

Human Rights Approach to International Intellectual Property Rights Regime: A Tool to Bridge the Gap?

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Background

There is a widespread concern that the current international legal regime relating to intellectual property rights doesn't adequately take into consideration the violations of human rights of millions of people in the world. This is specifically so in the case of innovations which are perceivably 'over protected' by the regime. As many of the victims of such violations are from the Global South, it is alleged, that the regime continuously contributes to the widening of the gap between the South and the North.

Also, since the scope of application of intellectual property rights is being increasingly expanded concerns are expressed as to its limits and primacy over the international human rights regime. In this regard, it still remains as a topic for debate whether intellectual property rights should be treated as a separate category of property rights thereby making inapplicable the rationale behind the human right of "right to property" to the former in recognizing its *sui generis* nature. Also, recent developments indicate the possibility of merging the individuals' human rights interests with that of the non-human beings. Is it a healthy practice to attempt to interface both interests or allow them to compete with each other?

Thirdly, the inherent conflict between the obligations undertaken by States due to their ratifications of respective international treaties places them in a dilemma regarding the priority to be attributed to those instruments. Is there any uniformity in State practice in this regard signaling bridging the cleavage?

This paper would attempt to address these three concerns in the light of modern human rights law applicable to the globalised world. The perceived bias of intellectual property legal regime towards the 'Global North' reintroduces the challenge to the universal character of the human rights norms. The danger posed to the universality of human rights by the ever expanding protection regime of intellectual property in some regions has not yet attracted the attention of the policy makers and the scholars with the required seriousness. Also, the urgency of addressing this challenge from a new angle, i.e., reiterating the universality of human rights has not been understood in its proper context.

It is proposed to discuss these issues with particular focus being on the need to strike a balance between the two legal regimes without undermining the universal character of human rights.

Methodology

The research is mainly based on literature review and engaged in analyzing those academic and judicial expressions on the issue of interplay between human rights and intellectual property rights. The review includes a critical approach to the interpretative methods adopted by international tribunals and regional courts in mulling out the real nature of obligations undertaken by the state parties to the respective treaties.

Starting with narrating the obligations of States under human rights treaties and briefly describing the case law authorities, it is intended to proceed to compare these obligations with that of the international treaty regime on intellectual property. A critical review of the decisions of the international /regional tribunals in upholding the rights of the property owners against the human rights of individuals would be undertaken at this stage.

For the above purpose, it is intended to heavily rely on the UN legal instruments relating to human rights as well as other international instruments relating to intellectual property rights. A critical analysis would be undertaken to assess the extent to which one regime tries to take precedence over the other. The findings and the views and comments of the UN human rights bodies and other international institutions would form the primary sources for discussion.

Results

It can be shown that the right to life, health, food, information, and cultural rights are grossly violated by the ever expanding protection afforded to the owners of innovations and creativities. The fundamental rationale for protecting the rights of such owners can not be justified in isolation of the larger interest of protecting the right to life of the people and improving their living conditions. However, the recent trend which seems to be the resultant of the 'over protection' approach of the international tribunals and of the demands made by multinationals indicates a clear deviation from that rationale and is leading in the direction of non-humanizing the human rights. As such, there is an urgent need to arrest this trend by striking a balance between the two protection regimes keeping in mind the primacy of core human rights over any rights that may be accrued under any international treaties.

The obligation of the international community to protect the basic rights of individuals can not be compromised for any moral or material benefits that may accrue to any individuals or corporate bodies. Demarcating the boundary is the immediate task for both the policy makers as well as the law makers in the international arena.

When corporate bodies start to claim human rights for themselves in order to protect their right to property over innovations and creativities the moral interest is converted into commercial interest. Hence, it can not be dealt with according to the human rights regime but purely in accordance with rules governing commercial transactions.

Conclusion

The protection regime of intellectual property law encourages the individuals and collective entities to actively engage in innovative and creative activities by affording a rigid security cover over their ownership of “the interest in the property”. However, such protection, as viewed by international institutions, significantly endangers the human rights of individuals in many ways. The enforcement mechanism prescribed for ensuring compliance with agreements such as TRIPS encourages the States to ignore their obligations under various human rights treaties. Though some of these obligations are “jus cogens”, still States are dared to disregard them for immediate and materialistic benefits. If this trend is allowed to continue, no State can be found fault with for violating human rights since there would be far more ‘business’ awaiting them to be worried about. If public interest is to be the yardstick for limiting any one’s human rights it should be so in the case of intellectual property rights well and in that the very ‘public interest’ itself is to be defined by international human rights law.

The Relevance of the Principles of International Humanitarian Law in post –conflict situations: A Justification for Transitional Justice with special reference to Sri Lanka

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Background

International Humanitarian Law (IHL) is defined as the body of law which seeks, for humanitarian reasons, to limit the effects of armed conflict. In a wider sense, IHL includes all the legal provisions whether in the form of treaty law, or customary international law ensuring respect for the individual and his well being in times of war, and thus comprises of the law of war and human rights. Technically, IHL is applied only once an armed conflict is begun and does not deal with the legitimacy or otherwise of the armed conflict. Therefore, it is commonly believed that IHL has no relevance in post war situations. The main objective of this research is to explore whether the principles of IHL has any further relevancy in post conflict situations. During the past thirty years our country was facing with a protracted internal armed conflict with a resistant movement named LTTE, and thus IHL could be effectively applied to that situation without any problem. Now Sri Lanka is immune from war and considered as enjoying a period of peace. In times of peace, human rights principles are applied and thus principles of IHL cannot be applied. Therefore, the relevance of the principles of IHL in post-war Sri Lanka is questionable. However, the compliance with or violations of IHL during an armed conflict undoubtedly influence the conduct of the judiciary and the situations of the victims in post-conflict societies. Therefore, this paper seeks further to determine the influence of IHL on the transitional justice process in post war situations with special reference to post war Sri Lanka.

Methods

This is mainly a library based research and hence scholarly work on the issue will be reviewed. Practical examples will be drawn from countries in transition to democracy after armed conflicts, which have been deeply affected by serious violations of human rights and humanitarian law. Text books and journal articles will be the main source for