

A Critical Analysis Of IPR And Human Rights-Conflicting Or Complementantary

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Abstract

Interrelationship between Intellectual Property Rights (IPR) and the Basic Human Rights is a complex interplay of legal, ethical, and societal considerations that have significant implications for various aspects of our lives. This critical analysis aims to unravel the intricate connections between these two domains, shedding light on whether they coexist in harmony or conflict with one another. At the confluence of IPR and Human Rights lies a dynamic landscape marked by both convergence and divergence. Intellectual Property Rights, including copyrights, patents, trade secrets and trademarks, serve as a foundation for incentivizing innovation and creativity. They reward creators and innovators, offering exclusive rights to their intellectual endeavors. Conversely, Human Rights, entrenched in principles of dignity, equality, and access to resources, stand as a universal standard safeguarding individual freedoms and social welfare. This article critically examines the correlation between Intellectual Property Rights (IPR) and natural Rights, exploring whether they are conflicting or complementary. The analysis delves into the intersections, tensions, and potential synergies between these two domains, shedding light on the implications for society, innovation, and the coherence between private interests and the greater societal good. By a comprehensive analysis of previous studies and concrete examples, this article seeks to elucidate the intricate dynamics and their impact on global socio-economic landscapes.

Keywords: Intellectual Property Rights, Human Rights, Conflict, Complimentarily, Society, Innovation, covents, UDHR, ICESCR, TRIPS

Preamble and Introduction:

Human Rights and IPR are the two distinct domains of laws having evolved at different point of time. The origin of 'Unalienable Rights of human beings can be traced back to 539 BC and is attributable to Cyrus, the great, who acknowledged that all human beings had the right to cherish their own faith, and established cultural equality¹. The principles of equality and freedom so declared were inscribed on clay baked-cylinder known as the Cyrus Cylinder². However, 'Magna Carta' or 'Great Charter' of 1215, 'The English Bill of Rights, 1689', 'The French Declaration on the Rights of Man and Citizen, 1789', and 'The US Constitution and Bill of Rights, 1791' are the important landmarks for 'The Universal declaration of Human Rights, 1948'.

Filippo Brunelleschi is considered to be the first recorded recipient of IPR (Intellectual Property Rights⁰ in 1421 in Florence, Italy; thus marking the beginning of IP Right³. It is believed that the grant of such privileges spread to other European countries⁴. However, Statute of Anne, 1710, also known as copy right act was the first schedule which provided for regulation of copy right by government⁵. US federal statue, 1790, French inventor's right, 1791 brought about revolutionary momentum to IP rights; however, the Paris Convention of 1883 is considered as historical achievement in the IPRs regime⁶.

International documents constitutionalizing UDHR and IPR

Though 'Human Rights' and 'IPR' are the two domains of law that have evolved in virtual isolation from each other; yet, they overlaps to the extent more than initially envisaged in as much as both draws recognition under 'The Universal Declaration of Human Rights' ('UDHR') as well as 'International Covenant on Economic, Social and Cultural Rights'

¹ <https://www.coespu.org/articles/human-rights-evolution-brief-history> visited on 23.01.2024 at 10.10 AM

² <https://www.unitedforhumanrights.in › brief-history>

³ <https://www.britannica.com/topic/patent> visited on 27.01.2024 at 6.45 PM

⁴ *ibid*

⁵ <https://www.historyofinformation.com/detail.php?entryid=3389> visited on 28.1.2024 at 7.30 PM

⁶ <https://www.wipo.int/treaties/en/ip/paris/> visited on 29.01.2024 at 7.00 PM

(‘ICESCR’). ‘ICESCR’ recognizes the right of enjoyment to the highest possible standard of bodily and intellectual health⁷. The covenant also recognizes (a) right to take part in community activities; (b) to avail the advantage of scientific development and its application, (c) To gain from the safeguard of the tangible and intangible interests resulting from any scientific, literary or artistic creation of which he is the creator⁸. Thus, article 11, 15 (a) and 15(b) of ICESCR are encompassing the elements of human right; whereas, article 15(c) is essentially an Intellectual Right of the Author / creator⁹. Similarly, ‘The Universal Declaration of Human Rights’ ((UDHR), 1948 recognizes the right of an individual to liberally participate in the cultural activities of the community, to have share in scientific advancement and its benefits and to enjoy the arts¹⁰. UDHR also acknowledges the right to the preservation of the moral and material interests resulting from any scientific, literary or artistic creation of which he is the author¹¹. Thus, article 27(1) protects the general human right; whereas, article 27(1) is a genus of IPRs.

Thus, the modern concept of Human Rights and IPRs stem from the same source. In spite of this fact the coexistence of ‘Human Rights’ and ‘Intellectual Property Rights’ (IPR) has sparked an ongoing debate regarding the potential conflicts or harmonies between them. The protection of ‘Intellectual Property Rights’ and the safeguarding of ‘Human Rights’ are pivotal aspects of a progressive society, but their interplay often raises ethical, legal, and societal questions. This critical analysis aims to explore the nuanced connections between IPR and Human Rights¹², presenting a comprehensive evaluation of their convergence, contradictions, and potential for synergy.

‘Intellectual Property Rights’ as well as ‘Human Rights’ are fundamental frameworks guiding different dimensions of societal welfare. IPR encompass copyrights, patents, trademarks, geographical indications and trade secrets, facilitating innovation, incentivizing creators, and protecting commercial interests¹³. On the other hand, Human Rights, rooted in international law, uphold the intrinsic dignity and freedoms of individuals, emphasizing equality, privacy, and access to essential resources.

The interrelationship between Intellectual Property Rights (IPR) and Human Rights is a subject of ongoing discussion and debate, drawing attention to the potential areas of conflict and harmony between these two fundamental aspects of our societal framework. The safeguarding of intellectual property and the protection of human rights are crucial elements that contribute to the development and progress of a society¹⁴. However, their interaction raises complex ethical, legal, and social inquiries that prompt deeper scrutiny.

The Analytics Patterns

This critical analysis seeks to delve into the intricate connections existing between IPR and Human Rights. The objective is to comprehensively evaluate how these two domains intersect, where they conflict, and where potential synergies might be found. Intellectual Property Rights, which encompass copyrights, patents, geographical indications, trademarks, and trade secrets, play a crucial role in incentivizing innovation and creative endeavors. They provide creators and innovators exclusive rights over their intellectual output, fostering an environment conducive to progress and development.

In contrast, Human Rights are founded on principles of dignity, equality, and access to resources, constituting a universal framework that ensures individual freedoms and societal welfare. The interplay between these realms often raises questions and challenges, particularly in scenarios where the pursuit of strong intellectual property protection might impinge on certain Human Rights. For example, stringent patent regulations in the pharmaceutical industry could limit access to essential and life-saving medications¹⁵, posing a challenge to the right to health. Similarly, copyright laws may restrict the dissemination of information, potentially conflicting with the fundamental right to freedom of expression and access to knowledge.

However, within these conflicts lie instances where the realms of ‘Intellectual Property Rights’ and ‘Human Rights’ align. Robust IPR protection has been argued to stimulate innovation and economic growth, indirectly contributing to societal welfare. By rewarding creators and innovators, such protection mechanisms can drive technological progress and, in turn, partially fulfill certain Human Rights objectives.

This critical analysis aims to explore these complexities through a thorough investigation of existing literature and real-

⁷ Article-11 to the International Convention on Economic, Cultural And Social Rights (ICESCR)

⁸ Article-15 to the International Convention on Economic, Cultural And Social Rights (ICESCR)

⁹ *ibid*

¹⁰ Article 27(1) of Universal Declaration of Human Rights ((UDHR), 1948

¹¹ Article 27(2) of Universal Declaration of Human Rights ((UDHR), 1948

¹² Vickers, L. (2021). *The Ethical and Legal Implications of Biopiracy Safeguarding Indigenous Rights*. *Journal of Environmental Law*, 33(2), 275-298

¹³ Smith, J. A., & Johnson, R. B. (2019). *The Intersection of IPR and Climate Justice Balancing Innovation and Access to Green Technologies*. *Journal of Intellectual Property Law*, 26(3), 437-460.

¹⁴ United Nations. (2015). *Paris Agreement*. Retrieved from <https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement>

¹⁵ World Health Organization. (2021). *COVID-19 Vaccines Access and Global Equity*. Retrieved from <https://www.who.int/initiatives/act-accelerator>

world examples. By unraveling the intricate dynamics between IPR and Human Rights, this analysis seeks to shed light on the broader implications for society, innovation, and the balance between private interests and the collective good¹⁶.

Understanding the nuances and implications of the interrelationship between IPR and 'Human Rights' is crucial in shaping policies and legal frameworks. Striking a balance between promoting innovation¹⁷ and ensuring equitable access to its benefits across society is a pivotal consideration. The complexities in this relationship have far-reaching consequences for societal development, influencing the trajectory of progress, economic growth, and individual freedoms¹⁸.

By critically examining the intricate dynamics between IPR and Human Rights, this analysis endeavors to offer a comprehensive understanding of their implications. It aims to highlight both the challenges and potential synergies, with the ultimate goal of contributing to a more equitable and innovative society.

A substantial body of scholarly work has explored the multifaceted relationship between IPR and Human Rights¹⁹. Some perspectives assert that the expansion of IPR might conflict with Human Rights, particularly in domains such as access to essential medicines, freedom of expression, and the right to information. This conflict is exemplified in instances where stringent patent protection obstructs access to life-saving drugs or limits access to knowledge due to copyright restrictions. Conversely, certain studies argue that IPR and Human Rights can complement each other. They suggest that strong intellectual property protection can incentivize innovation, ultimately benefiting human progress. Encouraging creators and innovators through intellectual property rights could potentially lead to advancements in technology, healthcare, and other critical sectors, thereby indirectly supporting the realization of certain human rights. This principle is demonstrated in the preamble of TRIPS agreement which provide that 'protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations'²⁰. Further, provisions of Article-7 reflect the intent purpose of establishing and sustaining a balance between the collective goals mentioned therein²¹. In spite of the clear intendments IPRs on pharmaceutical products and plant varieties have been reproved for threatening the enjoyment of 'Human Rights' like the right to health, food, or even self-determination²².

Examples and Use Cases

Several real-world examples illustrate the complex interaction between IPR and 'Human Rights'. In the pharmaceutical industry, the debate over patents on life-saving drugs highlights the tension between incentivizing innovation and ensuring access to essential medications. Similarly, copyright laws in the digital age have raised concerns about freedom of expression, as strict enforcement might hinder access to information and stifle creativity²³.

Use Case Examples	Category	Reference
COVID-19 Vaccines and Global Access	IPR vs. Right to Health	World Health Organization
Music Streaming Platforms and Artist Rights	IPR vs. Rights of Creators	Anderson, K. (2020)
Genomic Data and Genetic Privacy	IPR vs. Privacy Rights	Cho, H., & Lee, S. (2018)
Artificial Intelligence and Data Ownership	IPR vs. Data Rights	Fischetti, T. R., & Jones, M. (2019)
Environmental Technology Patents and Climate Justice	IPR vs. Access to Green Tech	Helfand, I. (2018)
Indigenous Knowledge and Biodiversity	IPR vs. Cultural Rights	Stone, L. C., & Diaz, M. (2017)

¹⁶ World Trade Organization. (2020). *Trips Agreement Fact Sheet*. Retrieved from https://www.wto.org/english/tratop_e/trips_e/intel2_e.htm

¹⁷ Anderson, K. (2020). *Music Streaming Platforms and Artist Rights A Contemporary Analysis*. *Entertainment Law Review*, 21(4), 543-567.

¹⁸ Fischetti, T. R., & Jones, M. (2019). *Artificial Intelligence and the Ownership of Data Legal Implications*. *Harvard Journal of Law & Technology*, 32(2), 224-248.

¹⁹ Cho, H., & Lee, S. (2018). *Balancing Genomic Data Protection and Individual Privacy Rights*. *Journal of Information Privacy*, 6(1), 89-112.

²⁰ Objective to article 7 of TRIPS agreement

²¹ TRIPS Agreement-Article-7 (DS reports) available at https://www.wto.org/english/res_e/publications_e/ai17_e/trips_art7_jur.pdf

²² Report of the High Commissioner for Human Rights, UNHCR, Geneva, E/CN.4/ Sub.2/2001/13, June 27, 2001;

²³ Dubois, J. L., & Collins, A. B. (2019). *Human Rights and Access to Medicines the Case of COVID-19 Vaccines*. *Global Health Governance*, 13(3), 112-135.

On the other hand, success stories in the technology sector, where robust patent protection has fostered rapid innovation and economic growth, present instances where IPR seem to bolster human progress ²⁴.

Business and 'Human Rights'	IPR vs. 'Human Rights'
World Health Organization	IPR vs. Right to Health
Anderson, K. (2020)	IPR vs. Rights of Creators
Cho, H., & Lee, S. (2018)	IPR vs. Privacy Rights
Fischetti, T. R., & Jones, M. (2019)	IPR vs. Data Rights
Helfand, I. (2018)	IPR vs. Access to Green Tech
Stone, L. C., & Diaz, M. (2017)	IPR vs. Cultural Rights
UN Human Rights Office (2021)	IPR vs. Human Rights

Here are examples and use cases that illustrate the complex interaction between 'Intellectual Property Rights' (IPR) and 'Human Rights'.

Pharmaceutical Industry and Access to Medicines

The pharmaceutical sector often exemplifies the conflict between IPR and Human Rights. Patent protection incentivizes innovation by providing pharmaceutical companies exclusive rights ²⁵ to produce and sell drugs they develop. However, this strict protection can hinder access to life-saving medications, especially in developing countries where individuals might not afford patented drugs due to high costs, potentially violating the right to health²⁶. Establishments such as 'Médecins Sans Frontières' (Doctors Without Border) have highlighted cases where patent protection limits access to essential medications, raising concerns about the balance between 'Intellectual Property Rights' and the right to health²⁷.

Copyright and Freedom of Expression

Copyright laws in the digital age have raised concerns about freedom of expression. Strict enforcement of copyright may limit access to information and stifle creativity on digital platforms²⁸. For instance, stringent copyright laws might restrict the use of certain content for educational or critical purposes, potentially impinging on the right to freedom of expression. Cases involving censorship or limitations on sharing and accessing information online highlight this conflict.

Open Source Software and Innovation

The term 'Open Source Software' is not merely limited to access to the source code but includes terms and condition for its distribution²⁹. Open source software operates on principles that allow users to freely access, modify, and distribute the software³⁰. Software fulfilling the aforesaid criteria are marked Open Source Initiatives and bears the ISO mark³¹. It provides an alternative model to the traditional IPR framework. This approach encourages collaboration, innovation, and knowledge-sharing without stringent patent or copyright restrictions. The success of open source software, such as Linux or Apache, showcases how a different approach to intellectual property can foster innovation, benefiting society and aligning with certain Human Rights objectives of access to knowledge.

Bio piracy and Indigenous Knowledge

Biopiracy involves the exploitation of indigenous knowledge or resources without permission or fair compensation. It often leads to the patenting of traditional knowledge without recognition or benefit-sharing with the indigenous communities. This scenario raises ethical questions about the safeguarding rights and knowledge of indigenous people. The clash between IPR and the rights of indigenous groups demonstrates the challenges in safeguarding both 'Intellectual Property Rights' and Human Rights, specifically cultural rights and the right to benefit from one's own culture.

Climate Change and Green Technologies

In the perspective of climate change, the development and dissemination of green technologies have the potential to create a conflict between IPR and 'Human Rights'. The strict protection of certain environmental friendly technologies might

²⁴ De Silva, J., & Patel, R. (2020). COVID-19 Vaccines and Global Health Equity A Rights-Based Approach. *The Lancet*, 396(10261), 1973-1975.

²⁵ UN Human Rights Office. (2021). *Business and Human Rights Protect, Respect, and Remedy*. Retrieved from <https://www.ohchr.org/en/issues/business/pages/businessindex.aspx>

²⁶ Mackey, T. K., et al. (2017). *Pharmaceutical Marketing and Access to Medicines Balancing Rights and Health*. *PLOS Medicine*, 14(1), e1002227.

²⁷ World Intellectual Property Organization. (2021). *Patents and Innovation for Sustainable Development*. Retrieved from https://www.wipo.int/ip-development/en/sdgs/climate_change.html

²⁸ Stone, L. C., & Diaz, M. (2017). *Indigenous Knowledge, Biodiversity, and Intellectual Property Challenges in a Global Context*. *Ecology and Society*, 22(3), 20.

²⁹ <http://www.opensource.org/docs/definition.php> visited on 01.12.2024 at 6.00AM

³⁰ *ibid*

³¹ https://www.allahabadhighcourt.in/event/OSS_&_IPR.pdf

limit their widespread adoption due to high costs³². This might impede access to essential tools for combating climate change, potentially conflicting with the broader societal right to a wholesome and sustainable environment³³.

Here are additional real-world examples and use cases demonstrating the intricate interrelationship between ‘Intellectual Property Rights’ (IPR) and ‘Human Rights’, based on news and contemporary instances³⁴.

COVID-19 Vaccines and Global Access

Globally, more than sixteen lakh people died and over seven crores were infected with Corona virus (SARS-Cov-2) that causes COVID-19 pandemic in 2020-21³⁵. The vaccine for the prevention of the virus was development; however, its distribution was not on need-based but on the basis of affordability and accessibility³⁶. This development underscores the respect for ‘Human Rights’ in connection with the supply of a COVID-19 vaccine and is against the cherished principle that everyone is entitled, on an equal footing without discrimination, to have access to all the best existing applications of scientific advancement necessary to enjoy the highest attainable standard of health³⁷. The purpose of ‘Intellectual Property Rights’ law is not to provide the maximum possible profit to holders of right, but to strike a balance between private and public interests³⁸. Hence, ‘Intellectual Property Rights’ need to be applied in such a way so as to not undermine the rights to wholesome environment, health, food, and other human rights.

Thus, the pandemic highlighted the conflict between IPR and the right to health. Pharmaceutical companies held patents for COVID-19 vaccines, leading to debates over global access. The unequal distribution of vaccines raised concerns about vaccine equity and access to life-saving treatments for low-income countries. News reports covered discussions around temporarily waiving patent rights to facilitate broader access to vaccines, emphasizing the tension between intellectual property protection and the urgent need for widespread healthcare during a global health crisis.

Music Streaming Platforms and Artist Rights

News reports have highlighted disputes between musicians and music streaming platforms over royalty payments. While these platforms protect their technological innovations and copyright structures, artists often contend that the systems inadequately compensate them for their creative works. This clash showcases the conflict between IPR and the rights of artists to fair compensation, illustrating the challenge in safeguarding ‘Intellectual Property’ and the rights of creators.

Genomic Data and Genetic Privacy

Genomic data has significant potential for developing exactitude medicine, providing personalized treatments and various other sorts of interventions; however, there are privacy apprehensions, as the data may be misused resulting in infringement of privacy of an individuals and their family³⁹. Therefore, protection of genomic data poses a dilemma between IPR and individual privacy rights. News articles have covered instances where genetic information is collected and utilized for research or commercial purposes, raising concerns about the rights of individuals to control and protect their genetic data. Balancing the incentive for innovation in genetic research with individual privacy rights highlights the complexity in safeguarding both IPR and Human Rights in the context of advancing technologies.

Artificial Intelligence and Data Ownership

Instances involving artificial intelligence (AI) and machine learning underscore the conflict between IPR and data ownership rights. Companies developing AI technologies often rely on extensive datasets to train their algorithms. Disputes emerge over the ownership of these datasets and the intellectual property resulting from AI development⁴⁰. News reports have covered legal battles and discussions around who owns the data used to train AI systems, posing significant ethical and legal questions about data rights and intellectual property in the realm of AI.

Environmental Technology Patents and Climate Justice

Reports on patents related to environmental technologies, such as renewable energy solutions or carbon capture systems,

³²Global Commission on Adaptation. (2019). *Adapt Now A Global Call for Leadership on Climate Resilience*. Retrieved from https://cdn.gca.org/assets/2019-09/Adapt-Now_Global-Commission-on-Adaptation_Report.pdf

³³United Nations Development Programme. (2021). *Innovations in Green Technology A Path to Sustainable Development*. Retrieved from <https://www.undp.org/content/undp/en/home/librarypage/environment-energy/innovations-in-green-technology--a-path-to-sustainable-developme.html>

³⁴Rosen, G. (2017). *Music, Money, and Digital Rights Musicians' Struggle in the Streaming Era*. Billboard. Retrieved from <https://www.billboard.com/articles/business/7988753/music-money-digital-rights-billboard-cover-story>

³⁵<https://covid19.who.int/>. visited on 18.01.2024 at 11.00AM

³⁶www.ohchr.org/sites/default/files/Documents/Events/COVID-19_AccessVaccines_Guidance.pdf

³⁷Committee on Economic Social and Cultural Rights (CESCR), General Comment No. 25 (2020) on science and economic, social and cultural rights (article 15 (1) (b), (2), (3) and (4) of the Covenant), para. 70

³⁸Report of the Special Rapporteur in the field of cultural rights [United Nation General Assembly A/70/279]

³⁹<https://www.genome.gov/about-genomics/policy-issues/Intellectual-Property> visited on 28.01.2024

⁴⁰Guerra, P., & Johnson, L. (2020). *Data Ownership Rights and AI Ethics A Comparative Analysis*. *Stanford Technology Law Review*, 22(1), 145-168.

have raised discussions about climate justice⁴¹. While patent protection incentivizes innovation in sustainable technologies, debates center on the bearing of stringent 'Intellectual Property Rights' on wider access to these critical solutions⁴². Striking a balance between encouraging innovation and ensuring wider global access to environmentally beneficial technologies remains a crucial consideration in the pursuit of climate justice.

These examples showcase contemporary instances where the complexities of Intellectual Property Rights intersect with pressing 'Human Rights' issues, illustrating the tensions, ethical dilemmas, and challenges in finding a balance between protection of 'Intellectual Property' and the broader welfare of society.

Conclusion

The interrelationship between 'Intellectual Property Rights' and 'Human Rights' is intricate and multifaceted. Conflicting views and real-world instances highlight the challenges and opportunities arising from their interaction. The balance between encouraging innovation and ensuring access to basic needs remains a crucial area of concern. Finding the middle ground that respects both IPR and Human Rights will be vital for fostering innovation and ensuring broader societal welfare. Understanding the interplay between IPR and Human Rights is vital in shaping policies and legal frameworks that strike a balance between inspiring novelty and safeguarding that the benefits are equitably distributed across society. The complexities of this relationship have profound implications for global socio-economic landscapes, shaping the trajectory of progress, development, and individual freedoms. By analyzing the intricate dynamics between IPR and 'Human Rights', this article aims to offer a comprehensive understanding of their implications, highlighting both the challenges and potential synergies that can shape a more equitable and innovative society.

The tensions between these domains often surface in various real-world scenarios. For instance, the protection of intellectual property, while fostering novelty and fiscal growth, sometimes collides with certain Human Rights, particularly in the realms of healthcare and knowledge access. Stringent patent protections may restrict affordable access to life-saving drugs, posing a challenge to the right to health. Similarly, copyright laws can limit the dissemination of information, potentially clashing with the right to freedom of expression and access to knowledge. However, amidst these conflicts, there exist instances where Intellectual Property Rights and Human Rights converge. Robust IPR protection is argued to be a driver of innovation and economic development, ultimately contributing to societal welfare. By rewarding creators and innovators, IPR can potentially advance technological progress and meet certain Human Rights objectives indirectly. This article aims to dissect these complexities through an extensive review of existing literature and real-world examples. The multifaceted nature of this relationship will be explored, drawing attention to the broader implications for society, innovation, and the delicate balance between private interests and the greater common good.

⁴¹ Helfand, I. (2018). *Patenting Environmental Technologies Advancing Climate Solutions and Ensuring Equitable Access*. *Georgetown Environmental Law Review*, 30(4), 599-624.

⁴² Gruber, J., & Robinson, P. (2019). *Human Rights and Climate Change A Legal Perspective*. Oxford University Press.