

## Relationship between Human Rights and Intellectual Property Rights



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### ABSTRACT

There is an international consensus that all human rights, civil and political rights on the one side and economic, social, and cultural rights on the other, are of equal status and interdependent. The Vienna Declaration and Programme of Action of the 1993 World Conference on Human Rights spells out, 'All human rights are universal, indivisible and interdependent and interrelated'. It recognizes that it is not possible to realize any one right without promoting and protecting other rights also. It further specifies that the international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. . Two most enthusiastic International Covenant on Civil and Political Rights and on Economic, Social and Cultural Rights. For making legally bound by the requirements of these Covenants and other international human rights mechanisms, countries are to ratify the mandates of the documents. Keywords – The Magna Carta, Declaration, Intellectual, Vehemently, Bill of Rights of the US Constitution, Scientific, Right, Mankind, United Nation Organization.

## INTRODUCTION

The relationship between human rights and contributions to knowledge has been at the central stage of important debates over the ancient time. The ancient Indians, Greeks and Romans had postulated human rights as an ideal standard derived from God or based on Dharma, truth, equality, righteousness and similar higher moral values of lasting validity.<sup>1</sup> The human rights are internal moral obligation to render everyone his due – the noblest ideal of all human laws. The Magna Cart – the great Charter of human liberty is the first example which people of England wrested from John – the King of England on June 15, 1215 who was threatening their liberty, rights and other freedoms.<sup>2</sup>

During Renaissance and Reformation to control power oriented sovereigns varying social contract theories were propounded as the basis of new social order founded on justice and natural rights of man.<sup>3</sup> French philosopher Pascal insisted that natural rights and power must be brought together, so that whatever is just may be powerful and whatever powerful may be just. Sydney Smith likewise highlighting the importance of natural rights observed ‘The only way to make mass of mankind see the beauty of justice is by showing them, in pretty plain terms the consequences of injustice. The great statesmen and national leaders and thinkers from Abraham Lincoln to Jawaharlal Nehru, Marx to Mao and Mahatma Gandhi to Martin Luther King Jr. have been blazing the trail of justice, equality and liberty for the poorest.<sup>4</sup>

Eternal concept regarding natural rights of John Rawls highlights the importance of natural rights in the following two principles<sup>5</sup>:

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<sup>1</sup> Dhyani, S.N., *Fundamentals of Jurisprudence (An Indian Approach)*, Central Law Agency, ed. 2002, p. 131.

<sup>2</sup> *ibid.*

<sup>3</sup> *ibid.*

<sup>4</sup> *ibid.*

<sup>5</sup> Rawls, John, *A Theory of Justice* 303, Oxford 1972.

- (i) Each person is to have an equal right to the most extensive basic liberty for others.
- (ii) Social and economic inequalities are to be arranged so that they are both-
  - (a) To the greatest benefit of the least advantaged, and
  - (b) Attached to the offices and positions open to all under condition of fair equality of opportunity.

The most realistic approach of Mr. Atlee, the former Prime Minister of Britain appears to be a golden thread which must inculcate in all the welfare legislations which was declared<sup>6</sup>:

“If a free society cannot help the many who are poor, it cannot save the few who are rich.”

## 2. HUMAN RIGHTS STRUCTURE AT INTERNATIONAL LEVEL

The principles and norms of internationally recognized human rights, in the last half century, have been set forth in a series of international and regional declarations and treaties viewed as setting minimal standards of decent social and governmental practice<sup>7</sup>. The UN General Assembly in 1948 adopted unanimously the Universal Declaration of Human Rights<sup>8</sup> which provides the single most authoritative statement of human rights. This Declaration described in the preamble as providing ‘a common standard of achievement for all peoples and nations’<sup>9</sup>, the Universal Declaration spells out an illustrative list of rights. A series of civil and political rights analogous to those listed in the Bill of Rights of the US Constitution, basic rights as rights to life, liberty, and security of person; freedom from torture and cruel punishment, freedom of peaceful assembly and association; equality before the law and nondiscrimination; and freedom of thought, conscience, and religion. The Universal Declaration, in addition to these customary civil and political rights,

<sup>6</sup> Dhyani, S.N., *Fundamentals of Jurisprudence (An Indian Approach)*, p. 155

<sup>7</sup> *Ibid*, p. 862.

<sup>8</sup> GA Res217A (III), 3UN GAOR (Resolutions, part 1) at 71, UN Doc A/k10 (1948).

<sup>9</sup> *Ibid*, Article 27.

identifies a series of economic and social rights which include rights to just and favourable conditions of work, to free choice of employment; and to form trade unions; to a standard of living adequate for health and well being; to participate in the cultural life of the community; to education, with its being free at least in the elementary and fundamental stages; and to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

## **ORIGIN OF INTELLECTUAL PROPERTY RIGHTS**

The International Covenant on Economic, Social and Cultural Rights (Covenant) is in many ways the most crucial legal instrument through which the relationship between the two fields can be examined. Firstly, it recognizes, for instance, the rights to health and food which are some of the rights whose realization can be affected in developing countries that adopt or strengthen intellectual property rights frameworks based on the commitments they take under the TRIPS Agreement or other intellectual property rights treaties<sup>10</sup>. The treaty recognizes at Article 15(1)c the need to reward individuals and groups that make specific intellectual contributions that benefit society. It must be noted at the outset that the rewards which are recognized under the Covenant are not related to existing intellectual property rights regimes. There may be cases where the realization of this right may be effected through existing intellectual property rights but on the whole, there is no necessary correspondence between the rights recognized in the Covenant at Article 15 and existing intellectual property rights. This is important as it indicates that the Covenant provides a basis for the recognition of all intellectual contributions and not only the ones that fit within the existing intellectual property rights paradigm. In other words, Article 15(1) c is broad enough to accommodate the claims of traditional knowledge holders for instance.<sup>11</sup>

<sup>10</sup> Dr. Philippe Cullet, *Human Rights and Intellectual Property Rights : Need for a New Perspective*, International Environmental Law Research Centre, International Environment House, Chemin de Balexert 7 1219 Chatelaine, Geneva, Switzerland.

<sup>11</sup> *Ibid.*

## THE HUMAN RIGHT TO INTELLECTUAL PROPERTY

The value of intellectual property protections has also found recognition from human rights activists. Some of the human rights instruments recognize a human right to one's own intellectual products. Beginning with the provisions of the American Declaration on the Rights and Duties of Man in 1948,<sup>12</sup> key international human rights instruments have acknowledged that intellectual products have an intrinsic value as an expression of human creativity and dignity. Numerous instruments describe the right of an author, creator, and inventor in some form of recognition and benefit from their intellectual products. Article 27 of the Universal Declaration of Human Rights 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. For a balanced approach upon the human rights and intellectual property rights in order to achieve inclusive growth of the world community, another provision of Article 27 says '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. The Covenant has also constructed a similar provision founded on Article 27 of the Universal Declaration. Under this provision, Article 15.1 (c) warrants states parties to recognize the right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

The statement also notes that the scope of protection of the moral and material interests of the author provided for under Article 15 of the Covenant does not necessarily coincide with what is termed intellectual property rights under national legislation or international agreements. A discussion about the importance of international assistance and cooperative within the UN system is also included in the statement. In those paragraphs the Committee observes that countries at different levels of development have different technological needs. As a result, some countries

<sup>12</sup> American Declaration of the Rights and Duties of Man, approved by the Ninth International Conference of American States, Bogota, Columbia, 30 March 1- May 1948, Resolution XXX, Pan American Union, Final Act of the Ninth Conference, Washington, DC.

may focus on the protection of technology while for others the key issue is facilitating access. For this reason, the Committee indicates that international rules concerning intellectual property should not necessarily be uniform. It also recommended the adoption and implementation of international mechanisms for intellectual property protection that accord special and differential treatment for developing countries.<sup>13</sup>

## IMPACTS OF INTELLECTUAL PROPERTY RIGHTS ON THE REALIZATION OF HUMAN RIGHTS

Article 15(1) c embodied in the Council of Economic, Social and Cultural Rights should not be examined as referring to existing intellectual property rights but should be seen as being much broader in scope. As a matter of fact, existing intellectual property rights are nevertheless of immediate relevance in this field because of the impact they can have on the realization of human rights. Significantly, it is as important as questions concerning the rewards granted to authors and inventors and should constitute one of the core aspects of a General Comment addressing all the main challenges in this area. However, the draft General Comment does not completely ignore questions related to the impacts of intellectual property rights on the realization of human rights and vehemently seeks, for instance, to confirm that there is a need to strike an adequate steadiness between the protection of intellectual property rights and human rights to food, health and education. This raises important questions. Regrettably, the Committee does not explain what the concept of obligations of comparable priority means.<sup>14</sup> Section 42(a) may be understood as providing that there should be a balance between the human rights claims of authors/inventors and the social function of intellectual property rights. In other words, the balance is not a question of the relative importance of the human rights to health, food and education on the one hand and intellectual property rights organizations seek to achieve. It is considerably important because it

<sup>13</sup> *Ibid*, para 15.

<sup>14</sup> *Para 42, Draft General Comment, supra 52.*



downgrades fundamental human rights such as the rights to food and health to elements which are taken into account in a balance which is not first and foremost centered on human rights claims.<sup>15</sup>

## **CONCLUSION**

A human rights approach offers an alternative vision of the purpose and requirements of intellectual property as well as a set of obligations that places intellectual property law in a wider context. The November 2001 statement by the Committee on Economic, Social and Cultural Rights characterizes intellectual property as a social product with the social function to serve the objective of human well-being. This is a very different perspective from the usual assumption that intellectual property issues should be governed by economic goals such as improved competitiveness or profitability. The statement sets forth the human rights provisions and principles to which intellectual property law on both a national and international level must conform. It views the entire range of civil, cultural, economic, political, and social rights, as well as the right to development, as relevant to intellectual property systems and makes the claim that intellectual property regimes must promote and protect all human rights. In the broader sense, it is relevant to mention here that “intellectual property rights are the means and the human rights are the ends.”

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*Ibid.*