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IPR AND HUMAN RIGHTS IN RECENT TRENDS IN INDIA: CONFLICT OR COEXISTENCE

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ABSTRACT

The Human Rights and Intellectual Property laws are developing together at a universal level, therefore various challenges required to be addressed and there is a necessity for describing extent of human rights provisions safeguarding individual assistances to the knowledge. This study seeks to examine relationship between the Human rights and Intellectual property rights. It also tries to analyze the coexistence of both the laws in the various International Human Rights Instruments. It further will seek to discuss the prospective trajectories between Human Rights and Intellectual Property Rights. This paper will look into the following research question: How are the Intellectual Property Rights inter-related to Human Rights Laws? What are the consequences of intersection of these two branches of law? To what extent Intellectual Property Rights and Human Rights Laws overlap in India? And, what is the future of Human Rights Laws in the TRIPS Era? Through this academic venture the authors attempt to analyzes different issues rising concerning the immediate and circuitous associations between Human Rights and IPR, and likewise the broader question of the plausible prospective part of learning related human rights aspects.

Keywords: Human Rights, Intellectual Property Rights, International Human Rights Instruments, TRIPS.

INTRODUCTION

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Intellectual property and human rights are two dimensions of the law that once were strangers, but now they are becoming increasingly intimate. For decades, the two themes have evolved in virtual isolation from one another. In recent years, however, international norm-setting activities have begun to map the previously unexplored interferences between intellectual property laws on the one hand and human rights laws on the other. From a perspective, intellectual property rights require visible legal rights, which provide incentives for the contribution of the private sector in certain regions, and we hope to add to the innovative progress. Intellectual property rights, for example, licenses or rights under intellectual property rights are close restriction rights. This impressive business model is presented by society as an expression of certain concessions, for example, disclosure of information and restriction of restriction of permitted rights. When we talk about the human rights perspective, the fundamental rights that the state sees are still linked to human pride.³

The way in which this new relationship evolves is that which is taught - and sometimes even disputed - by States and non-governmental organizations in international settings such as the United Nations Commission on Human Rights and the World Intellectual Property Organization (WIPO) and, the World Health Organization (WHO), the Sub-Commission on the Promotion and Protection of Human Rights, the World Trade Organization (WTO) and the Conference of the Parties to the Convention on Biological Diversity (CBD). The review of the laws in these forums reveals two separate methodologies to the HR-IPR interface. These two methodologies depend on radically unlike normative rules providing a different description of how the rights and obligations of national and private gatherings are organized. The primary approach reflects human rights and intellectual property as an ultimate conflict. This context considers strong intellectual property protection to undermine - and accordingly not to encounter with - an extensive variety of human rights commitments, especially in the area of economic, social and cultural rights. The approach pushed by defenders of this way to deal with settling this contention is to perceive the standardizing need of human rights law over Intellectual Property law in areas where particular bargain commitments are in struggle.⁴

The second way to deal with the crossing point of human rights and Intellectual Property sees two legitimate zones that are worried about a similar key inquiry: deciding the appropriate scope of private domination power which provides authors and innovators adequate incentive for

³. "Human Rights and Intellectual Property Rights in the TRIPS Era" by *Philippe Cullet*, Human Rights Quarterly, Vol. 29, The John Hopkins University Press: 2007

⁴. "Human Rights and Intellectual Property: Conflict or Coexistence?" by *Laurence R. Helfer*, Minnesota Intellectual Property Review, Vol. 5, Issue 1: 2003

creativity and innovation, while guaranteeing that the public consumer has sufficient access to the products of their endeavors. This school thinks human rights law and intellectual property law to be characteristically good albeit regularly unique about where to adjust the impetuses from one viewpoint and access to the next. Before investigating further, the ramifications of these two methodologies in mapping the IPR interface, it is helpful to first turn back so as to perceive how these two territories of global law are disconnected from each other and disintegrate that separation.⁵

HISTORICAL ISOLATION OF THE HUMAN RIGHTS AND INTELLECTUAL PROPERTY REGIMES

It is cagey that intellectual property and human rights have long been unfamiliar. The Universal Declaration of Human Rights, 1948 safeguards the moral and substantial interests of authors in their "scientific, literary or artistic production as part of their fundamental freedoms". In the mid-1960s, an analogous provision was encompassed in the International Covenant on Economic, Social and Cultural Rights (ICESCR), which has so far been ratified by some 150 countries. However, intellectual property has been stagnant for many years in Pantheon with a well-established human rights standard neglected by contracting authorities, experts and commentators, while other rights stem from ideological shadows.⁶

Human rights laws have no meaning in the intellectual property of the intellectual property system. In major intellectual property treaties, such as the Paris and Berne Conventions or the recently adopted TRIPS Conventions, there are no references to human rights. These treaties relate to the protection afforded by authors and inventors of "rights", but the rationale for these agreements is not the immoral allegations of irrefutable freedoms, but the economic and effective benefits that arise from the protection of intellectual property products across national borders. During the decades after the IIInd world War, the most pressing apprehension of the human rights community was to develop and codify legal norms and the strengthen supervisory mechanisms. This development led to a virtual separation of human rights into categories, extending from a basic set of authoritative standards to the most serious forms of misconduct by the state, civil and political rights as well as economic, social and cultural rights. Among these categories, economic,

⁵. id

⁶. Available at <https://blog.ipleaders.in/interrelationship-human-rights-intellectual-property-rights/> (Access on 01/01/2021, 12:00 a.m.)

social and cultural rights are less developed and less obligatory, since they have received noteworthy jurisprudential consideration only in the last decade.

For advocates of IP protection, by contrast, the crucial concentration of international law was dual: first, the advanced expansion of issues and rights through periodic reviews of Paris, Berne and other conventions; and, thereafter, a relationship between trade and intellectual property. A bit of the human rights law was added to these two companies. It didn't deliver an essential and adequate explanation for the monopolies of intellectual property granted by the State. It was, in contrast, a possible study of the expansion of law of Intellectual Property.

HUMAN RIGHTS APPROACHES TO INTELLECTUAL PROPERTY PROTECTION EMERGE

The Human Rights Community was the first intellectual to have intellectual property law. Two incidents caused the intellectual property involved in the agenda of human rights laws. First of all, residents of the country have legal rights. The second TRIPS agreement is the result of intellectual property and trade connections. These incidents showed a serious regulatory error in the legal rights of human rights. In addition, new legislative responses and initiatives have created an increasing tension between conflict and mutual style to explain the interface between human rights and intellectual property.⁷

THE RIGHTS OF INDIGENOUS PEOPLES AND TRADITIONAL KNOWLEDGE

UN Human rights wing began giving attention to the rights of the indigenous people in the 1990s. Recognition of the culture which includes the traditional knowledge of these communities is among the various claims that have been made by the indigenous people. Most of the traditional knowledge has been treated as knowledge in public domain under intellectual property laws as these communities do not claim private ownership over this knowledge. This has resulted in the exploitation of this knowledge by the outsiders without giving any compensation or recognition to these communities. This knowledge has been developed by private firms and later have got IP protection. The financial benefits arising out of this knowledge are not shared with these

⁷. "Intellectual property rights vs. Human rights: a need to re-examine the relationship between two to enhance social being" by *Gargi rajvanshi, rajeev gupta*

communities.

A working group and a special rapporteur was commissioned by the U.N. bodies in order to draft a Draft Declaration on the Rights of Indigenous Peoples, and Principles and Guidelines for the Protection of the Heritage of Indigenous People. These documents yearn for the states to use legal mechanism in order to protect the traditional knowledge under the existing legal framework of intellectual property. However, protectable subject matter has been defined more broadly than in the existing laws. They also urge states to not give intellectual property rights over “any element of indigenous people heritage” which does not provide for sharing of profits with the indigenous people. Therefore, from a human rights perspective intellectual property rights are a big concern for the protection of indigenous communities.

THE TRIPS AGREEMENT AND HUMAN RIGHTS

The TRIPS Agreement which was adopted in 1994 mandated the WTO members to give very high minimum standards for protection. Earlier intellectual property protection was non-existent in the developing and under-developed countries. The obligations under TRIPs are enforceable which means that in case of non-compliance, dispute can be brought before WTO’s dispute settlement system.

TRIPS was brought to the attention of the U.N. human rights system in 2000, the time which by which the developing nations had to transform their legal system. Resolution 2000/7 on Intellectual Property Rights and Human Rights was adopted by the Sub-Commission on the Promotion and Protection of Human Rights. This resolution has an antagonistic attitude towards TRIPS. It pointed out that TRIPS implementation conflicts with the economic, social and cultural rights. The primary areas of conflicts relate to the technology transfer to the developing countries, patents granted to genetically modified organisms and results of right to food on farmers’ rights, bio-piracy, right to health and access to medicines and the protection of rights of indigenous communities.⁸

In order to resolve these conflicts, the Sub-Commission called for review of the intellectual property concerns within the United Nations, with the core principle that the priority should be given to human rights over economic matters. The United Nations has given a lot of attention to

⁸. “Interrelationship between IPR and Human Rights” by *Debadityuti Banerjee*, Student Journal of Law

the issues of human rights and intellectual property. Some of the notable actions are:

Three resolutions of the Commission on Human Rights on Access to Medication in the Context of Pandemics such as HIV/AIDS, a scrutiny of TRIPS and public health by the High Commissioner for Human Rights an official statement by the Committee on Economic, Social and Cultural Rights that intellectual property regimes must be consistent with the rights in the Covenant; and a report by the Special Rapporteurs on Globalization, which claims that intellectual property protection has not given due consideration to human rights.

These documents have severely criticized TRIPS for undermining the human rights. They also identified certain areas where both regimes share common goals and hence call for harmonious reconciliation of TRIPS and human rights specially relating to protection the traditional knowledge and rights of the indigenous people.⁹

INDIAN SCENARIO

The Intellectual property rights have picked up an exceptionally critical place following implementation of TRIPS Agreement. The major challenge is looked by developing nations such as India which need to roll out changes in the regional laws. The entanglements on human rights are intense with regard to the safeguard of Intellectual property.

In 2005, the Patents Amendment Act came into existence keeping in mind the end goal to meet its commitments of International law. Prior to the change, generic medicines were permitted to be fabricated in the country which has comprehensive results on the Indian market. Because of patents the cost of drugs is increased sharply. It isn't only the pharmaceutical that variance human rights but the administration concerning traditional knowledge and technology transfer also variance human rights.

From quite a while, traditional communities have been utilizing traditional knowledge for the making of drugs. It has been pretty common that various medical giants use their information with no payment of eminence. Furthermore, the safeguarding of traditional knowledge is a huge challenge in the developing countries. The purpose behind TRIPS i.e., transfer of technology in ensuring development in developing as well as under- developed nations is many times

⁹. "Human Rights and Intellectual Property: Conflict or Coexistence?" by *Laurence R. Helfer*, Minnesota Intellectual Property Review, Vol. 5, Issue 1: 2003

contradicted by MNCs.

INDIAN PATENT AMENDMENT ACT (2005) AND ACCESS TO MEDICINES

In the Paschim Banga case¹⁰, the Hon'ble Supreme Court gave instructions to the government to provide essential medicinal conveniences. The government has essential obligation to give reasonable meds and medications, hospitals outfitted with present day technology and other such facilities. Access to medicine is secured by law in light of the International human rights Commitments that is a result of judicial activism.

The Patent Amendment Act of 2005 will undoubtedly affect access to drugs mainly to deprived people, who can't bear the cost of such pharmaceuticals. Product patent has been stretched out to all areas and presently the protection term for patent is 20 years. The alternative of reverse engineering has been stopped and therefore affected the medical industry. If access to medicines isn't guaranteed, then that would be infringement of right to life enshrined under Art. 21 of Constitution of India. The courts require assuming a proactive part to ensure that IPR laws are not in disparagement of essential human rights and business significance should provide path regarding human rights.

TRIPS AND TRADITIONAL KNOWLEDGE

The knowledge that traditional groups have in different parts of the world is traditional knowledge. It goes from one age and then to the next segment mostly orally and is owned by humans, communities or groups. In the last two decades, this information has been widely abused by major corporations. Large companies find this info and become elements that use innovation for commercial purposes. Developing countries have recognized the effects of these abuses and have expressed their concern at different world levels in the WTO. Later, many traditional groups are rejected for the various monetary benefits that companies derive from the benefit of learning. In addition, these groups have denied their right to use their own vision, since multinational companies have patents to use. Traditional knowledge is part of the economic and social economic rights of a person or a group of people. The ICESCR sees the rights of groups to guarantee their culture and traditions. In accordance with India's new amendment law and its

¹⁰. Paschim Banga Khet Mazdoor Samity and Ors., vs. State of West Bengal, 1996(4) SCC 37

marginal provisions, large companies can register that traditional knowledge within the reach of India's vast biodiversity. In this way, it is essential that India start taking new measures to protect its own information for its own benefit.

CASE STUDIES:

- **TURMERIC:** The turmeric plant was found in the roots of *Curcuma Longa* that grows mainly in Pakistan and India. In the Indian and Chinese Systems, it is used for the purpose of medicines. The United States has granted a patent to American Indian scientists, Drs Hari Har and Suman Cohly, to use turmeric to heal wounds. CSIR confronted this patent on the basis of novelty, citing the skill of traditional knowledge. Although this argument did not work, CSIR created written documents and applied them to ancient texts available in Sanskrit and the 1953 edition published in the Journal of the IMA. In the year 1998, the United States revoked patent claims. He decided that this use was not a new "invention", but an ancient Indian tradition. Even after this cancellation, a newspaper in the United Kingdom reported that at a cost of approximately US \$ 150 million, 5,000 patents were granted to traditional systems and medicinal plants violating clearly traditional knowledge of traditional societies of India.
- **NEEM:** Neem is also used for numerous medical purposes in India. Its excerpts are used to treat many infections such as ulcers, skin disorders, leprosy, diabetes and oil extracted as a means of contraception. United States granting a patent to W.R. Nima for operations and products extracts of Neem. The Research Foundation for Science, Technology and Environment challenged these patents on the ground of modernity and returned to the traditional knowledge of India. Subsequently, these patents were canceled in Europe and the United States.

COPYRIGHT VIS-À-VIS HUMAN RIGHTS

The copyright law protects individual creations in original works of art and literature. Copyright protection begins when you produce the work and you do not need any registration. Copyright law is generally limited to books, paintings, movies or music, but copyright protection is now involved in new dimensions and is now being extended even in computer programs and data sets. Art. 9 to 13 of the TRIPS Agreement supports the "minimum standards" for the protection of copyright. In India, copyright is recognized, permitted and authorized by the Indian Copyright Act, 1957. There is no uniform copyright law in the current scenario as the law does not need to

be registered as a prerequisite to claim the defense in accordance to the law. Everyone has the right to protect the moral and material interests that arise from any scientific, artistic or literary creation of the author. In this line, at the basic level of human rights laws, a balance is expected between the interests of the community and the individual in the serious abandonment of fair use. After the period of protection under the legislation, copyright works have progressed to the public sphere where exploitation opportunities are increasing. In this way, moral rights aim to guarantee the rights of authors after any financial reward, especially the right to integrity and attribution. These rights allow the author to recognize and recognize his efforts and ensure that the work is not altered or damaged.

The Supreme Court of India in *Bihar v. India Shailabala Devi*¹¹ argued that article 13 (b) of the Copyright Law of 1957 protects films, cinematography and audio recording on copyright, and in this way, these rights are treated as a fundamental right of the citizen. Therefore, it is said that copyright does not limit the right of expression and expression within the framework of art. 19 of the Constitution, and therefore it can be said that it is the right to expression and expression. Therefore, obtain a human rights situation.

FUTURE TRAJECTORIES FOR HUMAN RIGHTS AND INTELLECTUAL PROPERTY

The disagreement between supporters of a conflict approach and those contending a coexistence approach to the convergence of human rights and intellectual property is probably not going to be settled at any point in the near future. In actuality, the ongoing tension between these two contending issues is probably going to have no less than four particular results for the international legal framework.

The principal impact will be an expanded motivating force to evolve soft law human rights standards. For those favouring the supremacy of human rights over intellectual property protection norms, it is basic to distinguish decisively which rights are being undermined. Taking a look at the text of international treaties, there seem, by all accounts, to be few obvious clashes, under the customary international law. However, the text of treaties alone does not recount the entire story. Human rights law is prominently flexible, and contains an assortment of systems to evolve more definite legal standards and norms over time. Proponents of the conflictual approach

¹¹. 1952 SCR 654

to intellectual property are probably going to pressure human rights bodies to create particular interpretations of uncertain rights to contend against the accurately defined rule under TRIPS. This may also have the effect to accelerate the jurisprudential transformation of ESCR (economic, social and cultural rights) which is still a rudimentary area of human rights law.

A second fundamental change that may arise is the treatment of customers of intellectual property products as the bearers of rights assured internationally. In the realm of TRIPS the makers and proprietors of intellectual property products are the main “rights” holders. Consumers of those products, whether individuals or groups, are given an inferior status of users. These users are granted the same status as producers and owners under the human rights approach to intellectual property. This phonetic reframing isn’t just an issue of semantics. It additionally shapes States’ strategies of negotiation. By conjuring standards that have gotten the imprimatur of intergovernmental associations in which various states are members, governments would more be able to solidly contend that a rebalancing of intellectual property measures is a sensible attempt to blend two contending systems of universally recognized “rights”, rather than a self-intrigued endeavor to misshape trade rules or to free ride on foreign creators.

This prompts a third result of the new crossing point between human rights and intellectual property, i.e. the expression of “maximum standards” of protection of intellectual property. From the Berne Convention to Paris Convention and to TRIPS, all treaties have recognized the “minimum standards”. These instruments do not prevent the governments from framing more rigid national legislations relating to intellectual property, or from entering into agreements which recognize such standards. After the TRIPS came into force, the United States and EC have entered into bilateral agreements called “TRIPS plus” with many developing countries. These bilateral treaties set out greater standards of protection than that enshrined under TRIPS. However, the World Health Organization (WHO) and the UN High Commissioner for Human Rights have objected to these bilateral treaties on grounds of human rights.

The final issue determines the question whether these maximum standards will indeed actualize. The issue concerns how the human rights norms are accepted in the international organizations responsible for making laws related to intellectual property, such as WIPO and WTO. The WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) was created in the year 2000 for discussion on the intellectual property issues. In the first five sessions of the IGC held between 2000 and 2003, the Committee

analyzed a number of issues which were excluded from TRIPS and it also focused on the demands of indigenous people. Most as of late, the WIPO General Assembly broadened the Committee's command, approving it to quicken its work, which may incorporate the improvement of new international instruments. The High Commissioner for Human Rights, the WHO, and various NGOs have been allowed the status of observer to partake in the Committee's talks, making chances to raise human rights issues in the forum.

It is very uncertain in global business organizations to integrate human rights. The Declaration relating to TRIPS Agreement as well as Public Health implemented in November 2001 clearly shows the human rights backing in the area of access to medicines. In the meantime, the Doha Ministerial Declaration give directions to the TRIPS Council to scrutinize "the relationship between [TRIPS] and the Convention on Biological Diversity, the protection of traditional knowledge and folklore, and other relevant new developments raised by Members." Nevertheless, the USA has until now obstructed the Convention on Biological Diversity Secretariat's application as a bystander status in the Council, creating unclear the doom of a related submission by the Human Rights High Commissioner. More importantly, in September 2003, the failure of trade negotiations at the Cancún (Mexico), World Trade Organization ministerial meeting suggests that the development of new divisions between developed and developing countries can be achieved by making Human rights inspired.

CONCLUSION

IPR instruments in no way purposely tended to gaze at the impact on the recognition of the human rights. But, response of TRIPS Agreement as well as its vibrant execution in making countries has been connected with guaranteed specific difficulties.

The IPR agreements lack behind from Human rights treaties in giving a correlation involving science, advancement, and the human rights since instruments like ICESCR integrate specific arrangements around there. Art. 15(1) of ICESCR fuses a clear perspective relating to rights and obligations of each individual as to enhancement and pleasure in sound and mechanical progression. One of its central duties is to provide a framework to limiting rights to profit by science besides mechanical progression, and the benefits of individual supporters of data formation with no surrounding debate within an IPR situation.

Two rule difficulties ought to be had a tendency to in coming quite a while at the national and global levels. In the first place, the indisputably apparent impacts of particular sorts of IPR on the recognition of human rights ought to be had a tendency to by ensuring that measures are taken to guarantee everyone who is presumably going to be antagonistically affected by strengthened IPR models. Secondly, the broader analysis of the position of science and originality in the structure of human rights ought to be in addition calculated. This gives an assertion to keeping an eye on the point of assurance of all commitments to knowledge, something which the existing IPR framework is endeavoring to achieve. Traditional learning which has acquired the inevitably crucial place in law and understanding banter in cultivation, natural, in addition to IPR fields ought to likewise be tended to from a human rights point of view with regards to Art. 15(1) of the ICESCR. To date, most verbal confrontations have focused on the position of intellectual property rights within the framework of human rights, as well as on the effects of intellectual property rights on human rights. From the point of view of the importance of science and innovation in this century, it is essential to overcome the intellectual property rights in force with the attention of peoples from the point of view of human rights. This is due to the way the art. 15 (1) (c) does not imply intellectual property rights and the way in which the human rights perspective can only be restricted to specific types of scientific obligations.

The human rights perspective on traditional information cannot really be far from the point of view of the traditional knowledge holders' viewpoint and the promotion of free information. All the things that are considered gradually by Article 15 (1) are a reasonable reason to maintain a strategic distance from Bio Piracy and to provide positive protection to those who agree on the IPR screen.

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