Intellectual Property Law Vs Human Rights Law: A Re-Examination of the Relationship Between Two Distinct Legal Regimes in Light of Digitalization and Sustainability

MMM Shihan [1#]

[1]*Faculty of Law, General Sir John Kotelawala Defence University, Ratmalana, Sri Lanka*

[#] <shihan.tck@gmail.com>

Abstract— In simple terms, intellectual property rights are rights that recognize and provide incentives for inventions connected to social development. On the other hand, human rights are basic natural rights that are inheritable and contingent upon human dignity. While the right to protection of the "moral and material interests" of an individual's intellectual product is enshrined in the canon of international human rights, it could be argued that the dominant regime of intellectual property rights has historically come into conflict with other fundamental human rights of ordinary customers of intellectual property. The paper, hence, re-examines their relationship; firstly, for the impacts of intellectual property rights on the realization of human rights such as the right to health, which has become much more visible following the adoption of the 'TRIPS' Agreement and digitalization, and secondly, due to the increasing importance of intellectual property rights that has led to the need for clarifying the scope of human rights provisions protecting individual contributions to knowledge, while drawing a distinct line between intellectual property rights that protect and grant exclusive rights to new creators and the possible infringements it may cause for individual human rights of ordinary customers, and proceeds to identify that in relation to human rights, two strains of intellectual property thoughts have become increasingly prevalent: the first deals with the integration of human rights, while the second explores the possibilities of intellectual property as a mechanism of social justice and sustainability. The information necessary to conduct the study was collected through statutory analysis, while library research, provides secondary information by analogies of relevant scholarly articles and books. The paper in conclusion proves that intellectual property protection of the future must protect fundamental human rights by ensuring access to life-saving and life-improving technologies with sustainability while continuing to respect the material and moral interests of the individuals behind these vital innovations in a digitalized world.

Keywords— **Intellectual Property Protection, Human Rights, Sustainable Digitalization, Social Justice, Socio-Economic Development**

I. INTRODUCTION

In simple terms, intellectual property rights are rights that recognize and provide incentives for inventions connected to social development. On the other hand, human rights are basic natural rights. These rights are indeed inheritable rights contingent upon human dignity. In recent decades, the relationship between intellectual property and fundamental human rights has attracted increasing scrutiny. While the right to protection of the "moral and material interests" of an individual's intellectual product is enshrined in the canon of international human rights, with explicit inclusion in the Universal Declaration of Human Rights (UDHR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR), it could be argued that the dominant regime of intellectual property rights has historically come into conflict with other fundamental human rights of ordinary customers of intellectual property, as evinced by the proposition at hand.

Given that there prevails a glimpse of this system of recognition and enforcement for intellectual property rights, which has run afoul of human rights principles by restricting access to protections, to privileged classes throughout history, the paper explores the historical and contemporary conflicts between intellectual property law and human rights, addressing the current system of intellectual property protection, which could be argued as threatening, and even actively violating, the enjoyment of several basic human rights of ordinary customers.

The paper hence, reexamines their relationship; firstly, for the impacts of intellectual property rights on the realization of human rights such as the right to health, which has become much more visible following the adoption of the 'TRIPS' Agreement and secondly, due to the increasing importance of intellectual property rights that has led to the need for clarifying the scope of human rights provisions protecting individual contributions to knowledge. While also drawing a distinct line between intellectual property rights that protect and grant exclusive rights to new creators and the possible infringements it may cause for individual human rights of ordinary customers; identifying two strains of intellectual property thoughts in relation to human rights, which have become increasingly prevalent: the first deals

with the integration of human rights, while the second explores the possibilities of intellectual property as a mechanism of social justice and sustainability, proving that intellectual property protection of the future must protect fundamental human rights by ensuring access to life-saving and life-improving technologies, while continuing to respect the material and moral interests of the individuals behind these vital innovations in a digitalized world.

II. LITERATURE REVIEW

Initially, analyzing the General Comment 17 on Article 15(1) (c) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), it could be proposed that an alternative broader reading of this provision focusing on traditional knowledge is of critical importance. Because the right to protection of one's "moral and material interests" in his or her "scientific, literary, or artistic" products is considered a basic human right, the notion that intellectual property protection might conflict with the realization of human rights objectives may seem counterintuitive. The discussion of whether intellectual property protection is essentially in conflict with other human rights takes place within a broader debate over the priority of different "generations" of human rights.

In this context, although intellectual property is recognized in the ICESCR, a document enshrining "second generation" rights, its ideological underpinnings in the liberal philosophy of John Locke places it more comfortably alongside the "first generation" civil and political rights found in liberal-democratic constitutions. This potential misalignment has generated a tension that fuels debate around the proper interpretation of intellectual property rights in the framework of universal human rights.

The UN ECOSOC addressed this confusion in a 2006 comment to the ICESCR, stating that it is "important not to equate intellectual property rights with the human right recognized in article 15". Other international bodies, such as the United Nations Sub-commission on the Promotion and Protection of Human Rights, have also recognized a fundamental incompatibility between intellectual property instruments, like the TRIPs, and the enjoyment of other basic rights. This interpretation, however, has been challenged within the UN system, with the UN High Commissioner for Human Rights, suggesting that intellectual property protection can coexist with human rights protection.

The issue of inconsistent intellectual property protection was brought to the fore in 1873, when Vienna's International Exhibition of Inventions failed to attract international inventors who feared their designs would be copied and re-appropriated without consequence. This inconsistency led to the Paris Convention for the Protection of Industrial Property and the Berne Convention for the Protection of Literary and Artistic Works.

In 1893, parties to these conventions agreed to create a single bureau to regulate intellectual property in the areas of industry (patents and trademarks) and the arts; *"Bureaux Internationaux Réunis pour la Protection de la Propriété Intellectuelle"* (BIRPI), remained the sole international body for intellectual property protection until the United Nations restructured the organization to create the World Intellectual Property Organization (WIPO) in 1960.

Intellectual property rights included in Article 27 of the UDHR states that:

1. 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.
2. Everyone has the right to the protection of the moral and material interests resulting

The case of ***Officer-in-Charge Special Crimes Division v. Mananage Susil Dharmapala (2020);*** makes special emphasize on the topics enshrined herein.

The shift from discussion of intellectual property as a matter of trade law to human rights was furthered by the inclusion of intellectual property rights in Article 15 of the ICESCR, which took force in January of 1976.

The sub-clauses of 15.1 are essentially a reiteration of Article 27, but the mention of "development and diffusion" in 15.2 and "co-operation in the scientific and cultural fields" in 15.4 represent a radical shift in intellectual property interpretation. The conception of innovation in terms of market value and incentive systems was being challenged by ideas about human development, as is reflected in the suggestion that "the full realization" of the human rights aspect of intellectual property requires "the diffusion of science and culture," a suggestion that was not present in the UDHR.

The Patents Cooperation Treaty (PCT), arguably the most important development in international intellectual property law between the ICESCR (1976) and the TRIPs (1995), serves as an example of the continued dominance of traditional intellectual property notions, even within the diverse arena of the United Nations.

The PCT set out to ensure that corporations with patents enjoyed equal protection in every country. This meant that a large pharmaceutical company could prosecute pharmaceutical actors around the world for using patented formulas as a starting point for generic drugs development. WIPO became responsible for overseeing the regulation of knowledge through the PCT. This protection, which largely favors companies with preexisting patents, set the tone for the most controversial institutionalization of intellectual property thus far, the TRIPs.

The TRIPs, established in the 1994 Uruguay Round of the General Agreements on Tariffs and Trade, was the first

attempt to put forth comprehensive protection for intellectual property through the World Trade Organization (WTO). Though there have been subsequent agreements aimed at increasing access to "essential drugs," the TRIPs and its restrictive prescriptions continue to dominate the institutional framework of international intellectual property.

III. CRITICAL ANALYSIS

A. Intellectual Property and Violation of the Right to Food in the Digitalized World

In the developing nations of the world, access to affordable food is hindered by strict protection of genetically modified seeds, and harmed by the act of biopiracy. This pair of issues reveals two different directions from which intellectual property protection in the agricultural and health sector can affect human rights. This represents a systematic exclusion of an entire class of agricultural actors from the 3rd world. The act of biopiracy, on the other hand, is also an aggressive act of structural inclusion (think of the US based RiceTec obtaining patent on an indigenous Pakistani strain of Basmati rice or the Singaporean Based companies that have patent rights over Medicine made out of exclusive Ceylon Cinnamon).

Both of these practices have attracted much criticism, but the legal efforts to prevent them are almost always underpinned by the robust system of intellectual property protection internationally. This tide may be subjected to change, as the UN Special Rapporteur on the right to food recently recognized, the application of intellectual property protection to agricultural products as a grave threat to the right to food, especially in developing nations.

B. Intellectual Property Protection and Right to Health

The harmful effect of stringent patents on life-saving pharmaceuticals is the most evident structural violence perpetrated by the international intellectual property framework. Allowing millions of preventable deaths in the name of protecting gigantic pharmaceutical companies, is evidently an infringement of human rights. Both the UN Special Rapporteurs on the right to health and on cultural rights have warned the international community, on the tensions between exclusive production and essential public access. Furthermore, the Global Commission on HIV has called upon the United Nations to develop a special intellectual property regime to regulate the protection of medicines in an alternative way, which protects human rights.

The capacity of patent-holding corporations to demand high prices for protected innovations has created avoidable public health issues globally, and the present work towards progressing this situation is challenged by agreements that aim to stricken rather than relax international intellectual property protections. However, it has also been the scope for some of the most promising ideas for intellectual property reform.

C. Intellectual Property Law in Sri Lanka: The Way Forward

Intellectual property law in Sri Lanka recently took a step forward with the promulgation of the Intellectual Property Act No. 36 of 2003, which repealed the Code of Intellectual Property Act No. 52 of 1979 and all amendments made there under. While incorporating many of the provisions of the old Act, the new Act also includes a plethora of new provisions articulated to bring the nation's IP law into compliance with the TRIPs Agreement. Specifically, it includes substantial revisions in the areas of copyright, patents and designs. The provisions relating to unfair competition have also been expanded. Before the new Act was passed by parliament, its constitutionality was challenged in the Supreme Court by a group of health activists.

In delivering its judgement, the Supreme Court observed that several clauses in the Bill that dealt with patents were contradicting Art. 12(1) of the Constitution, which addresses equality before the law, as the relevant provisions of the TRIPs Agreement aren't applicable equally to developed and developing countries without the inclusion of safeguards, as provided for in the TRIPS Agreement.

To be precise, Art. 30 and 31 of the TRIPs Agreement allow states to make provision for the use of a patent in the local market without the prior permission of the patent holder in case of national emergency. Further, the Doha Declaration made provisions for the mandatory licensing and simultaneous importing of any pharmaceutical drugs needed to meet national health emergencies. In the course of it, the Supreme Court observed "equal protection means the right to equal treatment when similar circumstances are prevailing allowing no discrimination against two persons who are similarly circumstanced". The court observed that "producers of patented products and processes and their agents in developed nations and consumers of such products in developing countries such as Sri Lanka could not be taken as parties that are similarly circumstanced. There is sufficient justification to treat them differently as they cannot be put in equal standing and if they are to be, such decisions ought to be justified by relevant criteria." The court therefore found that Clauses 62, 83, 84, 87, 90, 91, 92 and 93 of the Bill were contradictory to Art. 12(1) of the Constitution of Sri Lanka. Therefore, the government amended the relevant provisions to comply with the fundamental rights of Sri Lanka.

IV. RECOMMENDATIONS

As per Laurence Helfer's three different interpretations of intellectual property by actors concerned with human rights:

1. If protection of intellectual property is a legitimate human right, then rights-holders will seek to expand their claims to protection.
2. If intellectual property protections are obstructive to a pursuit of universal rights, then rights advocates will seek to contain or limit such regimes in an effort to promote human rights.
3. If protection of intellectual property is seen to have instrumental potential with respect to other rights, it may be employed by policymakers as a means to a rights-oriented end.

While the conception of a system of intellectual property protection that is in complete harmony with other fundamental human rights requires a high level of intellectual flexibility, it is virtually impossible to think of intellectual property protection (especially in areas of agricultural and pharmaceutical innovation) boosting an agenda of distributive justice and empowering human rights. As a result, much of the debate surrounding intellectual property and human rights in a digitalized world concerning sustainability and particularly in this paper, calls for the chosen non-application of limitations based on demonstrated humanitarian need and human rights.

This pursuit has been structuralized through diverse exceptions, to international trade regimes, this was prominently evident in terms of the approach of multiple Covid19 Vaccine Production Companies like Pfizer, Moderna and Sinopharm during the pandemic and continues in the area of bioparents, where advocates seek the relaxation of laws prohibiting access to genetically-modified organisms that could help in famine-relief.

A. *Prioritizing Rights Through Exceptions*

One of the most promising approaches to intellectual property reform is to work within present norms and carve out exceptions for life-saving or life-improving technologies, currently protected by tough patent laws. At a domestic level, this can include judicial and administrative procedures that allow the citizens of a particular nation to request exemptions from intellectual property protection when such protection comes into conflict with the enjoyment of human rights. This solution is consistent with the United Nation’s statement that, “States have a positive obligation to provide for a robust and flexible system of patent exclusions, exceptions, and flexibilities,” in order to safeguard the human rights of citizens.

B. *Leveraging Public Funding and Creating Distributive Commons*

To ensure greater access to life-saving innovations that were developed through federally funded research, government agencies can provide research support to the non-exclusive licensing of products. For example, if the National Institutes of Health provide money for biotechnology research that produces a breakthrough cancer treatment, the government can require that the treatment be excluded from patent protection. Similar approaches could be used in the field of agriculture in relation to a Sri Lankan context, which is one of our primary modes of boosting the economy. This might be of much value especially in light of fertilizer productions, both organic and non-organic, given the controversies surrounding his field in the recent past. It would allow multiple organizations to develop competing products based on open-source technology, breaking the current monopolies that artificially and systematically inflate the prices of life-saving drugs for HIV/AIDS, cancer and essential crop cultivation.

V. CONCLUSION

While the traditional approach to human rights holds that they are indivisible and mutually reinforcing, the situations described above particularly that in the context of digitalization and sustainability display material conflicts that occur within the current system of intellectual property protection. Because it has been developed within neoliberal institutions like the WTO, which has a global tendency to reinforce the hegemonic position of those nations who industrialized early at the expense of developing countries. Moreover, within countries like the United States, instruments for intellectual property protection have been used to reassert privilege and perpetuate structural violence by robbing communities off their access to even cultural products like music and art.

The interaction between international intellectual property protection and the protection of other human rights is not a recent phenomenon, as highlighted above in light of the UDHR and the ICESCR. Their institutionalized inclusion, however, has not thus far been reciprocal; despite reference to moral and material rights relating to authorship and innovation in human rights documents, modern agreements on intellectual property are alarmingly devoid of human rights language. Though human rights and intellectual property have philosophically distinct origins, both have become embodied in expansive international legal regimes with increasing ideological and institutional density. The widening of these once distinct policy spaces has led to overlap, as emphasized above.

In conclusion we can identify that in relation to human rights, two strains of intellectual property thoughts have become increasingly prevalent: the first deals with the integration of human rights, while the second explores the possibilities of intellectual property as a mechanism of social justice. Which paves the path to the conclusion that; The intellectual property protection of the future especially in light of digitalization, must protect fundamental human rights by ensuring access to life-saving and life-improving

technologies, while continuing to respect the material and moral interests of the individuals behind these vital innovations in a digitalized world, especially to ensure the sustainability of each one of those phenomema.

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