



# The Role of TRIPS Agreement in Sustainable Development: An Overview

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## ABSTRACT

Over the past decade, intellectual property is considered a category of property that includes intangible creations of the human intellect. We are living in the midst of the rapid development of science and technology, and this technological innovation has transformed the world into a global village. This paper attempts to analyze the relationship between the TRIPS agreement, sustainable development, and the use of technology in a robust manner. It examines technical and legal aspects of the Agreement, as well as some of the possible impacts on the environment and human rights. Despite many years of debate, it was a matter of dispute whether intellectual property is a natural right or of an individual right. Hence, only for better sustainable development, developed and developing countries came forward during the Uruguay Round of trade negotiators that a minimum standard for the protection and enforcement of IPRs was inserted on the international trade agenda in the form of the TRIPS Agreement. As a result of the TRIPS agreement, WTO members are now obliged to introduce an IP system to promote sustainable development. This study is generally exploratory in nature and secondary data have been collected from various published, unpublished sources and publications of the Government of India abroad. The objective of this paper clearly identifies the role of IPR, TRIPS, and sustainable development in a vigorous manner.

## KEYWORDS

Intellectual Property;  
Development; Innovation, Knowledge;  
Agreement

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## Introduction

Today, where we are living and where we are going to be living is a question of intellectuals. The essence of curiosity leads us to live in the century of knowledge and indeed the century of mind. This century offers us an ample ambitious agenda to empower the rural people through improved road and digital connectivity, access to clean energy, financial inclusion, inclusive growth for all the people, and most importantly the way of an innovative idea in this century is the key issue for the production as well as the processing of knowledge. Literally speaking, the development of a nation and its future will determine the basis of the ability to convert the knowledge into wealth and social good through the process of new and newer innovation, adoption of new technology, and the role of those inputs which are considered as the shifting from the low to high values. Therefore, knowledge is the primary

resource in every sphere of human life, and the use of new technology provides tremendous opportunities for human development, full enjoyment, and certainty to touch the sky.<sup>1</sup>

In the present era of rapid development of science and technology, IPR is considered the proprietary right to enhance the pace of development. The world community has been greatly influenced by the protection of intellectual property rights during the last three-decade, and the importance of IPR is greatly increasing day by day. The leading international agreement establishing standards for the determination of rights in the information is the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) which plays a vital role in terms of sustainable development. This TRIPS Agreement

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<sup>1</sup> United Nations Development Programme (UNDP), *Human Development report 1999*, (United Nations, New York, 1999), p.57.



came in handy during the Uruguay Round of multilateral trade negotiations that established the World Trade Organization. It is very much significant that TRIPS is the first comprehensive agreement that establishes the minimum, enforceable standards for the protection of intellectual property rights in a meaningful way. Hence, it is noteworthy that to deal with the issue of protection, security, and legal issues, TRIPS is a vital step in harmonizing national and international intellectual property (IP) systems.<sup>2</sup>

From a broad sustainable development perspective, property and its protection plays vital importance from the days of Ramayana and Mahabharata. Since time immemorial, the concept of the property stood as one of the pillars of socio-economic development of life which leads to the ideal Indian life with the help of Dharma, Artha, Karma, and Moksha. With the pace of changing human life, dignity, and certain degrees of control over things, the intellectual property might relate to a number of new dimensions, and with high value.<sup>3</sup> The impact of intellectual property is now associated with various segments of modern advancement of science and technology behind the age scene of industrialization that does not cause any higher social, economic, and cultural problems. Moreover, the real value of health, education, nutrition, cultural policies and biodiversity, and the notions of other aspects of human life have undergone a drastic change. In matters of sustainable development, the use of high technology, synchronization of industrialization, and the practical revolutionary attitude of industrialization pave the way for the departure of the traditional concept of property. It is an important change brought by the IPR. In this context, the issues of liberalization-privatization and globaliza-

tion, generation of employment, and the use of intellectual property is the prime concern, and they are going to become critically significant all around the globe. In this paper, we will emphasize some major areas of attention from a national and international perspective with the help of some bilateral trade negotiations.<sup>4</sup>

We will also focus on understanding the significance of the role of the World Trade Organization's (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs), and also propose to address some interfaces between intellectual property rights in the line with sustainable development. We would like to examine tersely the Indian position regarding sustainable development, and use of patents, and also to list those high valued practices, which would be compatible with IPR and those which would not be. Hence, this paper is divided into three different parts. In the first part, we will examine the role of intellectual property systems and the TRIPs Agreement. In the second part, the study will review the potential impacts of the TRIPs Agreements on the issues of the new innovative ideas and technologies, multilateral environmental agreements, and the Convention on Biological Diversity in particular. And lastly, part three focuses on the review of the TRIPs agreement in the light of the WTO perspective.

### **New Dimensions of IPR in Indian Legal System prior to Sustainable Development**

Prior to our discussion, intellectual property can be considered as the single generic term that protects the application of ideas and information that are of commercial value. Intellectual Property is a temporary privilege over the products of intellectual activities, deter-

<sup>2</sup> The TRIPS Agreement, Article 7.

<sup>3</sup> J. P. Mishra, *An Introduction to Intellectual Property Rights* (Central Law Publications, Allahabad, Second Ed., 2009) 38.

<sup>4</sup> Pedro Roffe and Maximiliano Santa Cruz, "Intellectual Property Rights and Sustainable Development: A Survey of Major Issues" ROA/49 Project Document Economic Commission for Latin America and Caribbean (ECLAC, United Nations) (2007) 5.



mined by who controlled information and technology. The current IPR resume is encouraging commercialization of seed development, monoculture, and protection of new plant varieties, microorganisms, and genetically modified organisms.

Intellectual property rights are conceived as a tool to reward innovators and creators for their contributions to society, for a statutory period of time. They are intended to provide the necessary incentives for the generation and dissemination of knowledge as well as to encourage the transfer of technology. Basically, intellectual Property rights are covered under two headings: Copyright related rights and Industrial Property related rights. In most cases, copyright protects original literary, dramatic, musical, and artistic works, cinematography, sound recording, novels, musical scores, films, and photographs, as well as technology such as computer programs. On the other hand, industrial property rights protect the technology, patents, trademarks, and geographical indications.<sup>5</sup>Such new dimensions are as follows:

- Copyright
- Patent
- Trademark
- Industrial Designs
- Geographical Indications
- Layout Designs (topographic) of the Integrated Circuits
- Protection of Undisclosed Information.<sup>6</sup>

The above statement gives us a clear lesson in terms of the present juncture to adopt the international policy of sustainable development. Most developed countries have a strategic plan in place to achieve what they

want or what they do not while developing countries solely rely on the people and their institutions to get results from the international dimensions. At this present juncture, it is vital that IPR opened new vistas in the life of the human being sitting in any corner of the globe, which automatically turns into a small village. At one level, there was a time when people used proprietary rights, and they were given primary importance practically, but that era is gone. Hence, the adoption of Liberalization-Privatization and Globalization came into force, and the way of thought-provoking process in the field of technology has greatly added fuel to its value. Now, people talk about the pecuniary rights which they have freely enjoyed until a few years ago, which are now controlled by the law and regulatory framework. Those rights which were treated as natural rights are now considered intellectual property rights. Among them, the tribals are the most affected by that traditional values.

### **The Interrelationship between Intellectual Property Rights and Country's Development**

As normally understood, intellectual property (IPR) has a strong impact on the different aspects of human endeavour. Basically, the interrelationship between sustainable development and intellectual property rights is interchangeably contradictory in nature. The use of high technology and the advancement of globalization paves the way to bridging a gap between the two. On one side, most of the developed and developing countries are benefitted from the TRIPs Agreement. Hence, to attract foreign investment, such countries always depend on the long-term benefits through technology transfer, new innovation, and potential industrial development. On the other side, many countries adopt short-term benefits in the form of administration and enforcement of industrial inputs. In this context, potential conflict arises between the two when it comes

<sup>5</sup> P Narayanan, *Intellectual Property Law* (Eastern Law House Pvt Ltd., Kolkata, and Third Edn., Revised with Updated and Amended Statutes, 2017) 4.

<sup>6</sup> Cover Story, "Intellectual Property: Rights and Anti-Competitive Practices" Halsbury's Law (June 2008) 18-19.



to the exercise of intellectual property rights. It is a commonly accepted view that the use of IPR may produce anti-competitive effects through the monopoly power which is granted to the holders of the right. In this study, we will analyze the supporting value between the IPR and sustainable development. This produces the optimum results by promoting environmentally sustainable development through the use of geographical indications, capacity building, and technical assistance for policy coherence. This study also addresses the environmental and developmental impacts of patent protection by specifically focusing on the global agreement on the Trade-Related Aspects of Intellectual Property Rights (TRIPs), and tries to analyze those areas in which the Agreement will impact, either positively or negatively, sustainable development in developing countries such as country like India. It is equally important to note that the Paris Convention, Rio Convention are the best suitable example for the protection of intellectual property rights to ensure the global standard of living.

### **TRIPs and the Impact of Sustainable Development**

Apart from the international treaty that marks the most important development in the field of economic, social, and environmental development of the international economic order, TRIPs Agreement is one of the elements of the Uruguay Round results, the package in which way it created the World Trade Organization. The drastic effect of the TRIPs is that it makes full provision with regard to many new and newer areas which were previously not covered by the IPR regime. Moreover, like the other developing countrys' perspectives, India is also one country that is forced to amend its existing laws on IPRs in light of the TRIPs provisions. It focused on both merits and demerits. Under the TRIPs provisions within the ambit of the Indian context, agriculture, health

and education are likely to be affected from the perspectives of the Agreement. The essence of the Constitution of India is also against the TRIPs provisions whereas they are against the social and economic philosophy laid down in the preamble. Furthermore, as the process of liberalization, privatization and globalization came into force steadily and ultimately were challenged, some landmark cases were introduced where the Supreme Court declined to give remedy to the petitioners on the well-settled principle that a policy decision should not be interfered with by the Judiciary. The following landmark cases are *Mithlesh Garg vs. Union of India*,<sup>7</sup> *Dalmia Industries vs. State of Uttar Pradesh*,<sup>8</sup> *Delhi Science Forum vs. Union of India*,<sup>9</sup> etc. Most importantly, India is a signatory member country of the WTO, and hence, India is bound to follow the guidelines of the TRIPs provisions. The real facet of the value is that India is still not a powerhouse in terms of economic concern. Therefore, it is mandatory that India has to undertake suitable steps to maintain sustainable economic development by protecting the interest of the stakeholders, labour force, small traders, and local farmers as well as of the persons with intellectual pursuits. From that point of view, the TRIPs agreement creates a friendly environment for supportive technological innovation and welfare to the public interest through patents.<sup>10</sup>

As per the Patent Act, of 1970,<sup>11</sup> the patent allows the technology owners to recoup their investment in technology-oriented research by giving them the power to raise prices and reduce the supply of technology. It is very much important to note that if the research is innovative, and is based on technological de-

<sup>7</sup> AIR 1992 SC 443.

<sup>8</sup> AIR 1994 SC 2117.

<sup>9</sup> 1996 2 SCC 405.

<sup>10</sup> Simon Walker, "The TRIPs Agreement, Sustainable Development and the Public Interest" Discussion Paper 41 IUCN Environmental Policy and Law paper (2001) x.

<sup>11</sup> The Patent Act, 1970, (Act Id 197039 of 1970).



velopment then the IPR might help the technology owner to attain market dominance for a limited period with a resulting effect on competition in the market. Although subject to certain conditions, patent laws are applicable on the basis of the national legal framework, but it does not mean that there is no existing international regulatory framework. It is mentioned earlier that there is a number of multi-lateral treaties which seek to harmonize the law of patents are under the World Trade Organization's (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights, where patents are available for the signatory member countries for invention related issues. Although the term of the 'patent' is used in varied forms in relation to the different technologies, most importantly, the minimum duration is fixed by the WTO is that twenty years.<sup>12</sup>

It is a well-established principle that due to the paradigm shift of technology transfer among the developed and developing countries, IPRs are granted for specific issues with certain policy objectives. The IPRs should be protective but free from political interference. Hence, it is an urgent need that intellectual property should be conducive to the voice of the nations. The rules and regulations, needs, and objectives will change year after year and vary from country to country. Therefore, technological development must be determined on the basis of a clear evaluation as per the needs of the social, moral, ethical, and environmental investigations for the benefit of sustainable development.

### **Overview of World Trade Organization on TRIPS Agreement**

In addition to the various intellectual property-related statutes from national and international perspectives, it is undergoing tremen-

dous changes to bring them to harmonize with the corresponding laws in developed countries. It is gradually developed centuries after centuries in response to national and international needs. Before the adoption of the TRIPS Agreement, the world community witnessed significant changes in the field of patents. Several countries did not grant patent protection because they were not signatory member countries of the WTO.<sup>13</sup>

### **General characteristics of the Trade-Related Aspects of the Intellectual Property Agreements.**

Article 7 of the TRIPS agreement states "the protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and transfer and dissemination of technology, to the mutual advantage of the producers and users of technological knowledge in a manner conducive to social and economic welfare, and to the balance of rights and obligation" with the help of numerous objectives in a brief, which are following: (a) minimum standard, (b) enforcement, (c) Dispute settlement, (d) developing country's transitional period, etc.

### **Influential Character of TRIPS Agreement over Technological Development**

After the balance of payment crisis in the latter part of the 80<sup>th</sup> decade, liberalization, privatization, and globalization came into force, and at the same time, foreign collaboration provides a new height to the world economy. The introduction of foreign direct investment came forward steadily and to that same extent, the TRIPS agreement stands definitely as a remarkable and influential character of the technology transfer. After critically examining the basic objectives of the TRIPS agreement, it

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<sup>12</sup> S. Singh, *Intellectual Property Rights Laws* (University Book House Pvt. Ltd. Jaipur, First Edition, 2015) 68-69.

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<sup>13</sup> Biplab Kumar Lenin and Harsha Rohatgi, "Exceptions and Limitations of Patent Rights and Its Enforcement in India" 20 *Journal of Intellectual Property Rights* (2015) 297-304.



is worth mentioning that to protect the interest, safety, and security of the technology holder, it is an urgent need to use some supporting and strong enforcement mechanisms of IPRs. Arguably, it will undoubtedly provide a safe environment for technology transfer, control over the inventions, and the role of users proactively. Furthermore, it is necessary to mention that cultural, legal, moral, social, and economic aspects are often subject to the technological barriers of a strong IPR regime which can create a negative impact on the market strategies and economy of the country also. The barriers are as follows:

- (a) high price;
- (b) Can lead to adopting anti-competitive practices

#### **Role of TRIPS Agreement and the Convention on Biological Diversity**

The process of development is generally considered a multidimensional process and most of the time certain pressure and excessive use of technology can lead to environmental degradation. It is also worth mentioning that sustainable development is the integration of economics and ecology in the decision-making process. Hence, the concept of sustainable development was spelled out in the Rio Declaration 1992 on agenda 21. It provides numerous features in order to achieve the purpose of sustainable development. The salient features are as follows:

- a) To use and conserve natural resources
- b) Eradication of poverty
- c) Financial assistance to the developing countries
- d) To adopt the polluter pays principles
- e) To adopt the precautionary measures
- f) To adopt the principle of environmental protection etc.,

#### **g) Inter-generation equity**

Apart from these features, inter-generational equity, the doctrine of the pre-cautionary and the polluter pays principles are the core features of sustainable development.<sup>14</sup> From a theoretical perspective, the use of IPR has both positive and negative impacts on biodiversity. During the last several decades, the agricultural sector is the highest debatable topic in contrast to the IPR uses. The reasons behind the scene are the overplanting of new plant varieties and the displacement of many traditional varieties are creating areas of monoculture in many developed and developing countries, and contributing to the loss of biological diversities and local planting techniques. In terms of the environmental issues, the adoption of the Cartagena Protocol on Biosafety is a significant development in the field of intellectual property rights and especially in the use of patents.

#### **The Present IPR Model in the Indian and International Context**

Since 1998, the world community has witnessed tremendous changes in terms of the use of IPR in connection with the conservation of the environment and biodiversity. In 1998, the World Intellectual Property Organization (WIPO) was established and WIPO has undertaken a programme that explores emerging issues of intellectual property that covers several features which are-

- a) Protection of traditional knowledge, innovations, and creativity
- b) Biotechnology and biodiversity
- c) National and international character of intellectual property and sustainable development

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<sup>14</sup> Birendra Kumar Tiwari, "Sustainable Development and Environmental Protection in India" in Vijay Bhatt and Pratap Mehta (eds.), *Indian Bar Review* (Bar Council of India Trust, New Delhi, 2016) 214-215.



d) Protection of folklore

### **Concluding Remarks.**

Intellectual property rights and the use of patents in the name of sustainable development are not antithetical to each other. It is equally important to note that IPR requires absolute protection from the law in the interest of creativity and innovation, and such protection needs to be reasonable, allowing only such conditions that constitute the bundle of rights that is usually accompanied by the IPRs for the benefit of the environment and sustainable development. Hence, there is an urgent need for more research in this field and remarkable legislation for more protective measures.