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# INTELLECTUAL PROPERTY RIGHTS AS HUMAN RIGHTS- AN ANALYSIS

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## ABSTRACT

Intellectual Property Rights law infringes on the different areas of Human Rights law, especially when economic, social and cultural rights are concerned. Intellectual property regimes request to balance the ethical and economic rights of creators and inventors with the broader interests and desires of the society. A major justification for patents and copyrights is that incentives and rewards to inventors result in advantages for the society. A person's rights approach to holding takes what's usually an implicit balance between the rights of inventors and creators and therefore the interests of the broader society within holding paradigms and makes it way more specific and exacting. The International Covenant on Economic, Social and Cultural Rights (ICESCR) is that the major international human rights instrument addressing these problems. Article 15 specifies that States Parties, that's the countries that have legal or acceded to the current instrument, "recognize the proper of everyone" each "to fancy the advantages of scientific progress and its applications" and "to get pleasure from the protection of the ethical and material interests resulting from any scientific, literary or artistic creation of that he's the author.

*Key Words: Intellectual Property Right, Conventions, Human Rights, Patent, Trade Mark, Copy Rights.*

## **Introduction**

Intellectual Property Rights law infringes on the different areas of Human Rights law, especially when economic, social and cultural rights are concerned. Another view is that both Intellectual Property Rights Law and Human Rights law can co-exist with one another. Human Rights law and Intellectual Property Rights law are entirely two different areas of law. Since their beginning, they grew isolated from each other. Neither of them infringed on each other's domains<sup>i</sup>. But recently, it has been observed that both the areas of law are interrelated with each other.

## **What is Intellectual Property Rights?**

IPR is a strong tool, to protect the investment, time, money, and effort invested by the inventor/creator of the Intellectual property, as it gives the inventor/creator an exclusive right for a certain period of time for the use of its invention/creation. Thus, IPR affects the economic development of a country by promoting healthy competition and encouraging industrial growth and economic growth. Intellectual property regimes seek to strike a compromise between artists' and inventors' ethical and economic rights, as well as society's broader interests and wishes. Intellectual property rights (IPR) are the rights given to persons over the creations of their minds: inventions, literary and artistic works, and symbols, names and images used in commerce<sup>ii</sup>. They usually give the creator an exclusive right over the use of his/her creation for a certain period of time.

These rights are outlined in Article 27 of the Universal Declaration of Human Rights, which provides for the right to benefit from the protection of moral and material interests resulting from authorship of scientific, literary or artistic productions.

The importance of intellectual property was first recognized in the Paris Convention for the Protection of Industrial Property (1883) and the Berne Convention for the Protection of Literary and Artistic Works (1886). Both treaties are administered by the World Intellectual Property Organization (WIPO)<sup>iii</sup>. The World Intellectual Property Organization or WIPO is a global body for the promotion and protection of Intellectual Property Rights (IPR). WIPO is dedicated to developing a balanced and accessible international Intellectual Property (IP) system, which rewards creativity, stimulates innovation and contributes to economic development while safeguarding the public interest.

## **IMPORTANCE OF INTELLECTUAL PROPERTY RIGHTS**

The purpose of intellectual property rights is to encourage new creations, including technology, artwork, and inventions, that might increase economic growth. Intellectual property rights increase the incentives for individuals to continue to produce things that further create job opportunities and new technologies while enabling our world to improve and evolve even faster.

There are several reasons for promoting and protecting intellectual property. Some of them are:

1. Progress and the good of humanity remain in the ability to create and invent new works in the field of technology and culture.
2. IP protection encourages publication, distribution, and disclosure of the creation to the public, rather than keeping it a secret.
3. Promotion and protection of intellectual Property promote economic development, generates new jobs and industries, and improves the quality of life.

Intellectual Property helps in balancing between the innovator's interests and public interest, provide an environment where innovation, creativity and invention can flourish and benefit all<sup>iv</sup>. IPR is an intangible asset in any company. It provides a competitive edge in the market and protects against hackers and pirates. India is a fast-growing economy and innovation is a priority for Indian companies and government, this initiative needs to be protected and for this IP is needed.

## **TYPES OF INTELLECTUAL PROPERTY RIGHTS**

There are many different forms of rights that together make up intellectual property. There are four types of intellectual property rights (IP): patents, trademarks, copyrights, and trade secrets.

### **PATENTS: (Under the Patents Act, 1970)**

A patent is used to prevent an invention from being created, sold, or used by another party without permission. Patents are the most common type of intellectual property rights that come to people's minds when they think of intellectual property rights protection. A patent is a special right granted to the owner of an invention to the manufacture, use, and market the invention, provided that the invention meets certain conditions laid down in law.

**TRADEMARK (Under the Trademark Act, 1999)**

Trademarks are another familiar type of intellectual property rights protection. A trademark is a distinctive sign that allows consumers to identify the particular goods or services a company provides easily<sup>v</sup>. Some examples include McDonald's golden arch, the Facebook logo, and so on. A trademark can come in the form of text, a phrase, symbol, sound, smell, or color scheme. Unlike patents, a trademark can protect a set or class of products or services instead of just one product or process.

**COPYRIGHT (The Copyright Act, 1957)**

Copyright does not protect ideas. Instead, it only covers "tangible" forms of creations and original work—for example, art, music, architectural drawings, or even software codes. The copyright owner has the exclusive right to sell, publish, and/or reproduce any literary, musical, dramatic, artistic, or architectural work created by the author.

**TRADE SECRETS**

Trade secrets are the secrets of a business. They are proprietary systems, formulas, strategies, or other confidential information and are not meant for unauthorized commercial use by others. This is a critical form of protection that can help businesses gain a competitive advantage. Although intellectual property rights may seem to provide a minimum amount of protection, when utilized wisely, they can maximize the benefit and value of an invention and enable world-changing technology to be developed, protected, and monetized<sup>vi</sup>.

**WHAT ARE HUMAN RIGHTS?**

Human rights are essential for the overall development of individuals. The Constitution of India makes provisions for basic rights also known as Fundamental Rights for its citizens as well as for aliens. The Human Rights are concerned with the dignity of the individual—the level of self-esteem that secures personal identity and promotes human community. The United Nations Human Rights Council (UNHRC) recognizes life, liberty, equality and dignity as human rights.

The Universal Declaration of Human Rights (UDHR), adopted by the UN General Assembly in 1948, was the first legal document to set out the fundamental human rights to be universally

protected. Even after 72 years, it continues to be the foundation of all international human rights law<sup>vii</sup>.

## **TYPES OF HUMAN RIGHTS**

As guaranteed by the Universal Declaration of Human Rights (UDHR), Human Rights can be classified as

### **Social or Civil Human Rights**

Each one of us is entitled to:

- a. Right to life, liberty and security
- b. Right to freedom from slavery and servitude
- c. Right to freedom from torture or cruel, inhuman or degrading treatment or punishment
- d. Right to freedom from arbitrary interference with privacy, family, home or correspondence
- e. Right to marry and have family and right to property

### **Political Human Right**

To take part in political processes, each one of us is entitled to:

- a. Right to nationality
- b. Right to equality before the law and equal protection of law
- c. Right to judicial remedies, fair trial and freedom from arbitrary arrest, detention or exile
- d. Right to freedom of thought, expression, belief, faith, conscience and religion
- e. Right to freedom of peaceful assembly and association
- f. Right to take part in government affairs and equal access to public service
- g. Right to equal suffrage
- h. Right to freedom of movement and right of asylum etc.

### **Economic Human Rights**

Each one of us is entitled to certain economic human rights:

- a. Right to social security
- b. Right to work and the right to equal pay for equal work
- c. Right to form trade unions
- d. Right to rest and leisure
- e. Right to food, health and an adequate standard of living

### **Cultural Human Rights**

To protect different cultures, customs, and traditions, we are entitled to:

- a. Right to participate in the cultural life of the community
- b. Right to enjoy the art and to share in the scientific advancement and its benefits
- c. Right to the protection of the moral and material interests resulting from any scientific, literary and artistic production of which the individual is the author
- d. Right to a social and international order in which the human rights as provided in the Universal Declaration can be fully realized

### **DIFFERENCE BETWEEN INTELLECTUAL PROPERTY RIGHTS AND HUMAN RIGHTS**

The international body in charge of monitoring the Universal Covenant on Economic, Social, and Cultural Rights was uninterested in interpreting intellectual property as a human right. Most intellectual property lawyers, certainly, are more concerned with the commercial component than with ethical and moral concerns. Nonetheless, the current author believes that intellectual property viewed as a human right with an ethical stake is fundamentally different from intellectual property viewed as a business asset. To begin with, the economic part, of intellectual property stresses individualism by compensating an individual for his own effort, providing a guarantee for his costs, or recognizing the production as an extension of an individual's personality.

The reasoning of the ethical side of human rights, on the other hand, is fundamentally different. The argument based on human rights recognized that authors/creators/inventors might be people, groups, or communities. Intellectual products have intrinsic value as expressions of human dignity and creativity, according to this view. The human rights system is fundamentally

different, even if utilitarian proponents enhance their arguments by “fostering the social ideals they postulate at the heart of their claims.” To put it another way, human right’s logic does not reduce a product’s value to a price or a degree of utility.

Second, the essential theme of human rights is the protection of human dignity and the “common good.” Human rights take into account not just the interests of the authors and artists, but also the interests of society as a whole. Some scholars, on the other hand, argue that the economic factor decreases intellectual property rights to the benefit of the owner. However, such an analysis may be oversimplified and reductive. Indeed, “in utilitarian reasoning, the incentive system is centered on promoting the general public benefit, not on putting the individual author as an independent entity entitled to a right.”

## **THE OVERLAP OF THE INTELLECTUAL PROPERTY RIGHTS AND THE HUMAN RIGHTS LAW**

Today Human Rights Law and Intellectual Property Law overlap to an extent far greater than initially envisaged. The Intellectual Property has already found its way into the Human Rights. The Right to Intellectual Property is inserted in the Universal Declaration of Human Rights (UDHR) and the United Nations Declaration for the Right of Indigenous People (UNDRIP).

The UDHR is probably the most prominent international document to be said to annotate the Human Rights regime, which effectively annotates the Intellectual Property Rights on an International scale. Although not expressly mentioned, Article 27 (2) UDHR states 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.

### **UDHR (Universal Declaration of Human Rights) And the Intellectual Property Rights**

The UDHR Article 27.1, clearly states that everyone has the Right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits, and Article 27.2 of the UDHR, states 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. These two paragraphs of the same provision of the UDHR illustrate the complex and sometimes ambiguous relationship, which may give rise to contradictions, between the Intellectual Property Rights and Human Rights<sup>viii</sup>.

## **Agreement on Trade Related Aspects of Intellectual Property Rights And The Human Rights**

Human Rights and Intellectual Property Laws are two distinct fields that have largely evolved separately. The adoption of the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS Agreement) and its implications for developing countries have fundamentally changed the nature of the debate concerning Intellectual Property Rights and Human Rights. Their relationship needs to be re-examined for a number of reasons<sup>ix</sup>. This is demonstrated in two ways:

Firstly, the impacts of Intellectual Property Rights on the realization of Human Rights such as the Right to Health have become much more visible after the adoption of the Trade Related Aspects of Intellectual Property (TRIPS) Agreement.

Secondly, the increasing scope of Human Rights provisions in protecting individual contributions to knowledge in the field of medical patents is due to the rise in Intellectual Property Rights.

### **Intellectual Property Rights And Realization of Human Rights (Patent Rights Vs. Right To Health And Right To Food)**

Regarding the Human Right to Health, the link between Intellectual Property Rights and the Human Rights has become apparent in the relationship between medical patents and the Right to Health, particularly in reference to the HIV/AIDS epidemics. This is due to the fact that a number of drugs used to alleviate HIV/AIDS are protected by patents. Hence, there is a direct link between patents, the price of drugs, and access to drugs.

Regarding the Right to Food, there are links between patents in the field of genetic engineering, the limitation of farmers Rights, and access to food. While the link between Intellectual Property Rights and Human Rights has been made, it has been discussed almost exclusively in Human Rights forums. In other words, there remains a visible imbalance insofar as the language of Human Rights has not penetrated Intellectual Property Rights institutions, whereas the language of Intellectual Property Rights is now regularly addressed in Human Rights institutions.

## **International Convention on Economic, Cultural And Social Rights (ICESCR) And Intellectual Property Rights**

The Right to the enjoyment of the highest attainable standard of physical and mental health is specifically protected under the International Convention on Economic, Cultural and Social Rights (ICESCR). Core obligations of member States include the necessity to ensure the Right of access to health facilities, especially for vulnerable or marginalized groups. In the case of primary health care, this includes the provision of essential drugs. In the case of HIV/AIDS, more clear elaborations of these obligations have been given.

The UN Human Rights Commission adopted resolutions indicating that access to medication in the context of HIV/AIDS is one fundamental element for achieving the full realization of the Right to Health. In other words, accessibility of medicines and their affordability are two main components of the Right to Health. Medical Patents have direct impacts on accessibility and affordability.

They have the potential to promote access by providing incentives for the development of new drugs and also to restrict the access because of the comparatively higher prices of patented drugs. The fact that patented drugs are repeatedly more expensive than generic drugs is a relevant consideration. Other factors that influence access include situations where there is only limited competition between generic producers, local taxes, and mark-ups for wholesaling, distribution, and dispensing. Improving access can thus not be limited to bringing prices down through competition but must also include further measures such as public subsidies, or price control measures. Better access to drugs can be approached from the point of view of medical patents or the Right to Health.

The dichotomy is unavoidable insofar as each relevant legal framework is largely insulated from the other, but both need to be considered jointly because, in practice, a solution focusing on medical patents that ends up constituting a denial of the Right to Health would not be acceptable<sup>x</sup>.

### **RESOLUTION OF THE CONFLICT**

For resolving the conflict between Human Rights and Intellectual Property Rights, the precise Rights which are being undermined should be identified. The Human Rights Organizations should develop specific interpretations of the ambiguous Rights (mainly economic, social and

cultural rights) in order to comply with the terms of the TRIPS Agreement. Secondly, if the TRIPS Agreement is seen from the Human Rights perspective, then the consumers of Intellectual Property products will be on an equal stage with the owners of Intellectual Property Rights. The agreement regards the consumers of these products inferior to the owners. But if the Human Rights purview is added to the agreement, then the consumers will also be the holders of these internationally guaranteed Rights. Thirdly, rather than advocating minimum standards for Intellectual Property Rights protection, the Government should impose maximum standards for Intellectual Property Rights protections<sup>xi</sup>.

This would act as a limit for the multiplying standards of Intellectual Property Rights protection. It is also suggested for better protection of the Human Rights if a minimum required standard of the protection of the Human Rights is to be maintained while realizing any kind of Intellectual Property Rights. Lastly, the international forums on Intellectual Property Rights, such as the World Intellectual Property Organisation (WIPO), the World Trade Organisation (WTO), etc., while making new Laws on Intellectual Property Rights, should analyse the Laws with a Human Rights perspective. It is only in such circumstances that the Human Rights Law and Intellectual Property Rights Law will be able to co-exist with one another properly<sup>xii</sup>.

## **CONCLUSION**

The essence of human rights itself is hindered by intellectual property. While patents and trademarks are registered rights, copyrights are not subject to any examination. From this standpoint, such an automaticity of protection does not lead to any exclusion on the grounds of morality. In addition, it has been noticed that officials responsible for the deliverance of patents generally neglect their duty to moral care. Most of them estimate neither necessary nor convenient to take in consideration moral and ethnic preoccupations in a patent exam, in spite of the fact that ethic preoccupations are the soul of Human Rights.

## ENDNOTES

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<sup>i</sup> <https://www.sconline.com/blog/post/2020/07/18/human-rights-and-rights-in-intellectual-property-fixing-the-framework-for-a-better-tomorrow/>

<sup>ii</sup> <https://blog.ipleaders.in/ipr-description/>

<sup>iii</sup> <https://letslearnlaw.com/b/intellectual-property-rights-as-human-rights-analysis/>

<sup>iv</sup> World Intellectual Property Day — 26-4- 2020 Innovate for a Green Future, World Intellectual Property Organisation, available at <<https://www.wipo.int/ip-outreach/en/ipday/>>.

<sup>v</sup> Supra Note 3

<sup>vi</sup> <https://www.cfr.org/background/what-trans-pacific-partnership-tpa>

<sup>vii</sup> <https://www.equalityhumanrights.com/en/human-rights/what-are-human-rights>

<sup>viii</sup> <https://www.mondaq.com/india/patent/808140/intellectual-property-rights-as-human-rights39-an-analysis>

<sup>ix</sup> Supra Note 7

<sup>x</sup> <https://blog.ipleaders.in/interrelationship-human-rights-intellectual-property-rights/>

<sup>xi</sup> Ibid

<sup>xii</sup> <https://www.lexology.com/library/detail.aspx?g=ad58aecb-f971-426d-96bc-6a2d8c6e6cf7>