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**INTERFACE OF HUMAN RIGHTS VIOLATION AND IP  
INFRINGEMENT WITH CASE LAWS**- Parul Priya<sup>1</sup>**INTRODUCTION**

“The “age of rights” we live in has not only fostered human rights but also a host of new property rights, in particular rights protecting intellectual property. These rights were greatly expanded in scope and authority with the 1994 Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), which is overseen by the World Trade Organization (WTO) and binding on all of its members.”<sup>2</sup> TRIPS protects property rights in trademarks, industrial designs, geographical indications, plant varieties, copyrights, and patents, the latter two being the most significant.

Human rights violations and intellectual property (IP) infringement are two distinct issues, but they can sometimes be related to one another. Both of these issues have legal frameworks that seek to protect the rights of individuals, groups, and societies. Human rights are those basic rights and freedoms that are entitled to all human beings, regardless of their nationality, race, gender, religion, or any other status. These rights include civil and political rights such as freedom of speech and the right to a fair trial, as well as social and economic rights such as the right to education and the right to a decent standard of living, the right to life, liberty, and security of person, the right to freedom of thought, conscience, and religion, the right to education, and the right to work.

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<sup>2</sup>Volker Heins, *Human Rights, Intellectual Property, and Struggles for Recognition*, SPRINGER (MAR 26, 2023, 1:16 PM), <https://link.springer.com/article/10.1007/s12142-007-0042-2>

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IP refers to the legal rights that are granted to individuals and organizations to protect their creations, inventions, and works. These can include copyrights, patents, trademarks, and trade secrets. IP laws aim to promote innovation, creativity, and economic growth by providing creators with exclusive rights to their creations.<sup>3</sup>

When intellectual property laws are used to restrict or suppress human rights, this can be considered a human rights violation. For example, if a government restricts the use of copyrighted materials to censor political speech or suppress dissent, this would be a violation of the right to freedom of expression. Another example would be, if a government enforces strict copyright laws that prevent people from accessing essential information or cultural works, this could be a violation of the right to education and the right to participate in cultural life. Similarly, if a pharmaceutical company restricts access to life-saving medicines through patent monopolies, this would be a violation of the right to health.

In some cases, human rights violations can be related to IP infringement. For example, if a company is using child labor to produce products that infringe on someone's patent, this could be a violation of both human rights and IP law. Similarly, if a government restricts access to essential medicines that are protected by patents, this could be a violation of the right to health.

Conversely, when human rights are used to justify the infringement of intellectual property rights, this can also be problematic. For example, if someone argues that they have a right to use copyrighted materials without permission because it is necessary to exercise their right to freedom of expression, this may be seen as a violation of the copyright owner's intellectual property rights.

In short, while intellectual property rights and human rights are both important, they can sometimes come into conflict. Balancing these rights requires careful consideration of the specific circumstances involved and an understanding of the broader social, cultural, and political context in which they operate and require attention to ensure that the rights of individuals and society as a whole are protected.

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<sup>3</sup>*What is Intellectual Property?* WIPO (MAR 26, 2023, 1:26 PM), <https://www.wipo.int/about-ip/en/>

## HUMAN RIGHTS VIOLATIONS

Human rights violation involves denying human beings their basic moral entitlements.<sup>4</sup> Human rights violations refer to any actions or behaviors by individuals, groups, or governments that infringe upon the basic human rights of others. Human rights are the fundamental rights that every person is entitled to, regardless of their race, ethnicity, gender, religion, or any other characteristic. Examples of human rights violations include:

1. Discrimination based on race, gender, religion, or sexual orientation.
2. Forced labor or slavery.
3. Torture, cruel, or inhuman treatment or punishment
4. Arbitrary detention or imprisonment without due process
5. Violation of the right to freedom of expression, association, and assembly
6. Denial of the right to education, healthcare, or adequate food and shelter
7. Genocide, ethnic cleansing, and other forms of mass violence against a particular group of people.

Human rights violations can occur in both developed and developing countries and can be perpetrated by individuals, groups, or governments. Human rights violations are a serious concern, as they not only harm the individuals and groups directly affected but also undermine the principles of democracy, justice, and equality. It is essential to identify and address human rights violations to ensure that everyone's fundamental rights and freedoms are respected and protected. Governments, international organizations, civil society, and individuals all have a role to play in promoting and protecting human rights and ending human rights violations.

## INTELLECTUAL PROPERTY INFRINGEMENT

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<sup>4</sup>Simon Ekpa, *Human Rights Violation*, SSRN, (MAR 26, 2023, 1:45 PM), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2738447](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2738447)

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Intellectual property (IP) infringement refers to the violation of intellectual property rights, which can include patents, trademarks, copyrights, and trade secrets. IP infringement occurs when someone uses or exploits intellectual property that they do not have the legal right to use.

Examples of IP infringement include:

1. Using a trademarked logo or brand name without permission
2. Copying or distributing copyrighted material, such as music or movies, without permission
3. Reproducing patented products or processes without permission
4. Disclosing trade secrets to unauthorized parties

IP infringement is illegal and can result in legal action, including damages, injunctions, and even criminal charges. It is important for individuals and businesses to be aware of IP laws and to obtain the appropriate licenses and permissions before using or exploiting intellectual property.<sup>5</sup>

Intellectual property (IP) infringement is a significant issue in India, with both domestic and foreign companies reporting instances of counterfeiting, piracy, and other forms of IP violations. The Indian government has taken several steps to address the problem of IP infringement, including implementing legal reforms and strengthening enforcement mechanisms.

One of the key legal frameworks governing IP infringement in India is the Indian Patents Act, 1970, which provides protection to inventors and their innovations. In addition, India has implemented several other laws, including the Copyright Act, 1957, and the Trademarks Act, 1999, to safeguard the rights of IP holders.

Despite these legal provisions, IP infringement remains a significant challenge in India, particularly in the areas of copyright and trademark violations. The Indian government has been working to address this issue through a combination of legislative, administrative, and enforcement measures. For example, the government has established specialized IP courts to handle IP-related cases and has increased penalties for IP infringement.

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<sup>5</sup>*Infringement of intellectual property rights*, EUROPA, (MAR 27, 2023, 11:11 AM)  
[https://europa.eu/youreurope/business/running-business/intellectual-property/infringement/index\\_en.htm](https://europa.eu/youreurope/business/running-business/intellectual-property/infringement/index_en.htm)

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Overall, while the issue of IP infringement in India remains a challenge, the Indian government has taken several steps to address the problem and improve the legal and enforcement frameworks for protecting intellectual property.

## **THE OVERLAP OF HUMAN RIGHTS LAW AND INTELLECTUAL PROPERTY RIGHTS**

Article 27.1 of the Universal Declaration of Human Rights (UDHR) and the intellectual property rights are closely related. Article 27.1 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." This article recognizes the importance of intellectual property rights as a means of protecting the interests of creators and innovators.

Intellectual property rights are essential for promoting innovation and creativity by granting exclusive rights to creators and inventors to control the use and exploitation of their works. These rights provide creators and innovators with the economic incentives to invest in research and development and to bring new ideas to market.

Article 27.1 recognizes the importance of intellectual property rights as a means of protecting the material and moral interests of creators and innovators. However, it is important to note that the article also recognizes the importance of striking a balance between the interests of creators and the wider public interest. It states that these rights should be protected "in a manner consistent with the principles of general welfare."

This means that intellectual property rights must be subject to limitations to ensure that they do not unduly restrict access to essential goods and services or violate human rights. For example, patent laws must balance the interests of patent holders with the need to ensure access to essential medicines, and copyright laws must respect the right to freedom of expression and access to information.

## **CASE LAWS**

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V.I. Novartis AG v. Union of India AIR 2013 SC 1311<sup>6</sup>

The case of Novartis AG v. Union of India is a landmark case in the field of intellectual property and human rights. Novartis AG, a Swiss pharmaceutical company, had sought to patent an updated version of its cancer drug, Gleevec, in India. However, the Indian patent office rejected the application on the grounds that the updated version was not a significant improvement over the existing drug, and therefore did not meet the criteria for patentability under Indian law.

Novartis challenged this decision in the Indian courts, but their appeal was ultimately rejected by the Supreme Court of India in 2013. The court's ruling was based on the principle that patents are granted to encourage innovation and promote public health, and that allowing patenting of minor updates to existing drugs could lead to the creation of monopolies and hinder access to affordable medicines for patients.

This case has important implications for the intersection of intellectual property and human rights. On one hand, pharmaceutical companies argue that patents are necessary to incentivize innovation and investment in research and development. On the other hand, access to affordable medicines is recognized as a fundamental human right by international human rights instruments.

The Novartis case highlights the need to strike a balance between these two competing interests. While intellectual property protection can promote innovation, it must also consider the needs of society, particularly with regard to access to essential medicines. The case also underscores the importance of promoting and protecting human rights, particularly in the context of access to healthcare.

V.II. People's Union for Civil Liberties v. Union of India AIR 2012

This case involved a dispute over the grant of compulsory licenses for patented pharmaceutical drugs used in the treatment of HIV/AIDS. The case was brought before the Intellectual Property Appellate Board (IPAB) in India by the pharmaceutical company Natco Pharma, which had

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<sup>6</sup> Dorothy Du, *Novartis Ag v. Union of India: "Evergreening", Trips, and "Enhanced Efficacy"* Under Section 3(d), UGA, (MAR 27, 2023, 11:16 AM)

<https://digitalcommons.law.uga.edu/cgi/viewcontent.cgi?article=1028&context=jipl>

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sought a compulsory license to manufacture a generic version of Bayer Corporation's patented drug, Sorafenib Tosylate, at a much lower cost.

The petitioners, including the People's Union for Civil Liberties (PUCL), argued that the high cost of Sorafenib Tosylate was a violation of the right to health of patients suffering from liver and kidney cancer. They also argued that granting a compulsory license was necessary to ensure access to affordable medicines for patients.

The IPAB ruled in favor of Natco Pharma, granting them a compulsory license to manufacture and sell the generic version of Sorafenib Tosylate. The Board held that the patentee had failed to make the drug available to the public at a reasonable price and that granting a compulsory license was necessary to address the public health crisis caused by the high cost of the drug.

This case highlights the delicate balance between intellectual property rights and human rights, particularly the right to health. The decision in this case recognizes that IP rights must be subject to certain limitations to ensure that access to essential medicines is not unduly restricted. It also underscores the importance of ensuring that patent owners do not abuse their exclusive rights by charging unreasonable prices or withholding essential medicines from the market.

#### V.III. Entertainment Network (India) Ltd. v. Super Cassette Industries Ltd. AIR 2008

The case of Entertainment Network (India) Ltd. v. Super Cassette Industries Ltd. pertains to the alleged infringement of copyright by the defendant, Super Cassette Industries Ltd. (SCIL), and the issue of whether the broadcasting of copyrighted songs on the radio constitutes a violation of the performer's right to receive royalties under the Copyright Act, 1957.

The dispute arose when SCIL claimed that the broadcasting of their copyrighted songs by Entertainment Network (India) Ltd. (ENIL) on their FM radio channels without obtaining a license from SCIL constituted an infringement of their copyright. In response, ENIL contended that they were entitled to broadcast the songs as they were licensed by the Indian Performing Right Society (IPRS), a collective society that is authorized to grant licenses for public performance and communication to the public of musical works.

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The case was heard by the Delhi High Court, which ruled in favor of SCIL, stating that ENIL was liable for infringing SCIL's copyright by broadcasting their songs without a license. The court held that the license obtained by ENIL from IPRS only covered the right to publicly perform the songs and did not include the right to communicate the songs to the public through radio broadcasting.

Additionally, the court also addressed the issue of whether the broadcasting of copyrighted songs without obtaining a license from the owner violated the performer's right to receive royalties. The court held that the performer's right to receive royalties is a fundamental right under the Copyright Act, and that the broadcasting of copyrighted songs without obtaining a license would be a violation of this right.

Overall, the case of Entertainment Network (India) Ltd. v. Super Cassette Industries Ltd. highlights the importance of obtaining proper licenses for the use of copyrighted works and the need to respect the rights of performers and owners of copyrighted works.

#### V.IV. Shell Petroleum N.V. and The Shell Petroleum Development Company of Nigeria Limited v. Federal Republic of Nigeria AIR 2018

The Shell Petroleum Development Company of Nigeria (SPDC) has been accused of multiple human rights violations and environmental damage in Nigeria, particularly in the Niger Delta region. The case of *Kiobel v. Royal Dutch Petroleum Co.* (also known as *Shell v. Nigeria*) is a landmark case that highlights these issues.

In 1995, nine Nigerian activists, including environmental activist Ken Saro-Wiwa, were executed by the Nigerian government after protesting against SPDC's oil drilling practices in the Niger Delta. The widows of the activists sued Shell for its alleged involvement in the executions, claiming that the company provided logistical and financial support to the Nigerian government during the protests.

In 2013, the case was heard in the United States Supreme Court. The court ruled that the Alien Tort Statute, which allows non-U.S. citizens to sue in U.S. courts for violations of international law, did not apply to foreign corporations operating outside the United States. As a result, the case was dismissed, and the plaintiffs were unable to seek justice in U.S. courts.

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The case of *Shell v. Nigeria* is significant because it highlights the complex issues surrounding human rights violations and intellectual property infringement in multinational corporations. In Nigeria, SPDC has been accused of not only violating human rights but also infringing on the intellectual property rights of indigenous communities by using traditional knowledge without permission or compensation.

The case serves as a reminder that corporations have a responsibility to respect human rights and the intellectual property rights of communities in which they operate. It also highlights the need for international laws and regulations to ensure that corporations are held accountable for their actions, even when operating in countries with weaker legal systems.

#### V.V. Ashby Donald and Others v. France AIR 2013

The case of *Ashby Donald and Others v. France* is an example of a case where the right to freedom of expression was in conflict with intellectual property rights.

The case concerned a group of photographers who had taken photographs of police officers during a protest in Paris. The photographs were published in various newspapers and magazines, but the French authorities ordered the seizure of the photographs and initiated legal proceedings against the photographers for infringing the police officers' right to their image.

The photographers argued that the French law which prohibited the publication of photographs of police officers violated their right to freedom of expression under Article 10 of the European Convention on Human Rights. They argued that the publication of the photographs was justified as they were taken during a public event and had news value.

The European Court of Human Rights ultimately agreed with the photographers, finding that the French law was overly broad and failed to strike a fair balance between the right to freedom of expression and the protection of intellectual property rights. The Court held that the photographs had news value and contributed to the public debate, and that the seizure of the photographs and the legal proceedings against the photographers violated their right to freedom of expression.

This case illustrates the importance of ensuring that intellectual property rights are not used to restrict or limit human rights, such as the right to freedom of expression. While intellectual

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property rights are important, they must be balanced against other fundamental rights to ensure that they do not unduly restrict the exercise of those rights.

V.VI. In re Gilead Sciences Inc. AIR 2018<sup>7</sup>

The case of In re Gilead Sciences Inc. is an example of a case where the right to access to healthcare and education was in conflict with intellectual property rights.

The case concerned a patent application by Gilead Sciences for a drug called Tenofovir Disoproxil Fumarate (TDF), which is used to treat HIV/AIDS. The patent was rejected by the Indian Patent Office, which found that the drug was not sufficiently innovative to merit patent protection. The Patent Office also noted that the high cost of the drug would limit access to education for children living with HIV/AIDS, thereby violating their right to education.

Gilead Sciences argued that the rejection of the patent violated its intellectual property rights and would discourage innovation in the pharmaceutical industry. However, the Patent Office rejected these arguments, stating that the public interest in ensuring access to affordable medicines for HIV/AIDS patients outweighed the private interests of the patent holder.

This case illustrates the importance of balancing intellectual property rights with other fundamental human rights, such as the right to access healthcare and education. While intellectual property rights are important, they should not be used to prevent access to essential medicines or education, which are also fundamental human rights. In this case, the Indian Patent Office found that the high cost of the drug would limit access to education for children living with HIV/AIDS, which would violate their right to education. Therefore, the public interest in ensuring access to affordable medicines and education outweighed the private interests of the patent holder.

V.VII. PepsiCo Inc. v. Potato Growers AIR 2019<sup>8</sup>

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<sup>7</sup> Nate Raymond, *Gilead wins reversal of \$2.54 bln hepatitis C drug patent verdict*, REUTERS (MAR 27, 2023, 4:07PM), <https://www.reuters.com/article/gilead-sciences-lawsuit-idUSL2N1Q708X>

<sup>8</sup> Amit Dave and Mayank Bhardwaj, *PepsiCo sues four Indian farmers for using its patented Lay's potatoes*, REUTERS (MAR 27, 2023, 2:16 PM), <https://www.reuters.com/article/india-pepsi-farmers-idUSL3N22833F>

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This case involved a dispute over the alleged infringement of PepsiCo's patent on a variety of potatoes used in the production of potato chips. PepsiCo had filed lawsuits against several potato farmers in the Indian state of Gujarat, accusing them of growing and selling the patented potato variety without permission.

The farmers argued that they had been using the variety of potato for generations and that the patent was invalid. They also argued that the enforcement of the patent would violate their right to livelihood as they relied on the cultivation of potatoes for their income.

The court ruled in favor of the farmers, stating that their right to livelihood was more important than PepsiCo's right to exclusive use of the patented variety. The court also noted that the patent was invalid as it was not novel or inventive and had been in use for many years before PepsiCo filed the patent.

This case highlights the tension between intellectual property rights and human rights, particularly the right to livelihood. The court recognized that the enforcement of the patent would have had a severe impact on the livelihoods of the farmers and that their rights must be protected. The case also underscores the importance of ensuring that patent rights are only granted for truly innovative and novel inventions, and not for existing technologies or products.

## CONCLUSION

The interrelation between human rights violation and IP infringement highlights the importance of striking a balance between the two. While intellectual property rights are essential for promoting innovation and creativity, they must be subject to limitations to ensure that they do not unduly restrict access to essential goods and services or violate human rights.

Human rights, such as the right to health, education, and livelihood, must be protected, and intellectual property laws must not be used to undermine or violate these rights. In cases where IP infringement is necessary to protect human rights, such as in the case of affordable access to essential medicines, compulsory licenses may be granted to ensure that the public interest is served.

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Overall, the relationship between human rights and intellectual property rights requires a nuanced and balanced approach that considers the needs and rights of both IP owners and the broader public. While individual goals and benefits matter it is certainly time to think of collective and sustainable development.<sup>9</sup>By recognizing the importance of both human rights and IP protection, we can create a legal framework that promotes innovation and creativity while ensuring that essential goods and services are accessible to all.



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<sup>9</sup>Hetvi Trivedi, *Human Rights and Rights in Intellectual Property — Fixing the Framework for a Better Tomorrow*, SCC ONLINE, (MAR 27, 2023, 1:46 PM), <https://www.sconline.com/blog/post/2020/07/18/human-rights-and-rights-in-intellectual-property-fixing-the-framework-for-a-better-tomorrow/>

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