing their economies, with DCs suffering an unfair portion of the expense in comparison to the gain on the other end. All of these issues point to the 'inequality' that developed countries have imposed on DCs and LDCs, which affects the whole international IP framework, including national IP protection.

II. INTELLECTUAL PROPERTY (IP) AND INTELLECTUAL PROPERTY RIGHTS (IPRS); CRITICAL OVERVIEW

'Intellectual' means anything which relates to the intellect, i.e. mind or the ability of mind and 'Property' means something which belongs to someone and upon which that person has certain legal rights to exercise. Creations of human minds or intellects, including invention, design, trademarks etc., are referred to as 'intellectual property'.⁵ Furthermore, IP refers to legal rights arising from intellectual activity in the commercial, scientific, literary, and creative areas, with the goal of protecting inventors and/or creators, as well as goods and services by granting time-limited legal rights to regulate the exploitation of those commodities.⁶

According to WIPO Convention 1967 'Intellectual property rights include rights to literary, artistic, and scientific works; performances and performing artists, photographs, and broadcasts; inventions in all fields of human endeavour; scientific discoveries; industrial designs; trademarks, service marks, and commercial names and designations; and all other intellectual property rights.'⁷ IP means those 'goods' or 'services' which are the creation of the human mind by utilising the intellect or ability of mind; that includes but doesn't a limit-invention, artistic, literary or innovative works. The fact that the IP regime is a result of several intellectual and legal traditions which further complicates the definitional and conceptual

⁴ Arif Hossain and Shamima Parvin Lasker, *Intellectual Property Rights and Developing Countries*, 1(3) BJB 43, 43-44 (2010).

⁵ MASWOD AND TAJ, *supra* note 1, at 1.

⁶ WORLD INTELLECTUAL PROPERTY ORGANIZATION, *WIPO INTELLECTUAL PROPERTY HANDBOOK 3* (2nd ed. 2004, Reprinted 2008).

⁷ Convention Establishing the World Intellectual Property Organization, 1967.

aspects of IP,⁸ and since the adoption of The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), implementation of IPRs has been the most discussed concern on the international economy, in the national and international IP agenda.

IPRs are based on the notion that IP is the original product of the creators' intellect and they should own the work. IPRs refer to the legitimate rights granted to an author or creator to safeguard his invention or creation for a certain length of time, as well as the right to benefit from the creation or invention, as IPRs provide the inventor or creator with a monopoly on such intellectual works.⁹ These rights are specified in Article 27 of the Universal Declaration of Human Rights (UDHR), which outlines that creator of scientific, literary, or creative works have the right to get their moral and material interests protected.

There remain both moral and economic reasons for extending rights to the IP. From a moral standpoint, a person is considered to have an inherent right to his or her brain's product and is entitled to compensation to the degree that they have generated anything valuable for society: 'what one sows, so should one reap.'¹⁰ On an economic level, IPRs are meant to stimulate the public disclosure of work, enhance society's pool of ideas and information, and establish monopolies that allow the authors to profit financially from it.¹¹ Patents, utility models, designs, trademarks, copyrights, industrial designs, trade secrets, and other IPRs are among the most common. IPRs encompass the following areas, according to the TRIPS agreement: - (a) Copyrights and related rights (i.e., performers', producers', and broadcasting organisations' rights); (b) Trademarks, including service marks; (d) Industrial designs; (c) Geographical Indications, including appellations of origin; (e) Patents, which provide protection for novel plant kinds; (f) Integrated circuit layout designs (topographies); (g) Confidentiality of non-public information, such as trade secrets and test data.¹²

III. RELATIONSHIP BETWEEN HUMAN RIGHTS AND INTELLECTUAL PROPERTY RIGHTS (IPRS)

⁸ Peter Drahos, *The Universality of Intellectual Property Rights: Origins and Development*, THE WORLD INTELLECTUAL PROPERTY ORGANIZATION (Oct. 19, 2021, 8:35 PM), https://www.wipo.int/edocs/mdocs/tk/en/wipo_unhchr_ip_pnl_98/wipo_unhchr_ip_pnl_98_1.pdf.

⁹ Saha, C. N., & Bhattacharya, S. *Intellectual property rights: An overview and implications in pharmaceutical industry*, 2(2) JAPTR 88, 88–93 (2011).

¹⁰ David Vaver, *Intellectual Property Today: Of Myths and Paradoxes*, 69(1) Canadian Bar Review 98, 99 (1990).

¹¹ *Id.* at 100.

¹² Zaman, *supra* note 3, at 110.

Human rights (HR) and IPRs are two significant disciplines of law that evolved separately though have a considerable amount of inter-relationship. IPRs are legally recognised, allowing the owner of IP to own and gain profit from his creations, and thus offering IPRs holders' incentives and contributing to technological advancement. HR, on the other hand, are fundamental rights inherent for human freedom, dignity, and worth of human lives that are assigned for the benefit of humankind and recognised by States. The linkage between IPRs and HR has been recognised for decades, as evidenced by the Universal Declaration of Human Rights' (UDHR) 'science and technology-related sections',¹³ highlighting the significance of recognising such a relationship, as IPRs bear an enormous amount of prominence upon HR. The UDHR does not expressly refer to IPRs; nevertheless, it treats real property and IP separately. Article 27(2) of UDHR imposes that "Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author."¹⁴ In addition, Article 27(1) of UDHR highlights that everyone has "the right to freely participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits."¹⁵ As a result, Article 27 of UDHR has a typical dichotomy in IP law: the tension between regulations that "protect the producers of information" and rules that "guarantee the use" and "distribution of information."¹⁶ The UDHR's acknowledgement of the authors' rights is reinforced by the declaration of a "universal right of property" in Article 17(1), which declares that "everyone has the right to possess property,"¹⁷ and Article 17(2), which stipulates that "no one shall be deprived of his property unjustly."¹⁸ The consequence of Article 17(2) is that States have the authority to control people' property rights, but they must do so in accordance with the rule of law.¹⁹

Other treaties aimed at solidifying the legal responsibilities laid out in the UDHR were finally concluded and adopted by the international community.²⁰ Subsequently, the International Covenant on Economic, Social, and Cultural Rights (ICESCR) 1966 expanded the UDHR's economic, social, and cultural rights. The right of an author to "benefit from the protection of the moral and material interests deriving from any scientific, literary, or creative output"

¹³ Philippe Cullet, *Human Rights and Intellectual Property Protection in the TRIPS Era*, 29(2) HRQ 29(2) 403-430 (2007).

¹⁴ Universal Declaration of Human Rights, 1948 art. 27, sub art. 2.

¹⁵ *Id.* at art. 27, sub art. 1.

¹⁶ *Id.* at art. 27.

¹⁷ *Id.* at art. 17.

¹⁸ *Id.* at art. 17, sub art. 2.

¹⁹ *Ib.*

²⁰ International Covenant on Economic, Social and Cultural Rights, 1966, art. 5.

produced by the author is recognised in Article 15 (1)(c) of the ICESCR, which reflects the provision of Article 27 of the UDHR. It is obvious from the Article that authors are entitled to have their interests protected. The right recognised in Article 15(1)(c) is one of three parts of a general right, the other two being essentially rights to cultural life and scientific innovation's advantages. These legal instruments, in particular, serve as the foundation for arguments that IPRs and HR have been on the formal hook for a long time²¹ and instruments like the ICESCR, which have particular provisions in this area, have contributed far more than IPRs' instruments in bridging the gap between science, technology, and HR.²² However, the TRIPS Agreement, which was primarily conceived as a stand-alone legal instrument, has not made a significant contribution to the recognition of the relationship between IPRs and HR. Neither the WTO nor the WIPO has taken any remarkable measures to consider HR issues, nor have they shown any definite enthusiasm to address the relationship between the two.

IV. AN OVERVIEW OF INTELLECTUAL PROPERTY LAW PROTECTION IN THE INTERNATIONAL ARENA WITHIN THE PERIPHERY OF TRIPS AGREEMENT

It has already been discussed that IP bears so much significance in the trade that it dominates the economy considerably. By the grace of globalisation of trade and commerce, it has expanded up to the international level, which has contributed to the international character of IP and IPRs as soon as these properties deriving out of the human mind started to influence international trade. IPRs provide the inventor exclusive rights to exploit the products or goods he has created, along with the right to stop others from infringing those rights, which is a 'negative right'. However, these rights operate as incentives and encourage creative works that contribute to development in the field of technology, economy, trade, society, etc. Furthermore, debate arose on how to protect these rights globally so as to acknowledge and protect inventions. Following the successful conclusion of the Uruguay Round of GATT, the World Trade Organization (WTO) was established on January 1, 1995, with the signing of the Marrakesh Agreement, which subsequently structured the TRIPS (Trade-Related Aspects of Intellectual Property) Agreement,²³ with the goal of harmonising national IPRs in order to manage trade interactions. As a result, some developing nations that were less able to persuade

²¹ Ruth L. Okediji, *Does Intellectual Property Need Human Rights?*, 51(1) ILP 2, 18-19 (2018).

²² Cullet, *supra* note 13.

²³ Kato Gogo Kingston, *The Implications of 'TRIPS' Agreement 1994 of the World Trade Organisation for the Developing Countries*, 1(1) AJSS 37, 41 (2011).

international commerce were able to profit from capital flows or even attract foreign investments.²⁴ As the first comprehensive and enforceable worldwide agreement on IPRs, the TRIPS Agreement built a bridge between IP and IPRS with a new multilateral trade system.²⁵ The Bern Convention, the Paris Convention, the Universal Copyright Convention, and the Patent Cooperation Treaty, among others, recognise the worldwide nature of IP; and the TRIPS Agreement is the most significant of all of these treaties.²⁶ The purpose of the TRIPS Agreement is to provide adequate protection for IPRs, to ensure measures and procedures to protect IPRs for the purpose of reducing barriers to legitimate trade, and, most importantly, to build a link between IP and international trade; and thus shapes IPRs in multilateral trade negotiations.²⁷ The TRIPS Agreement created a worldwide minimum standard of IP protection that includes copyrights, trademarks, industrial designs, geographical indications and patents, among other things, and imposes an implicit responsibility of adherence on all WTO members.²⁸ In the same way as other WTO Agreements, the TRIPS Agreement follows the essential concepts of 'non-discrimination,' 'most-favoured-nation treatment,' (no discrimination between trading partners), and 'national treatment,' (providing foreigners with the same treatment as one's own citizens) on a domestic level).²⁹ WTO members are required by the TRIPS Agreement to (1) afford basic IPRs protection through domestic legislation; (2) guarantee effective enforcement of those rights; and (3) undertake to submit issues to the WTO dispute settlement mechanism.³⁰ The TRIPS Agreement establishes standard IP law obligations, yet member countries are allowed to impose higher standards, as well as determine the best way to apply the Agreement's provisions within their respective legal systems and practises.³¹ Thus, TRIPS Agreement paved the way for acknowledging and protecting IP and provided global protection to the inventors' rights over their own works and creations, which have added more value to IP in the international platform. It was necessary to form harmony between international trade and IP as these properties have a close linkup with global trade. TRIPS Agreement has done a remarkable job of building the bridge between IP and

²⁴ Ilayda Nemlioglu, *A Comparative Analysis of Intellectual Property Rights: A case of Developed versus Developing Countries* 158 PCS 988, 998 (2019).

²⁵ Susan K. Sell and Aseem Prakash, *Using Ideas Strategically: The Contest Between Business and NGO networks in Intellectual Property Rights*, 48(1) ISQ, 143-175 (2004).

²⁶ Zaman, *supra* note 3, at. 111.

²⁷ Agreement on Trade Related Aspects of Intellectual Property, 1995, Para 1.

²⁸ Ben Willis, *The Arguments For and Against the TRIPS Agreement*, E-INTERNATIONAL RELATIONS (Oct. 20, 2021, 9:00 PM), <https://www.e-ir.info/2013/12/23/the-arguments-for-and-against-the-trips-agreement/>.

²⁹ *Id.*

³⁰ Intellectual Property, *supra* note 27, art. 7-8.

³¹ L.T.C. HAMS, *A CASEBOOK ON THE ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS* 11 (4th ed. 2018).

international trade and it has also provided opportunities to DCs by setting minimum standards to design and establish their own national IP system in such a way to attract foreign investors and multinational companies. However, the TRIPS Agreement has been subjected to ample criticisms for creating a gap between developing and developed countries, which are still debated. The later part of this article put light upon such criticisms.

V. INTELLECTUAL PROPERTY LAW PROTECTION AND TRADE-ORIENTED APPROACH: REALITY OR MYTH?

Behind any legislation or legal document, both national and international, there are some primary aims that should be fulfilled to the greatest extent possible by different substantial processes defined by such law or legal instrument. A legal framework has evolved to safeguard the IPRs of inventors and creators, which has been extended internationally, based on the emerging expansion in the IP industry and rising needs. On a global scale, a variety of legal instruments have been adopted and approved by States in order to recognise, promote, and protect various creators' or inventors' IPRs. All legal instruments relating to different perspectives of IP and IPRs, particularly the TRIPS Agreement, have a few things in common; notably, they aim to provide certain exclusive rights to the inventors, enabling them to use, sell, exploit, and profit from the product; protect those rights through various means and methods; and afford the inventors the right to restrict any sort of trespass to their exclusivity.

As previously discussed, IP and commerce are inextricably linked, and IP law protection significantly impacts trade. Developed nations have been using IP law protection to boost their economies by establishing monopolies over goods and services, occasionally leading to unfair competition. IP legislation, on the other hand, aimed to eliminate the problem. Over the years, the goal of IP law has shifted from protecting right holders' IPRs to accelerating commerce, and industrialised nations have played a part in this shift to defend their own economic interests under the pretence of robust IP law protection. As a result, IP law protection has become more trade-oriented, and in terms of IPR protection under IP law, it is being protected for trade purposes, with developed countries being the primary beneficiaries; and this has made IP law protection more likely to be unrealistic for DCs and LDCs, as developed countries retain economic power and DCs, particularly LDCs, continue to face economic marginalisation.³² IP law protection serves as an interest for developed and industrialised countries, but it may also

³² Evelyn Su, *The Winners and the Losers: The Agreement on Trade-Related Aspects of Intellectual Property Rights and Its Effects on Developing Countries*, 23(1) J. Int'l L., 169, 195–97 (2000).

be a luxury or a burden for DCs, resulting in some discrimination. Developed nations maintain strong IP law protection since they want to get the most out of IP, and they have lobbied strongly for the economic benefits of solid IPR protection to safeguard their economies' interests and drive growth;³³ and also claim that greater global IPR protection would also help DCs by increasing foreign direct investment (FDI) and technology transfer as a direct outcome of more robust IPR protection.³⁴ The connection between FDI and IPRs, on the other hand, shows that improving the IP regime alone would not significantly enhance FDI flow unless it is complemented by other characteristics of the investment environment,³⁵ and due to their limited resources, LDCs find it challenging to implement sophisticated policy reforms. DCs, on the other hand, desire inadequate IP protection so that people may get the most out of ideas, creations, and technology and achieve progress. They also argued that compelling them to pay for the use of IP, which is mainly held by people and corporations in developed countries, would impede economic development.³⁶

Developed countries such as the United States and China put pressure on DCs to enact strong IP laws to protect their interests in those countries, making DCs more attractive investment destinations, limiting development and maintaining the gap between developed and developing countries. A limited number of developed nations, notably the USA and the Western European States, are expected to gain most, and it is also suggested that, while most countries may benefit in the long run, the advantages will be spread disproportionately among the leading developed countries.³⁷ IP law protection is being utilised by industrialised countries as a weapon for development as well as to repress other countries, which is a component of international politics. Such an occurrence is diametrically opposed to the reality of IP law protection and its true purpose, leading to the suggestion that IP law protection is a myth.

IP law protection is likely to promote and preserve IPRs that are supposed to benefit humanity but are instead being utilised for monetary gain. IP law protection is more of a fiction in this regard. It is commonly said IP law protection harms the public domain by decreasing it through high pricing, artificial obstacles to access, and unjust limitations, as well as raising the cost of

³³ Okediji, *supra* note 21.

³⁴ *Id.* at 346–58.

³⁵ CARSTEN FINK, INTELLECTUAL PROPERTY AND THE WTO 10 (World Bank 2004).

³⁶ Willis, *supra* note 28.

³⁷ Commission on Intellectual Property Rights (CIPRS), *Integrating Intellectual Property Rights and Development Policy: Executive Summary*, (2002)
http://www.iprcommission.org/papers/pdfs/final_report/cipr_exec_sumfinal.pdf

information to the point that it stifles innovation and creativity.³⁸ As an incentive to innovators and creators, IP law protection recognises and supports progress in the sphere of industry and technology. If such safeguards prevent individuals from benefiting from the substance of such advancements in the actual world, then such safeguards and rules are more of a fiction.

VI. ROLE OF TRIPS AGREEMENT IN ACCELERATING DIFFERENCES BETWEEN DEVELOPED & DEVELOPING COUNTRIES

The TRIPS Agreement is often considered as the most significant success in the field of IPRs' protection since it created 'minimum standards of protection' by making nearly all types of IPRs and their enforcement available. The TRIPS Agreement's level of protection and minimum standard are similar to present norms in industrialised countries' laws and regulations; nonetheless, DCs consider them to be exceptionally high.³⁹ The TRIPS Agreement permits member countries to design or change their laws and regulations, as well as take other appropriate steps, in accordance with the Agreement, to safeguard and promote public health, public interest, and socio-economic and technical advancements;⁴⁰ however, the costs and resources required to adopt such necessary measures are significantly greater for low-income DCs and LDCs than they are for middle-income or even wealthy nations, which are expected to gain more from the stronger IPRs protection provided by the TRIPS Agreement.⁴¹ Furthermore, the effects of the TRIPS Agreement on DCs vary in part depending on the degree to which these countries had established a domestic system of IPRs protection before joining the WTO; thus, the TRIPS Agreement widens the gap between developed and developing countries, including LDCs. The Agreement also created new conflicts within DCs because the protection of IPRs was not a part of the culture of many countries like Hong Kong, Indonesia, Singapore, Guatemala, India and Bangladesh.⁴² By joining the WTO, many of these DCs were made to undertake extensive internal reforms and build different institutions to ease the transition and fulfil the TRIPS Agreement's basic requirements, which take into account countries' technological and economic progress. Such measures taken by these DCs and LDCs

³⁸ Balat and Loutfi, *The TRIPS Agreement and Developing Countries: A Legal Analysis of the Impact of the New Intellectual Property Rights Law on the Pharmaceutical Industry in Egypt*, 2 JCLI 3-4 (2004).

³⁹ *Id.*

⁴⁰ Intellectual Property, *supra* note 21, art. 8.

⁴¹ Willis, *supra* note 28, at 1257.

⁴² Thomas F. Mullin, *Aids, Anthrax, And Compulsory Licensing: Has The United States Learned Anything? A Comment On Recent Decisions On The International Intellectual Property Rights Of Pharmaceutical Patents*, 9(1) ILSA JICL 185, (2002); L D. Tully, *Prospects for Progress: The TRIPS Agreement and Developing Countries After the DOHA Conference* 26 B.C. Int'l & Comp. L. Rev. 129 (2003).
<https://lawdigitalcommons.bc.edu/iclr/vol26/iss1/7/>.

were quite burdensome as they used to have resource constrain, limited assets and inadequate funds, unlike developed countries. Here, requirements established by the TRIPS Agreement for availing the essence of IPRs had ignited the difference between two types of countries which was quite irrational.

According to data from World Bank, assistance initiatives, improving IP legislation and enforcement in Mexico cost \$30 million.⁴³ It is indisputable that the TRIPS Agreement obligates developed countries to provide technical and financial assistance to DCs and LDCs members in order to facilitate enforcement of the Agreement, which shall include (1) assistance in the development of laws and regulations on the protection and enforcement of IPRs, as well as the prevention of their abuse, and (2) providing support regarding the establishment or reinforcement of domestic offices and agencies relevant to these matters.⁴⁴ However, the extent to which the provisions are applied in practice is a fascinating topic that must be explored. Despite incurring high costs to raise domestic standards to the required level and diverting resources from other vital sectors on occasion, DCs and LDCs are still unable to reap the benefits of IPRs in the same way that developed countries do, as developed countries frequently transfer wealth from DCs under the guise of IP protection; and by advocating for strong IPRs protection, developed countries are co-opting DCs. In the near term, the TRIPS Agreement essentially represents a \$20 billion transfer of wealth from technology-importing developing nations to technology-exporting developed nations, according to a 2001 World Bank analysis.⁴⁵ As a result, DCs and LDCs remain in the importing or receiving end of international trade. However, they are unable to upgrade their position in the international trade regime as an "exporting country" since giant developed countries or multinational corporations already dominate this platform; and the TRIPS Agreement is being used as a device to reflect the interests of specific global corporate actors.⁴⁶

At first, Western transnational companies advocated the notion of IPRs, which was backed by governments and eventually became incorporated in the agreement. The primary aim and scope of IPRs are to strike a fine balance between private gain and the public good; nevertheless, industrialised nations and multinational companies seek to exploit the TRIPS Agreement to

⁴³ Fink, *supra* note 35, at 11.

⁴⁴ Intellectual Property, *supra* note 27, art. 67.

⁴⁵ Graham Dutfield & Uma Suthersanen, *Harmonisation or Differentiation in Intellectual Property Protection? The Lessons of History* 23(2) Prometheus 35, 131-147 (2017).
<https://www.tandfonline.com/doi/full/10.1080/08109020500085528?scroll=top&needAccess=true>.

⁴⁶ MATTHEWS, D., *GLOBALISING INTELLECTUAL PROPERTY RIGHTS: THE TRIPS AGREEMENT* (1st ed. 2006).

pursue private gain at the expense of the public good;⁴⁷ in contrary to the purpose and scope of the TRIPS Agreement. Thus, developed countries are gaining much from IPRs, unlike DCs. The TRIPS Agreement indeed offers some 'special and differential treatment' (SDT) to DCs and LDCs, for example, in order to give DCs and LDCs time to integrate major reforms, a staggered system of accession was formed, under which DCs and LDCs are entitled to a transition period, which can be extended, to comply with the TRIPS Agreement's standards fully.⁴⁸ However, once transition periods have expired, DCs and LDCs must follow the same rules on scope and duration of protection as the most advanced developed countries, regardless of circumstances. Where SDT is not a possibility, LDCs cannot exclude sectors from protection or shorten the patent duration to address social or economic concerns. Through this scenario, it is clear that the special treatment offered by the TRIPS Agreement is not of the same calibre, as the benefits derived from SDT are not equivalent for two sorts of nations. LDCs requested an unconditional extension to the transitional period on several occasions to the 'TRIPS Council,' unless or until a specific member country graduates from LDC status, and TRIPS Council approved this as the TRIPS Agreement provided the mandate for 'according extension of transition period upon duly motivated request by a LDCs Member.'⁴⁹ As a result, three additional extensions in favour of the LDCs have occurred, and the Doha waiver that particularly targeted pharmaceutical patents has been extended until January 2033 in response to a request from the LDCs group.⁵⁰ However, given a lack of capacity; human resources; a lack of financial and technical assistance from the WTO and other developed countries; an insufficient positive attitude towards innovation; and a lack of proper and sufficient LDCs' action plans and policies- a critical question remains unanswered: "whether extending the transition period is a measure for making LDCs developed in technology and IPRs or not?"

VII. RECOMMENDATIONS & CONCLUDING REMARK

Due to the growing explosion of knowledge and technology, which has been accompanied by globalisation, the need and utilisation of new creations and inventions have reached an astonishing level that will undoubtedly increase in upcoming decades. IP law has emerged as the fastest-growing and most-needed area of the law. However, IPRs protection has departed

⁴⁷ Nemlioglu, *supra* note 24.

⁴⁸ Intellectual Property, *supra* note 21, art. 65(4), art. 66(1).

⁴⁹ Intellectual Property, *supra* note 27, art. 66(1).

⁵⁰ MONIRUL AZAM, INTELLECTUAL PROPERTY AND PUBLIC HEALTH IN THE DEVELOPING WORLD in Ch. 5. HAS THE TRIPS WAIVER HELPED THE LEAST DEVELOPED COUNTRIES PROGRESS TOWARDS INNOVATION AND COMPLIANCE? (Cambridge: Open Book Publishers, 2016).

from its original goal of providing protection to IPRs holders by focusing on trade and commerce-related issues, which has inevitably conveyed the perception of IP law protection as a myth rather than a reality. The protection of IP law and international trade has a strong link with legal validity under the TRIPS Agreement, which the WTO and WIPO have recognised. This relationship cannot be disregarded; instead, it should be taken into serious consideration while dispelling the myths mentioned in the previous sections of this article.

The link between IPRs and HR implies a significant amount of impact upon the legal regime of IPRs- which further affects IPRs protection. Both WTO and WIPO should endeavour to incorporate provisions in the TRIPS Agreement so as to recognise and thus emphasise the relationship between HR and IPRs. Following the adoption of the TRIPS Agreement, the effects of IPRs on the realisation of HR, such as the 'right to health' have become much more visible during the time of the global pandemic, and the rapid growing implication of IPRs has led to the necessity of clarifying the scope of HR provisions protecting individual contributions to knowledge.

Developed countries have used IP law protection as a tactic to stifle the growth of DCs and LDCs and put international pressure on them to have a robust IP system in place to safeguard the interests and rights of developed States. In this sense, developed countries should expand cooperation towards DCs and LDCs in order to construct sophisticated IP systems in those countries under the TRIPS Agreement's mandate to provide 'technological and financial support'; so that DCs and LDCs might profit from IP and consequently achieve development. Both developed countries and DCs would be able to gain maximum from IP if cooperation is increased by subsidising unreasonable competition. The TRIPS Agreement emerged from developed countries' intention to secure their economic gain coming from IPRs' monopoly, where the interests of developed countries and multinational trade cooperations were stressed. Developed countries have long campaigned for strong national IPRs protection and consequently coerced DCs and LDCs into establishing robust IP laws and policies. In the long run, developed countries would benefit from IPRs by utilising the TRIPS Agreement; however, the outcome should be equally and overwhelmingly distributed among the member States covering all DCs and LDCs, with a focus on the purpose and scope of the TRIPS Agreement, i.e. to maintain the balance among private gain and public goods.

Designing the national IP legislation of DCs and LDCs should be subject to 'complete sovereignty' rather than the sweet will of developed countries, and the TRIPS Agreement's

provision mandating assistance for the establishment of national legal IP regimes in DCs and LDCs should be strictly implemented. In this regard, the TRIPS Council, the World Trade Organization, and the World Intellectual Property Organization (WIPO) can act as supervisors with the help of a 'National Governing Body' developed through an integrated strategy. Under the auspices of the TRIPS Agreement, an 'aggregated fund' can be established with monetary contributions from WTO member States—based on the countries' financial status, economic condition, GDP rate, and other relevant criteria—for the purpose of providing financial assistance to DCs and, in particular, LDCs, as needed, to support the reinforcement of IPRs. Furthermore, governments of DCs and LDCs should always consider whether the potential benefits of the TRIPS Agreement would outweigh the costs of establishing an institutional and legal framework and safeguarding their interests. Most importantly, those countries should investigate the most appropriate alternative ways of implementing obligations under the TRIPS Agreement, taking into account domestic demands, economic structure, financial stability, and other pertinent variables.

The protection of IPRs, the promotion of creative works and inventions, the right to socio-economic development, the right to food, medical care, health and well-being, and the right to social security should all be prioritised; where trade and economic aspects should also be considered rather than making it focal substance. International organisations attached to IP and IPRs protection should introduce a supervising system to monitor whether States are complying with the minimum standard of protection or eliminating the same in guise. Rather than putting pressure on DCs to achieve the requirement in the interests of developed countries, the international community should put pressure on States to ensure maximum compliance and intervene if anything contrary happens. International laws governing IPRs, particularly the TRIPS Agreement, should dictate that States parties to implement an IP system that is simple and effective, allowing for real-world protection of IPRs through national legislation. The most contentious TRIPS's provisions, such as "minimum standards" that are quite burdensome for LDCs and DCs, "pricey mandates for establishing national legal IPRs regimes prior to joining WTO," and "inequitable SDT measures," should be revised first and foremost to alleviate the luxurious hardship on LDCs and DCs. This effort may open the path for LDCs and DCs to benefit from IPRs by attracting foreign direct investment (FDI), capital flows, and technological advancements, allowing them to become major participants in the international trading regime.

IP law has been designed to protect innovative and creative minds' creations and thus contribute to the development. Deviation from the main object of IP law protection has portrayed it as a myth that is quite different from reality. Shifting the major attention to the preservation of IPRs, on the other hand, would result in synchronisation with reality, and myths would be extinct. In today's global trade-centric era, creative works and scientific discoveries are highly prized and sought, and focusing upon such factors; the IPRs system must be better integrated. Such integration and balanced application of TRIPS provisions can assist in the creation of a more orderly world in which DCs will be having a fair chance to improve their own IPRs centric legislation- resulting in paving the way for economic growth, poverty eradication, scientific innovations, and technological advancements in those countries. As a result, in an age dominated by information and technology, IPRs protection may be the most effective means for DCs and LDCs to obtain a ray of hope in terms of scientific advancement and creative works. As previously mentioned, IPRs should be harmonised to afford benefits to both developed and developing countries. After all, no nation can walk alone in this era of globalisation without leaving others behind, and every nation is in some way reliant on others.