



# The Interface Between Human Rights and Intellectual Property Rights

M Yuktha Somaiah

Student

School of Law

Christ Deemed to be University, Bangalore

**Abstract:** This paper examines the intricate relationship between human rights and intellectual property rights (IPR) through the lens of the International Covenant on Economic, Social, and Cultural Rights. It discusses how the Covenant recognizes certain rights, like the right to food and health, which may be affected by intellectual property frameworks in developing nations. The paper also explores the balance between rewarding intellectual contributions, as acknowledged in Article 15(1)c of the Covenant, and the impact of existing intellectual property laws. It delves into conflicts between IPR and human rights, such as the right to health, education, culture, privacy, and freedom of expression, highlighting the need for a careful balance between these rights. It concludes with a few suggestions on how to address these conflicts and ensure that both intellectual property and human rights are protected.

**Index Terms:** Human rights, Intellectual property rights, TRIPS agreement, ICESCR

## Introduction

Over the past few years, significant discussions have focused on the connection between human rights and intellectual contributions. The most important legal tool for analyzing the relationship between the two domains is, in many ways, the International Covenant on Economic, Social, and Cultural Rights (ICESCR). First of all, it acknowledges certain rights, like the right to food and health, the realization of which may be impacted in developing nations that adopt or reinforce intellectual property rights frameworks in accordance with the obligations they make under the TRIPS Agreement or other intellectual property rights treaties. Second, it acknowledges in Article 15(1)c the necessity of rewarding people and organizations that contribute particularly to society through their intellectual output. It is important to clarify right away that the incentives recognised by the Covenant have nothing to do with the current laws governing intellectual property rights.<sup>1</sup> The realization of this right might occasionally be made possible by already-existing intellectual property rights, but generally speaking, there is no requirement that the rights defined in Article 15 of the Covenant and already-existing intellectual property rights correspond to one another. This is significant because it shows that the Covenant establishes a foundation for acknowledging all intellectual contributions, not only those that fall under the pretext of already recognised intellectual property rights. Stated differently, Article 15(1)c is sufficiently inclusive to allow for the assertions made by holders of traditional knowledge, for example. A few years ago, the Committee on Economic, Social, and Cultural Rights, which is in charge of enforcing the Covenant, made the decision to look more closely at the connection between human rights and contributions to knowledge. The Committee began by concentrating on how the implementation of human rights is affected by the intellectual property rights that are now in place. The result of this was the 2001 Statement's adoption." The Committee then started working on

<sup>1</sup> Cullet, Philippe. "Human Rights and Intellectual Property Rights: Need for a New Perspective." International Environmental Law Research Centre (IELRC), 2004.

a General Comment, which is a more important document in terms of both politics and law. It is anticipated to be adopted at the Committee's November 2004 meeting. This General Comment, which would essentially take the place of the 2001 Statement, will be the recognised interpretation of Covenant Article 15(1)c.

The proposed General Comment, in contrast to the 2001 Statement, places more emphasis on the rights of individual knowledge producers and leaves less room for inquiries into how intellectual property rights affect human rights.

### ***IPR and Human Rights***

The fundamental purpose of intellectual property rights is to safeguard intellectual property rights. It merely suggests that the thinkers who invented the innovation ought to be paid for their efforts in addition to being acknowledged for their contributions. It is also occasionally referred to as a negative right that forbids anyone from interfering with previously generated work. Human rights, on the other hand, are inherent rights that every person has the right to from birth.

Human rights are those basic freedoms that each and every person has and that are unalienable.<sup>2</sup> Furthermore, human rights are defined under Indian law in Section 2(d) of the Protection of Human Rights Act, 1993 as the entitlement to life, liberty, equality, and dignity of an individual that is upheld by international treaties and the constitution and is enforceable in court. But in recent years, there has been closer examination of how intellectual property rights affect fundamental human rights. Human rights and intellectual property rights are related in a variety of ways. For example, patent laws acknowledge the socioeconomic aspects of patent rights, including the interests of society and patent holders. At the 2001 World Trade Organisation (WTO) Ministerial Conference, it was considered how the relationship between pharmaceutical patents and the human right to health had more global significance. There are various cases that demonstrate how pharmaceutical patents affect the right to health in India. For example, as of 2017, 2.1 million individuals were living with HIV/AIDS, and 69,000 people died as a result of the disease. Nonetheless, in an effort to rein in the country's exorbitant drug prices, the Indian government issued the 2013 Drug Price Control Order and cooperated with the National Pharmaceutical Pricing Authority (NPPA).<sup>3</sup> The desire of patent holders to maximize profit in exchange for their investments has caused changes in the prices of medications over the past 20 years. An HIV medication that is patented also comes at a hefty price. The cost of one Atripla dosage, an anti-HIV medication, is US \$1,300 per month. Such an enormous sum is out of reach for the impoverished population that claims the greatest number of lives while living in emerging nations. The impoverished in third-world countries are the most affected, as they lose their lives due to lack of access to life-saving medications. According to nominal Gross Domestic Product (GDP) and purchasing power parity (PPP), the Indian economy was ranked seventh in the world in 2018. In the World Bank and WHO Report from 2017, it was noted that over 7.3 billion people worldwide lack access to basic healthcare and medications. This represents more than half of the world's population. In India, the majority of people, including women, cannot afford to pay for their health care, and poverty and social hierarchy mostly affect other vulnerable groups. It's interesting to note that India has never allocated more than 2% of GDP to healthcare and related infrastructure. Consequently, a thorough examination of these specific facets of the rights to health and intellectual property is required.

### ***Impact of IPR on Human Rights***

As was mentioned in the previous section, Article 15(1)c should be seen as having a far wider scope than the current intellectual property rights. However, given their potential to affect the realization of human rights, existing intellectual property rights are immediately relevant in this sphere. This is one of the primary points of a general statement covering all the major issues in this field, and it should be at least as essential as questions about the benefits given to authors and inventors. The draft General Comment attempts to affirm that there is a need to strike an appropriate balance between the protection of intellectual property rights and human rights to food, health, and education, for example. It does not entirely ignore questions about the effects of intellectual property rights on the realization of human rights. This brings up some significant issues. To begin with, the Committee does not define the term "obligations of comparable priority." Second, it is possible to read Section 42(a) as stating that the social role of intellectual property rights and the claims to human rights made by writers and inventors

<sup>2</sup> Vaver, D. (2002). *Intellectual Property and Human Rights: Addressing the Interface*. Oxford University Press.

<sup>3</sup> Geiger, C. (2015). *Intellectual Property Rights and Human Rights: A Complex Relationship*. *Journal of Intellectual Property Law & Practice*, 10(8), 569-570.

should be balanced. To put it another way, the balance has nothing to do with how much weight should be placed on intellectual property rights vs human rights to food, health, and education.<sup>4</sup> The equilibrium is only the fundamental "social" equilibrium that intellectual property rights laws aim to accomplish. This is significant because it reduces basic human rights, such the right to food and health, to factors that are considered in a balance that is not primarily focused on human rights claims. States parties shall, therefore, make sure that their intellectual property regimes do not prevent them from upholding their fundamental duties with regard to the right to health, food, education, or any other right specified in the Covenant, according to the draft General Comment. This is far more in line with the issues raised in the 2001 Declaration and issues that are by now widely acknowledged as some of the primary obstacles that all parties participating in the achievement of the rights to food and health must consider. The Draft acknowledges that, from the standpoint of human rights, the present development of intellectual property rights protection poses serious difficulties. As a result, it recognizes the moral dilemmas raised by the patenting of human organs. Regarding the fulfillment of social and economic rights, the Draft is significantly more constrained than the 2001 Statement, especially in that it concentrates mainly on a few specific issues within this broader field. The major conclusion that is taken into consideration while looking at the enjoyment of the human rights to food, health, and education is that the realization of these rights shouldn't be jeopardized by "unreasonably high license fees or royalties." The extent of protection provided by current intellectual property rights, however, does not appear to be a topic that needs to be addressed from the standpoint of human rights.

For example, the introduction of product patents in the health sector is a significant issue in many developing nations. More precisely, unless it is offset by steps to guarantee that those impacted by the higher costs of patented drugs do not lose access to these drugs, this could be seen as a purposeful regression in the realization of the human right to health in nations like India that have specifically imposed restrictions on product patents in this area.<sup>5</sup> In general, a General Comment on these matters should delve much deeper into the subject of the link between human rights and currently in effect intellectual property rights. This is mostly because intellectual property rights laws and treaties are rapidly expanding the range of protection that they offer. Given that some modifications to intellectual property rights regimes may have an impact on the realization of human rights, this is one of the major issues that the human rights community will need to deal with in the years to come. Actually, when the Committee said in its 2001 Statement that it deemed "of fundamental importance the integration of international human rights norms into the enactment and interpretation of intellectual property law," that is exactly what it meant to accomplish.

### ***Conflict in Human Rights and IPR***

Though it encompasses much more, when we think about intellectual property rights, we often associate it with innovation and entrepreneurship. Human rights and intellectual property represent the next frontier that requires examination. While preserving the writers' human rights through copyright protection is important, it's as important to determine whether the protection infringes on any other human rights.<sup>6</sup> Human rights and intellectual property rights (IPR) clash when the exercise of one set of rights restricts or tramples upon the enjoyment of another. When it comes to Freedom of Expression, Intellectual property rights (IPRs) like copyright and trademarks may clash with the freedom of speech. For instance, copyright laws may impose limitations on how copyrighted content is used, which could restrict artistic or speechful expression. When copyrighted content is used in ways that restrict artistic or linguistic freedom, intellectual property rights (IPR), such as trademarks and copyright, can clash with the right to freedom of expression. For instance, copyright laws that forbid using protected works for criticism, parody, or educational reasons could restrict people's freedom of expression and creative endeavors. Right to Health is another area of conflict because patented medications may be prohibitively expensive in developing nations, pharmaceutical patents may interfere with the right to health by restricting access to reasonably priced medical care. Patents on pharmaceuticals can conflict with the right to health by limiting access to affordable medicines. In many developing countries, patented drugs are often priced out of reach for many individuals, leading to barriers in accessing essential healthcare. This can have severe consequences,

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<sup>4</sup> Ragavan, S. (2009). Intellectual Property Rights and Human Rights: Friends or Foes? *Journal of Intellectual Property Rights*, 14(5), 347-354.

<sup>5</sup> Garg, S. (2017). The Impact of Intellectual Property Rights on Human Rights and Access to Medicines: A Study in the Indian Context. *Journal of Intellectual Property Rights*, 22, 263-275.

<sup>6</sup> Drahos, P. (2015). *Intellectual Property and Human Rights: Reconciling Competing Interests*. Edward Elgar Publishing.

particularly for those living in poverty or facing health crises. The right to education may be hampered by copyright restrictions on educational materials since they may restrict access to information and resources. For instance, laws against sharing or copying instructional materials may make it more difficult for students to obtain the knowledge they need to learn, particularly in areas with few educational resources. By restricting access to information and educational resources, copyright restrictions on educational materials may interfere with the right to education. IPR can impede the right to participate in cultural life by restricting access to traditional knowledge, cultural expressions, and genetic resources. For instance, patents on traditional medicinal knowledge or indigenous cultural practices may prevent communities from freely practicing and preserving their cultural heritage.<sup>7</sup> IPR interferes with Right to Culture by limiting access to traditional knowledge, cultural manifestations, and genetic resources, IPR may infringe upon the right to participate in cultural life. Another major area which is in conflict is Right to Privacy. In the context of data protection and intellectual property rights in personal data, IPR may clash with the right to privacy. Intellectual property laws in the digital age often involve collecting and processing personal data, potentially infringing on privacy. For instance, copyright enforcement may require monitoring online activities. The use of biometric data in intellectual property protection, like facial recognition, raises privacy concerns without proper regulation. IoT devices, integral to intellectual property protection, can collect substantial personal data, prompting privacy issues. Surveillance for copyright enforcement, such as monitoring internet traffic, may violate privacy if not transparent and proportionate. Balancing intellectual property rights with privacy protection is crucial in these contexts.

### ***Conclusion***

Because the smooth operation of both is necessary for the appropriate and rich economic and social growth of the society as a whole, the fundamental discussion is thus how to maintain a balance between intellectual property rights and human rights. In order to address the contradiction between intellectual property rights and human rights, it is necessary to pinpoint the specific rights that are being violated. In order to adhere to the provisions of the TRIPS Agreement, the human rights organizations need to formulate particular interpretations of the ambiguous rights, which mostly pertain to economic, social, and cultural rights. Second, consumers of intellectual property goods will be on an equal footing with the owners of intellectual property rights if the TRIPS Agreement is viewed through the lens of human rights. According to the agreement, the proprietors of these things are superior to their customers. However, if the agreement's Human Rights clause is inserted, then the customers will also be the owners of these globally recognised rights. Thirdly, the government ought to set maximal requirements for the protection of intellectual property rights rather than pushing for minimum standards. This would serve as a boundary for the increasingly stringent protection requirements for intellectual property rights. If a minimal level of human rights protection is to be upheld while releasing any form of intellectual property rights, then it is also recommended for improved human rights protection. Last but not least, while creating new laws pertaining to intellectual property rights, international bodies like the World Trade Organisation (WTO), the World Intellectual Property Organisation (WIPO), etc., should consider human rights. Only under these conditions can the laws pertaining to intellectual property rights and human rights coexist peacefully. Notwithstanding the undoubtedly heated discussions that will take place within the WTO and WIPO, trade and intellectual property negotiators ought to welcome, rather than oppose, the introduction of human rights influence into these institutions. Providing more avenues for human rights advocates to voice their opinions on intellectual property matters will bolster these groups' credibility and encourage the assimilation of a growing number of complex legal regulations covering the same wide range of topics. The more urgent challenge of defining the interface between intellectual property and human rights with cogent, balanced legal rules that promote both individual rights and the welfare of the global economy will also be made possible by such integration for legislators and non-governmental organizations at the national and international levels.

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<sup>7</sup> Trimble, M. (2006). Intellectual Property and Human Rights: A Paradox. WIPO Journal, 2(2), 87-96.



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