

Interface between IPR and Human Rights: A Study with Reference to International Law

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ABSTRACT

This research work aims to establish a link between IPR and human rights in the national and international perspectives. Furthermore, lack of implementation of legislations at the national level is one of the greatest setbacks in the history of human rights protection. Basically, the value of human rights is largely tested by it's implementation. The earlier form of Industrial property underwent transformation after the Paris Convention to be nomenclature as Intellectual property. IPRs, such as patents, plant variety protection, copyrights, and trademarks, are exclusive monopoly rights over a creation that the society provides to the inventor for a period of time. While such monopoly protection obviously restricts the dissemination of knowledge, it is supposed to be counterbalanced by the incentive that it provides to innovate. Intrinsic, natural, interrelated, indivisible, inalienable, basic, instrumental and inherent rights are ought to be protected if required, for maintaining peace in the society. Imperialism, colonialism and inequalities among the states were some reasons of concern for the development of human rights.

Keywords: *Intellectual Property Rights, Interface, Human Rights, Copyright, Trademark.*

1- INTRODUCTION

Intellectual property, as we know is a concept of recent origin. Different parts of the world having different cultures, traditions and lifestyles have different definitions of human rights as well. Intellectual Property Right (IPR) is the creation of human mind. From one perspective, the modern development of international law has been a remarkable success. The general opinion is that violations of international human rights law are not due to the inadequacy of its rules. Rather, they stem from an unwillingness to respect the rules, from insufficient means to enforce them, from uncertainty as to their application in some circumstances and from a lack of awareness of them on the part of the general public. Due to the weak record of ratification of key human rights treaties many of the problems accord in the image of contemporary human rights law.

IP consists of intangible elements which can be incorporated in, or associated with, goods or services, thereby adding value to them, and IPRs extend to the intellectual component as such, rather than to a single physical object in which that component is embodied. There is a need to focus on the potential of human rights clauses in World Trade Organization (WTO) being misused as non-tariff barriers to trade.¹ The other fundamental human rights are, in fact, linked to and dependent upon realization of the human right to development. Right to development is one of the most important human rights, which seeks for the realization of all human rights, i.e. civil, political, economic, social and cultural¹.

2- LITERATURE REVIEW

Copyright

Copyright is a bundle of rights which includes the right to produce, copy, adapt, distribute, publicly perform and display a work. Copyright stands for legal right to prevent others from copying an existing work of an individual. It is such a right which is exclusively given for a definite period of time to the originator (author or creator) of intellectual work such as publication, or an article or a literary work for sale or any other use.²

Music piracy

Music piracy poses a greater threat to the international music industry than at any other time in its history. Traffic in pirate recordings is not only proliferating worldwide but also rapidly diversifying into new technologies and formats.

Commercial pirate recordings today range from the traditional cassette to the manufactured CD and from the CD-R disc replicated in a garage or laboratory to the audio file distributed on the internet. Adding to the threat of commercial piracy is the spread of CD burning, made possible by advances in digital copying technologies.

The fight against internet piracy requires national and international copyright rules to keep pace with technological developments. The World Intellectual Property Organization (WIPO) 'internet treaties' of 1996 are an important tool for bringing copyright into the digital age. These treaties make clear that copyright protects the making available and copying of material over the internet, as well as technologies used to manage copying and transmission.

International Patent Law

The WTO sought to create a practical, balanced framework for patent protection in creating TRIPS. In theory, this notion of balance and fairness should apply to protect the profits of manufacturers in the pharmaceutical industry, as well as provide methods to gain access to critical medications in developing countries. TRIPS generally mandate that inventors and manufacturers receive twenty years of patent protection¹ for their products or processes. The WTO and its member nations have recognized that special circumstances may exist that should excuse countries from performing their obligations and special exceptions have been written into IRPS³.

3- THEORETICAL BACKGROUND

The establishments of the World Trade Organization in 1994 and the international Agreement on Trade-Related Aspects of Intellectual Property Rights in 1995 have strengthened the global character of intellectual property regimes.

Human rights and intellectual property, two bodies of law that were once strangers, are becoming increasingly intimate. It is something of a mystery why intellectual property and human rights have remained strangers for so long. There is close nexus between IPR & international law. The general concepts of international law are reflected in the IPR. A study deeper into international law shows the concern towards IPR³.

International law envisages that any advancement in science or technology should be shared between countries of the world on mutual basis. This very concept is enshrined in various conventions relating to IPR, which allows exchange of knowledge systems⁴.

Protection of IPR is the concern of every state and the globe as a whole. Protection is granted under national laws relating to IPR as well as under international law⁵.

International law relating to IPR is found in various statutes like the WTO, TRIPS, and conventions like the Rome Convention, Paris Convention, Madrid Agreement and many others. The national laws of many states have been turned up in accordance with these international laws. Conventions, agreements and treaties have binding force of law particularly because the states are parties to it and are bound by the principle of *Pacta Sunt Servanda*⁶ i.e. to abide by the treaties or conventions in good faith.

The role of International Law Commission (ILC) is noteworthy in the development of law among nations. The progressive development of international law over the years is indented from the works of ILC. But when it comes to IPR, there cannot be an exhaustive law obviously because technology changes from day to day. Most of the crimes relating to IP are today so complex that the existing law cannot cope up with these circumstances. It is my humble suggestion that if the task is entrusted to ILC, it would try to cope up with the changed scenario and prepare more stringent laws for violating IPR⁷.

4- STATEMENT OF PROBLEM

Intellectual property right (IPR) is the creation of human mind. The relationship between intellectual property systems and human rights is complex and calls for a full understanding of the nature and purposes of the intellectual property systems. The glaring and growing inequalities in the distribution of wealth pose a dangerous polarization between the haves and the have-nots. Potential efforts of human beings lead to intellectual outcomes which in turn have a considerable value in economy. Just as raw materials and labour were key resources in the first industrial revolution, intellectual property is a central asset in the information or knowledge based economy. Right associated with intellectual property which gives protection is referred to as

IPR. The main question is how a human rights frame work and the provisions of international law provide tools to address the imbalances in the current IP system and achieve a more development- oriented outcome?

5- OBJECTIVES

- 1- To develop a stronger link between IPR and Human Rights
- 2- To enhance enforcement mechanisms for effective implementation of Human Rights.
- 3-To enact more stringent laws for the violation of IPR at international and national levels.

6- HYPOTHESIS

H1: The Trade-related Aspects of Intellectual Property Rights (TRIPs) agreement obliges all member countries to protect intellectual property rights. It has special implications for human rights when the technology of producing life saving drugs, for instance drugs for AIDS, is controlled by a handful of pharmaceutical companies that can charge prices way above what poor people can afford. The main international human rights treaties of relevance to a rights-based approach to IP policy include the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights with about 160 parties each.

H2: These international conventions, treaties and agreements protect IPR by the principle of mutuality, which is again a concept of International law or in other words preemptory norms of general international law. Where an inventor invents a new product in a foreign country, he is allowed to get patent in that foreign country itself provided the state of origin is a member of the agreement and allows similar rights to inventors there. This is nothing but the concept of reciprocity as imbibed from general international law.

H3: It is widely accepted that under human rights States have three types of obligations; the obligation to *respect, protect and fulfil* rights, and these pertain also to international assistance and cooperation. In order to *respect* rights States have an obligation to ensure that their policies do not harm the enjoyment of human rights in other countries. Raise awareness of national parliaments about the adverse effects of IP policies of their countries on the enjoyment of human rights. Use existing international human rights rules and mechanisms to raise concerns about the impact of IP rules on the enjoyment of human rights.

7- RESEARCH METHODOLOGY

The methodology used in this research work is Qualitative methodology and the research method adopted is Secondary type.(i.e.) the information is collected from journals, books and newspapers.

8- TESTING OF HYPOTHESES

In response to the controversies and differing views concerning how to effectively assist developing countries in terms of improving public health through international trade, the WTO formulated TRIPS in an attempt to balance the interests of the many different stakeholders involved. Some aspire to higher standards of IP protection to promote their technological industries, whilst others would benefit from more flexible IP standards to facilitate transfer of technology and allow them to respond to economic, social and cultural development concerns. The link between intellectual property rules and ethical regulations over genetic research should be institutionalized. Although the debates within the WTO and WIPO will surely be contentious, trade and intellectual property negotiators should embrace rather than resist opening up these organizations to human rights influence. The development of a global economy in which intellectual property plays a central role underscores the need for the human-rights community to claim the rights of the author, creator and inventor, whether an individual, a group, or a community, as a human right. It is equally important for human-rights advocates to protect the moral interests and rights of the community.

9- CONCLUSION AND SUGGESTIONS

- 1- There is a need for developing proactive, transparent and integrated IPR management regime. Such regime shall be promptly implemented.
- 2- There is need to exchange information on the latest research findings and development efforts relating to the IPR.
- 3- Develop new guidelines and recommendations for administering the IPR.

- 4- Expanding the work of the WIPO to develop the regulations for protection of the international copyright is very much required.
- 5- There ought to be amendment of or review to the existing Conventions. There is urgent need to frame conventions to make a comprehensive estimation of the hitherto growth of the legal framework and enable appropriate changes along with continuity.
- 6- WIPO is still in the early phase of its establishment and operation. It is important that member states pay their assessed contributions in full, on time and without conditions to enable its effective functioning.
- 7- The roots of confrontation should be removed.
- 8- With the recent technological developments and peripheral changes in the use of the IPR, some of the doctrines of IPR will have to be drastically modified.

* Following strategies can be followed with a view to improve international human rights.

- 1- ratification of international human rights instruments;
- 2- enhancement of enforcement mechanisms;
- 3- measures for effective national implementation;
- 4- respect for human rights by parties to the conflict;
- 5- dissemination of conventions;
- 6- enactment of penal legislations;
- 7- translation of treaties into national languages.

REFERENCES

1. See WTO report 2008.
2. Supra note 5.
3. D P Mittal, Indian Patent Law and Procedure, Taxman Allied Services Pvt p 313.
4. P Narayan, (2002), Copyright and Industrial Designs, (Eastern Law House), also Lione Beantly Brad Sherman, (2003), Intellectual Property Rights, Oxford University Press, p 109.
5. Ibid, see 1967 Convention.
6. Duty to fulfill international obligations in the light of good faith, it is a universal norm should be accepted.
7. Malcolm Shaw, International Law, see state responsibility.