

## ANALYSING THE INTERLINK BETWEEN INTELLECTUAL PROPERTY RIGHTS AND HUMAN RIGHTS

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### *Abstract*

*The Interlink between Intellectual Property Rights (IPR) and Human Rights are very substantial in nature. Diverse contextual aspect of intellectual property has been extended with human right as IPRs are creation of human intellect. The interphase between Intellectual Property and human right are supported by the policy makers, academic critics, bureaucrats and civil society organizations. By this it can be assured that the existence of the coexistence approach, notwithstanding, the human rights obligation towards the intellectual property arena is not yet explored in a greater context. The boundary of human rights and willingness to accept human rights are extending to the corporate's owners through intellectual property rights. These extensions require the protection of individual through different kind of intellectual property registration. Registration of intellectual property within the ambit of constitutional values needs to be taken care for the prevention of human rights violation. This also prevents the work from being recoded or any other modification which prejudice to the authors reputation. Similarly, other intellectual property aspects also attract the same. This research work identifies and analyses the holistic approach of intellectual property rights and human rights with different attributes.*

**Keywords:** Human Rights, Intellectual Property, Author, Inventor

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## INTRODUCTION

People's standard of living is tremendously changing in the recent days. The lifestyle of the people from normal life to quality life is shifting towards advancement. It is because of the improvement and development of technology and knowledge various fields including the medical field. Moreover, enhanced quality of life to produce new drugs, labour for invention and productivity has been growing increasing concern for the human rights as well as intellectual property. With that inequalities prevail in health sector is in more related to the theme. There is a significant relation with that of developed and developing countries. Every country has their own agenda to improve human right. This apprehension is with the human rights fascination. There are lots of recognized and enforced mechanisms which suggest that the new forms of intellectual property fall under human rights.<sup>1</sup> With the said context human rights placed as a trump card for every country to respect their human centric behaviour. In all the sector of human rights arguments are set for the benefit of the human being and respected to an ultimate extent.<sup>2</sup> This is also fact that both the side good and bad phenomenon available. If the calculation of good happens, then the idea for human rights is exclusively successful. At the same time, if the bad calculation happens then the aspects of all high ended 'trump Card' are wastes.<sup>3</sup> However, with this variety of argument, the aspect of human rights is interrelated with intellectual property rights. There is sector specific relation which adds the value of human rights in a very lucid way.

## BRIDGE OF HUMAN RIGHTS & INTELLECTUAL PROPERTY RIGHTS

The bridge of the human rights and intellectual property depends on the below attributes:

### *Intellectual Property Rights , Human Rights And Economy*

In the aspect of intellectual property, the only aspect is economy growth of an individual as well country. The idea is being placed for the growth in different way, like the innovation of the country may lead the notion of economy. This notion can only be recognized by the system of strengthening the original process of intellectual property protection. In the same

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<sup>1</sup> Neumayer, E. (2005). Do international human rights treaties improve respect for human rights? *Journal of conflict resolution*, 49(6), 925-953

<sup>2</sup> Macmillan, F. (2008). Human rights, cultural property, and intellectual property: three concepts in search of a relationship. See Graber & Burri-Nenova, 2008, 50-63.

<sup>3</sup> James, F. D. (Ed.). (2010). *Educational Judgments (International Library of the Philosophy of Education Volume 9): Papers in the Philosophy of Education*. Routledge

way IPR regime could contribute the foreign direct investment for the country's growth. It is the growth of international trade inflow between the countries to community. These community benefits are more effectual in most of the developed countries where the IPR protection laws are strong. The valid ground of human right for the individual needs to be ensured by the protection of intellectual property through economy.

### ***Intellectual Property Rights, Human Rights And Innovation***

Intellectual property is the only factor to address innovation of a country. The relation of the innovation with human right is only connected by intellectual property. Appropriate condition for the protection of intellectual property is made through the patentability. The patent protection is varying from industry to industry that is more effective on pharmaceutical industry. For better protection and appropriateness of the innovation argument put forward to be implement more stringent intellectual property laws. There is study which shows that 65 percent of pharmaceutical and in 30 percent in chemical innovation not guaranteed under patent protection.<sup>4</sup> It is also accepted that most of the innovative areas are lacking the patent protection because of its nature. Likely, product patent is in demand for the different sector of drug, organic chemical, and pesticides.<sup>5</sup> It is given the power to the real inventor in this competitive market. As a result of it the invention gets the higher life scale and has a vital role in terms of the IPR.

### ***Intellectual Property Rights, Human Rights And Culture***

As the mounting controversies round pharmaceuticals, genetically modified organisms, generation transfer, and faculty readings make clear; the expansion of corporately-held intellectual assets rights can battle with other diagnosed human rights together with rights to health, meals security, economic development, and education.<sup>6</sup> One prominent response has been the movement to "loose way of life," based upon the large conviction that the growth and enforcement of intellectual belongings have a chilling effect on cultural creativity and the sharing of public items. It's not possible to safeguard the public domain work in patent protection from the croaked corporate system.

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<sup>4</sup> Arundel, A., & Kabla, I. (1998). What percentage of innovations are patented? Empirical estimates for European firms. *Research policy*, 27(2), 127-141.

<sup>5</sup> Clark, T. (2011). *The Cambridge introduction to literature and the environment*. Cambridge University Press

<sup>6</sup> Coombe, R. J. (1998). Intellectual property, human rights & sovereignty: New dilemmas in international law posed by the recognition of indigenous knowledge and the conservation of biodiversity. *Indiana Journal of Global Legal Studies*, 59-115.

The rights of peoples with admire to their cultural history pose new and essential challenges for balancing the exercising of highbrow properties with individual freedoms of creativity. Those consist of a need for the global human rights gadget to pay more interest to capability violations of the cultural rights of minorities and indigenous peoples.<sup>7</sup> Obligations to guard conventional environmental understanding and to appreciate indigenous cultural background are already internationally identified. States are seeking to satisfy their felony duties below the conference on organic variety and to appreciate global standards set up by using the Draft declaration at the Rights of Indigenous Peoples. The sector highbrow assets corporation (WIPO) has, likewise, identified a need to attain out to “*new beneficiaries*” if the highbrow property machine is to obtain worldwide legitimacy. This includes an extensive attempt to articulate the standards through which traditional knowledge and traditional cultural expressions are pleasant diagnosed, maintained, and guarded. All of these projects contain the elaboration of cultural rights, even though they're not often framed as such.<sup>8</sup>

There are UNESCO Conventions available which can be undergoing immediately on the question of “*the right lifestyle*”. These Conventions are: the sector history convention of 1972; the conference for the Safeguarding of Intangible Cultural historical past, 2006; and the conference at the protection and advertising of the diversity of Cultural Expressions, 2007. Of course, it seems pretty abnormal to share the first convention in the present context. That is, perhaps, due to the fact the continual linking among a few sorts of cultural rights and intellectual assets rights has inclined to advocate that what is probably defined as “*tangible tradition*”.<sup>9</sup> The final phase of this bankruptcy queries this taxonomy, however; in thrall to it with the end result that this section can have extra to say about the alternative UNESCO Conventions. Further, in the aspect of evaluating human rights start before focusing at the UNESCO Conventions it’s vital to not forget worldwide prison background.

Ultimately, to argue that just a few factors of a proper to existence constitute human rights, well defined, is interesting however does not solve the query of which, if any cultural rights ought to be issue to unlawful safety. It may be accepted that to protect cultural rights far from the truth of human rights. It also extends the arguments of protecting the cultural

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<sup>7</sup> Coombe, R. J. (1998). Intellectual property, human rights & sovereignty: New dilemmas in international law posed by the recognition of indigenous knowledge and the conservation of biodiversity. *Indiana Journal of Global Legal Studies*, 59-115.

<sup>8</sup> Dutfield, G. (2001). TRIPS-related aspects of traditional knowledge. *Case W. Res. J. Int'l L.*, 33, 233

<sup>9</sup> Macmillan, F. (2008). Human rights, cultural property, and intellectual property: three concepts in search of a relationship. *See Graber & Burri-Nenova*, 2008, 50-63.

heritages and diversity, “a guarantee of sustainable development”,<sup>10</sup> “of general interest to humanity”, and “a common heritage of humanity”.<sup>11</sup>

Notwithstanding the commonalities among the human rights and highbrow property regimes, the Committee's “center responsibilities” method to authors' rights leaves many troubles unresolved. Maximum appreciably, it does now not outline the content of the “ethical and materials pastimes” which states are required to “admire, shield, and fulfill.” Here, the conflict lies with the domestic and international regulation of the intellectual property assets.

### ***Intellectual Property Rights, Human Rights And Traditional Knowledge***

Traditional knowledge is knowledge that belongs in various parts of the world to traditional cultures. It is found in the developing world in particular. It is spoken by mostly people, groups or communities from one generation in the next. Over the last few decades, the big companies have taken full advantage of this experience. Big firms discover traditional knowledge and transform it into products for commercial use with technology. Developing countries have recognized the consequences of these exploitations and, in particular at the WTO, raised concerns at various international levels. Through this way, the economic and other benefits which corporations reap from using their expertise are denied for many traditional societies. The right to use their own knowledge as multinationals are granted patents on this use are further deniable to these communities. In many cultures traditional expertise is often used to supply medicines. The problem is more aggravated when firms who exploit the traditional knowledge not only “neglect to ask permission to reproduce these items, but also fail to acknowledge the source and even pass off productions and works as authentic expressions or products when they are not.”

Traditional expertise is information owned in one-of-a-kind components in the sector with the aid of traditional communities. There are miles especially discovered in the world's development. Its miles have been transferred by the term, often by means of cultures, businesses or societies, from one technology to another. This information has been exploited notably by big companies within the previous few years. Large numbers explore common understanding and use technology for industrial purposes to turn into products. The consequences of these exploitations have been realized by increasing countries and the

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<sup>10</sup> Preamble, Convention for the Safeguarding of Intangible Cultural Heritage, 2003

<sup>11</sup> Preamble, Convention on the Protection and Promotion of the Diversity of Cultural Expressions, 2005

concerns posed at various international levels, particularly in the WTO. Therefore, the money and numerous benefits that can be obtained by the use of understandings by agencies are denied to many traditional groups.<sup>12</sup> The right to use its own definition as multinationals have been licensed on this use is further denied to these classes. Conventional experience is used in many communities routinely to provide medicines (Bodeker, G. 2003). The problem is more irritated when companies who make the most the traditional information no longer simplest *“forget about to invite permission to reproduce these items, however additionally fail to acknowledge the supply or even skip off productions and works as genuine expressions or merchandise when they're not.”*<sup>13</sup>

### INTELLECTUAL PROPERTY RIGHT AND HUMAN RIGHTS CONFLICT

The issue of human rights is not only that of drug admission alone but also that of normal knowledge and transition of generations. Traditional groups make medicines using their traditional knowledge. Often major drug companies market this knowledge without even paying royalties or knowing the source.<sup>14</sup> There are severe concerns in developing countries about protecting traditional know-how owned by their nations' conventional communities. In addition, one of the key roles of journeys is to help turn generation to develop international locations which are that and less advanced. Multinational parties, however, are not usually prepared to collaborate. Increasing foreign locations have expressed concern about the safety, conventional knowledge and technology transfer implications of the tool for intellectual property. Within this text, the relationship between the regimes is to be clear. That human rights and intellectual property rights that co-exist jointly is the key problem it addresses? The aim is to understand this complicated debate in the Indian context by reading it.

Intellectual property rights and Human rights once strangers are becoming increasingly close supporters at present. The two subjects progressed for decades in total isolation from each other. Over recent years however, global favourite putting practices have started to chart obscure intersections between, on the one hand, the legal rules on intellectual property and,

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<sup>12</sup> Ghosh, S. (2003). Globalization, Patents, and Traditional Knowledge. *Colum. J. Asian L.*, 17, 73.

<sup>13</sup> Dutfield, G. (2001). TRIPS-related aspects of traditional knowledge. *Case W. Res. J. Int'l L.*, 33, 233

<sup>14</sup> Helfer, L. R., & Austin, G. W. (2011). *Human rights and intellectual property: Mapping the global interface*. Cambridge University Press.

on the other, the human rights rule.<sup>15</sup>

This is very important to take into account that there is only one aspect of human rights and Intellectual-property rights. As fundamental to human rights, intellectual property rights are contract rights given by government to knowledge owners in exchange for the value of such an invention; even as human rights are never expired, the intellectual property rights are restricted in time. Intellectual property rights are unlimited and not exhaustive in nature.<sup>16</sup> It is accepted that intellectual property and human rights are primary responsibility for a country. In its overall statement the Committee defined: human rights are important because they can be intrinsic to the individual as such, while intellectual property rights are first and foremost a fundamental way in which states try to offer opportunities for innovation and originality, inspire new and modern innovations to be disseminated, and improve culture.<sup>17</sup>

India is a signatory member of the conventions respectively ICCPR & ICESCR. Both the convention assures the human rights of the individual and long with that the constitution of India guarantees the same in wider way. Nevertheless, the best Court in India found that any law given by the legislature to the legislative capacity could not override the fundamental human rights enshrined in Article 21 of the Constitution of India, especially the right to life and privacy.<sup>18</sup> The appropriate residence in dignity and equality is provided for under Article 21 of the Charter. Article 21 no longer calls an animal of a trivial nature such as existence the right to life confident. That requires the freedom to live, higher standards of living, safety in the workplace and recreation. This is even broader. By its numerous rulings, India's very best court finds the right to lifestyle to the right to health and “*access to medical treatment.*”

## INTELLECTUAL PROPERTY RIGHTS: SOCIO-ECONOMIC RELATION

Socio- economic condition of an individual can be enriched by the intellectual property value. The value of intellectual property vouched the norms of human rights as its moral rights. Anatomy of the socio-economic condition of an individual can be flourished by accepted nature of human intellect. This diagnosis is related to the reality of socio-economic aspects of

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<sup>15</sup> Helfer, L. R. (2003). Human rights and intellectual property: Conflict or coexistence. *Minn. Intell. Prop. Rev.*, 5

<sup>16</sup> Cullet, P. (2007). Human rights and intellectual property protection in the TRIPS era. *Human Rights Quarterly*, 403-430.

<sup>17</sup> Tully, S. (2006). Flighty purposes and deeds: a rejoinder to Malcolm Langford. *Netherlands Quarterly of Human Rights*, 24(3), 461-472.

<sup>18</sup> Tamvada, S. S. (2010). TRIPS and Human Rights: The Case of India. *Jindal Global Law Review*, 2(1)



human being. Also, for non-ethical realists, a basic awareness check tends to be an ineffective way to determine whether or not anything is a human being. Examples of commonly-identified criteria are etiquette guidelines for the engagement of holidaymakers at international airports in the field. Also, for non-ethical realists, a simple identification check tends to be unsatisfactory to see if anything has the value of a person. Examples of commonly established norms are the etiquette regulations regulating contact between holiday makers at international airports across the industry. Does it comply with that the proper to queue, for example, has the equal general reputation because the rights of existence and liberty? There appears to be “*something more*” worried within the concept of an everyday human rights norm whether or no longer is one a moral realist.<sup>19</sup>

Human rights are often regarded as a civil right Can it be argued plausibly that all states will enforce a small patent gadget and individuals who do not violate human rights? The philosophical framework of the principle of human rights does not contribute to an human right to property from labour practice.<sup>20</sup> *“In the 21<sup>st</sup> century, the economic growth of developing countries, as indeed also of the developed ones, will depend on the international competitiveness of their economy, industry, and business. Such international competitiveness, in turn, will be driven by knowledge-based technological progress, which can be achieved only through a well-functioning national system of innovation that has as its core, a strong, modern and well enforced intellectual property system,”* says Mr. Alikhan, a well-known author in IPR.<sup>21</sup>

## CONCLUSION AND SUGGESTIONS

It's far as a result crucial to craft a sui generis machine of safety capable of assembly the heterogenic desires of respective communities, each with their personal peculiarities, cultures and assets, and of creating legal rights that not best defend against the perceived abuse of cultural heritage, but that also defend, at least in precept, absolutely everyone who can satisfy its necessities. Cultural historical past rights developed on this foundation can have stronger credibility and compatibility with current belongings rights and legal responsibility structures.

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<sup>19</sup> Perry, M. J. (1997). Are human rights universal? The relativist challenge and related matters. *Human Rights Quarterly*, 19(3), 461-509.

<sup>20</sup> Mitchell, C. (1998). Peter Drahos, a Philosophy of Intellectual Property.

<sup>21</sup> Hughes, J. (1998). The Personality Interest of Artists and Inventors in Intellectual Property. *Cardozo Arts & Ent. LJ*, 16, 81.



The manner wherein the right to health, freedom of expression, get admission to understanding, and the rights of disabled humans were lately addressed in the Intellectual Property regime indeed endorse that human rights ends can be accomplished inside bendy Intellectual Property frameworks. The Intellectual Property and human rights interface give a platform for developing new areas or attractive to opportunity institutions where Intellectual Property rights may be challenged, changed, and otherwise balanced. Notwithstanding this, Intellectual Property rights continue to grow and beautify safety for highbrow creations continues to be an excessive priority for evolved countries because the interaction among Intellectual Property and human rights maintains to unfold, positive key limitations of putting Intellectual Property in a human rights framework where development is worried have emerged.

On this context, Intellectual Property flexibilities are certainly crucial. However, also essential is the potential of nations to enact exceptional forms of regulations, select exclusive models of innovation, and live underneath their personal set of values, all even as leveraging domestic norms to help form cultural and technological situations that strengthen their potential to take part meaningfully in a globalized international. As human rights frameworks hold exerting moral pressure on the course and workout of Intellectual Property rights, they also must exert comparable force at the layout of those rights and the means by way of which states grow to be obliged to adopt them inside local situations. As currently practiced and conceptualized, human rights norms will not inexorably facilitate results steady with human flourishing in the way that resonates with communities labouring under wonderful cultural, social, and institutional environments. Academic scholars must remain attentive to the distributive justice factors and inherent biases of the human rights framework as a good deal as they may be alert to the ones within the Intellectual Property framework.