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RESEARCH ARTICLE

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INTELLECTUAL PROPERTY RIGHTS VS. HUMAN RIGHTS: A Brief Analysis

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Manuscript Info

Abstract

Human rights and intellectual property protection are two distinct fields that have largely evolved. First, the impacts of intellectual property rights on the realization of human rights such as the right to health have become much more visible following the adoption of the TRIPS Agreement. Second, the increasing importance of intellectual property rights has led to the need for clarifying the scope of human rights provisions protecting individual contributions to knowledge in the field of medical patent. Third, a number of new challenges need to be addressed concerning contributions to knowledge, which cannot effectively be protected under existing intellectual property right regimes.

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Introduction:-

What are intellectual property rights?

Intellectual property rights are like any other property right. They allow creators, or owners, of patents, trademarks or copyrighted works to benefit from their own work or investment in a creation. These rights are outlined in Article 27 of the Universal Declaration of Human Rights, which provides for the right to benefit from the protection of moral and material interests resulting from authorship of scientific, literary or artistic productions. The importance of intellectual property was first recognized in the Paris Convention for the Protection of Industrial Property (1883) and the Berne Convention for the Protection of Literary and Artistic Works (1886). Both treaties are administered by the World Intellectual Property Organization (WIPO).

Property rights are:

1.Patient Right 2.Copy Right 3.Trade Marks etc...

Patient Rights:

A patent is an exclusive right granted for an invention – a product or process that provides a new way of doing something, or that offers a new technical solution to a problem. A patent provides patent owners with protection for their inventions. Protection is granted for a limited period, generally 20 years

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Copy Rights:

Copyright is the exclusive right, given to the creator of a creative work, to reproduce the work, usually for a limited time. The creative work may be in a literary, artistic or musical form. Copyright is intended to protect the original expression of an idea in the form of a creative work, but not the idea itself. A copyright is subject to limitations based on public interest considerations, such as the fair use doctrine in the United States. Some jurisdictions require "fixing" copyrighted works in a tangible form. It is often shared among multiple authors, each of whom holds a set of rights to use or license the work, and who are commonly referred to as rights holders. These rights frequently include reproduction, control over derivative works, distribution, public performance, and moral rights such as attribution.

What are Human Rights?

Human rights are rights inherent to all human beings, regardless of gender, nationality, place of residency, sex, ethnicity, religion, color or and other categorization. Thus, human rights are non-discriminatory, meaning that all human beings are entitled to them and cannot be excluded from them. Of course, while all human beings are entitled to human rights, not all human beings experience them equally throughout the world. Many governments and individuals ignore human rights and grossly exploit other human beings.

There are a variety of human rights, including:

1. Civil rights (such as the rights to life, liberty and security),
2. Political rights (like rights to the protection of the law and equality before the law),
3. Economic rights (including rights to work, to own property and to receive equal pay),
4. Social rights (like rights to education and consenting marriages),
5. Cultural rights (including the right to freely participate in their cultural community), and
6. Collective rights (like the right to self-determination).

Introduction:-

Over the past two decades, there have been major changes at the municipal and international level, which necessitated a novel and pragmatic approach for a broader understanding of intellectual property protection. In 1994, the agreement establishing the World Trade Organization (WTO) was adopted and as a part of it an agreement on the Trade Related Aspects of the Intellectual Property Rights (TRIPS) also comes into force. The TRIPS agreement laid down the uniform standards on the grant and enforcement of the Intellectual Property Rights (IPRs). The Globalization of the IPRs also simultaneously triggered the debate on the relationship between the human rights and the intellectual property, because many developing countries, particularly the least developed countries, are not in a position to implement the TRIPS standards in their jurisdiction without further compromising their development at the cost of human rights.

1. The HIV/AIDS epidemic in Brazil and South Africa,
2. The cases of bio piracy and misappropriation of the traditional knowledge,
3. Gene patenting and research on the stem cells for patenting,
4. And the right to "fair use" of the copyrighted material,

Intellectual property rights and realisation of human rights (patent rights vs. Right to health and right to food):-

Intellectual property rights largely evolved as a distinct field of law for most of their history. This was due in part to the perception that rights like patents made a specific contribution towards economic and technological development. The links between the incentives granted through the patent system and its broader impacts on society were only superficially addressed.

Nevertheless, the basis of patent rights is a balance between the interests of society at large in technological and economic development and the rights granted to individual inventors.

This is linked to the fact that there has always been a tension inherent in the patent system between the promotion of competitiveness for economic development in capitalist economies and the introduction of near monopoly rights to ensure similar aims in certain specific fields.

It has therefore always been recognized that a balance should be struck between the rights granted to patent holders and the broader interests of society. In other words, socio-economic concerns constitute an integral part of patent

laws and treaties. This emphasis on socio-economic concerns is limited by the context within which they are introduced. Patent laws focus on the rights of patent holders and the interests of everyone else.

Medical Patent And Human Rights To Health:-

General considerations concerning the impacts of existing intellectual property rights on human rights highlighted above are better analyzed by focusing on specific rights. In recent years, one of the most controversial debates has focused on the impacts of medical patents on the realization of the human right to health in developing countries

The right to the “enjoyment of the highest attainable standard of physical and mental health” is specifically protected under the ICESCR. Core obligations of member states include the necessity to ensure the right of access to health facilities, especially for vulnerable or marginalized groups. In the case of primary health care, this includes the provision of essential drugs.

In the case of HIV/AIDS more specific elaborations of these obligations have been given. The UN Human Rights Commission adopted resolutions indicating that access to medication in the context of HIV/AIDS is one fundamental element for achieving the full realization of the right to health.

In other words, accessibility of medicines and their affordability are two central components of the right to health. Medical patents have direct impacts on accessibility and affordability. They have the potential to improve access by providing incentives for the development of new drugs as well as to restrict access because of the comparatively higher prices of patented drugs. In practice, access to drugs is governed by a number of factors. Their price is one important factor.

Therefore, the fact that patented drugs are nearly always more expensive than generic drugs is a relevant consideration. Other factors that influence access include situations where there is only limited competition between generic producers, local taxes, and mark-ups for wholesaling, distribution, and dispensing. Improving access can thus not be limited to bringing prices down through competition but must also include further measures such as public subsidies, or price control measures.

A Conciliatory, Peace Making And Balance Approach Between Human Rights And The Intellectual Property Rights:-

In order to paint a general background to the debate, among the many legal texts related to the interface between human rights and IPRs, two will be quoted here: the “Universal Declaration of Human Rights” of 1948 (“UDHR”) and the “International Covenant on Economic, Social, and Cultural Rights.” For the present purpose, it is sufficient to cite UDHR Article 27.1 which states that “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,” and Article 27.2 of the UDHR, which states that “everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.” These two paragraphs of the same provision of the UDHR illustrate the complex and sometimes ambiguous relationship, which may give rise to contradictions, between the IP system and human rights.

On the one hand, the right to freely participate in the cultural life of the community and to share in the scientific advancement and its benefits is guaranteed,

And on the other, the right to protection of the moral and material interests flowing from the results of IP production is ensured.

Although IPRs have at times evolved in relative isolation, the subject of attention mainly by a relatively small community of specialists, this text has laid the foundation for a long-standing debate on the relationship between IPRs and human rights

Solution Of The Problem Between The Intellectual Property Rights And The Human Rights:- Recent Treaty Making

The solution to the problem of misbalance between the human rights can be finding out in the establishment of the new treaties at international concern. In the last two years, intellectual property issues have risen to the top of the agendas of several international organizations. Then to overcome the problem number of the treaties got introduced

to balance the working of the intellectual property rights and the human rights. We are going to discuss the following treaties with reference to their basic and ultimate goal.

UNESCO: The Convention on the Protection and Promotion of the Diversity of Cultural Expressions:-

On October 20, 2005, UNESCO adopted a new international agreement, the Convention on the Protection and Promotion of the Diversity of Cultural Expressions ("Cultural Diversity Convention"). The Convention, which is a product of two years of intensive negotiations by government officials and meetings of independent experts, builds upon the Universal Declaration on Cultural Diversity which UNESCO's members unanimously adopted in 2001.¹² The Cultural Diversity Convention responds to the belief shared by many governments that the increasingly fluid movement of cultural goods and services across national borders is endangering cultural diversity and domestic cultural industries. Asserting that cultural diversity is a "common heritage of humanity,"¹¹⁹ the Convention reaffirms states' "sovereign right to formulate and implement their cultural policies and to adopt measures to protect and promote the diversity of cultural expressions" within its territory. A series of "guiding principles" informs how states are to achieve this objective. These principles include refraining from actions that "hinder respect for human rights," such as "freedom of expression, information and communication," and a "principle of openness and balance," which seeks an accommodation between protecting local

culture and "promoting, in an appropriate manner, openness to other cultures of the world." A major point of contention among the treaty's drafters was how to define "cultural expressions," "cultural industries," and "cultural activities, goods and services," given the overlap among these terms and free trade and intellectual property agreements. Thus this clearly shows that this treaty designed for the balanced co-existence between the intellectual property rights and the human rights at par.

WHO: The Medical Research and Development Treaty:-

In February 2005, a coalition of more than 150 NGOs, public health experts, economists, and legal scholars called on the WHO to consider a proposal for a Medical Research and Development Treaty ("MRDT").¹³ The treaty aims to establish a new legal framework to promote research and development for pharmaceuticals and other medical treatments that functions as an alternative to patents and the monopoly drug pricing they engender. The treaty's proponents argue that expansive intellectual property protection rules have created numerous problems, including restricting access to essential medicines, costly and wasteful marketing of drugs and medical products, and skewing investment away from innovations needed to treat diseases that afflict individuals throughout the developing world. The core objectives of the MRDT include encouraging investments in medical innovation responsive to the greatest global need, fairly allocating the costs of such innovation among governments, and sharing the benefits of medical innovation, including new drugs and medical technologies, with developing countries. The treaty achieves these goals by setting minimum financial obligations for qualifying research and development based upon each nation's gross domestic product. The MRDT's intellectual property provisions are both novel and controversial. The treaty requires all member states to adopt "minimum exceptions to patents rights for research purposes" within five years of ratification. The MRDT's future remains uncertain. A meeting of experts attending the World Health Assembly in May 2005 debated the treaty's provisions and underlying philosophy, and advocates at that meeting have proposed that the Assembly establish a committee of member states to consider the draft treaty sometime in 2006. Thus this proposal says that the states

globally want to incorporate the provisions which can not only protect the right to health of the people but can also ratify the security to the inventor by providing patents in medicines.

WIPO: The Development Agenda and Access to Knowledge Treaty:-

Since its creation in the late 1960s, the WIPO has engaged in a broad array of activities consistent with its mandate of "promoting the protection of intellectual property throughout the world."¹⁴ To assist member states in negotiating international agreements, the WIPO Secretariat hosts periodic diplomatic conferences, shares information, and provides expert advice. WIPO also provides technical assistance and training to national governments and to their intellectual property offices, especially in developing countries. More recently, the organization has created standing, expert, and inter-governmental committees which examine specific intellectual property topics and create nonbinding guidelines and recommendations (so-called "soft law").

Over the last decade, WIPO and its member states have been exceptionally active in negotiating new intellectual property treaties relating to copyrights, patents, and trademarks and in undertaking an ambitious program of soft lawmaking. Although these activities have generated new intellectual property protection standards, those standards have not exclusively favored the interests of industrialized countries. Although some initiatives have benefited states with well-resourced and influential intellectual property industries, developing countries have retained considerable influence in the organization to shape treaty obligations and soft law norms. Among the many items on the Development Agenda is a proposal for a Treaty on Access to Knowledge (colloquially referred to as the Provisions for the protection of the Medical Patents as well as of the Right to Health under the Indian Patents Act, 1970

While taking recourse of the Indian Patent Act, 1970, we found that:

First, Section- 3(i) of the Indian Patent Act, 1970 provides that any process for the medicinal, surgical, curative, prophylactic or other treatment of human beings or any process for a similar treatment of animals or plants to render them free of disease or to increase their economic value or that of their products.

Secondly, Section 92-A of the Patent Act, 1970-

1. Compulsory license shall be available for manufacture and export of patented pharmaceutical products to any country having insufficient or no manufacturing capacity in the pharmaceutical sector for the concerned product to address public health problems, provided compulsory license has been granted by such country or such country has, by notification or otherwise, allowed importation of the patented pharmaceutical products from India.
2. The Controller shall, on receipt of an application in the prescribed manner, grant a compulsory license solely for manufacture and export of the concerned pharmaceutical product to such country under such terms and conditions as may be specified and published by him.
3. The provisions of sub-sections (1) and (2) shall be without prejudice to the extent to which pharmaceutical products produced under a compulsory license can be exported under any other provision of this Act.

Conclusion:-

The creation of a human rights framework for intellectual property is still in an early stage of development. During this gestational period, government officials, international jurists, NGOs, and commentators, many of whom have divergent views concerning the appropriate relationship between human rights and intellectual property, have a window of opportunity to influence the framework's substantive content and the procedural rules that mediate relationships among its component parts. In this conclusion, we briefly sketch three hypothetical futures for the framework and explain why each of these predictions is both plausible and likely to be contested by states and non-state actors. In the following hypothecon we will find a better solution to provide balanced standing to the intellectual property rights and very basic human rights.

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