

Intellectual Property Rights: The Other Side of the Coin

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Abstract *The modern world operates on the survival of the fittest rule. Hence, there is cutthroat competition among the states, and every state is striving for greater economic development. Development is based on the minimal use of resources which in turn is dependent upon technological innovations. These innovations incur huge research and development costs and can easily be copied to serve as the basis for further developments by the rivals. Thus, the idea of Intellectual Property Rights (IPR) was introduced. While there are many advantages that these rights have to offer, they also prove to be deleterious in some ways as they also play a role in restricting innovation by the global North, which further widens the gap between both worlds. This paper traces the history of the IPR and develops an argument that proposes that IPR has been a cause of inequalities and has restricted innovation.*

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Introduction

The 21st century is an evolved era, with globalization being an unassailable reality that has laid down the foundation of some unprecedented developments. It has transformed the entire world, eradicating the idea of borders, reducing the distances, improving accessibility and creating bridges for communication. While the perks that this contemporary phenomenon has to offer to seem appealing as the world is now much more connected, the fact remains that the interconnectedness has given birth to an intense competition all over the globe which has magnified over time; and as realists put it, it's the survival of the fittest, so it wouldn't be wrong to argue that this escalated competition is a matter of survival. Thus, each entity struggles to ensure its survival which automatically induces technological development since, in the modern world, that is the key to survival. Moreover, it is this technological development that ultimately leads to economic development in the form of enhanced productivity; hence, survival and

technological development share a strong relationship. (Rapp & Rozek, 2007).

The developed nations have strategically worked on their technological innovations in such a manner that they have been able to ensure greater productivity with minimal use of resources. However, once the required level of technological innovation is achieved through research and development, the next step calls for the protection of that innovation and creativity from being copied in a competitive world where every entity is looking to save money and time required in a competitive world where every entity is looking to save money and time required to be technologically advanced. This is where the Intellectual Property Rights (IPR) step in and secure the intellectual property, which according to Mark Getty, is the oil of the 21st century, and most of the richest men have made money through this very idea (Getty, n.d.). Before delving deeper, it is pertinent to find out that what IPR exactly is and in that regard, it needs to be noted that Chandra Nath Saha and Sanjib Bhattacharya define the IPR as exclusive rights

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provided to the inventors of the ideas and creative inventions ([Bhattacharya & Saha, 2011](#)). These rights provide commercial benefits of the creation to their creators, and since the world is now a global marketplace, the IPR debate has gone global.

While Intellectual Property Rights have the benefits like dissemination of new knowledge and ideas along with the motivation for investment in the sector of research and development, which would ultimately lead to economic development, the reality is that it is not only the benefits that the Intellectual property Rights have to offer. These rights work both ways, and while a few states continue to prosper through the use of IPR, the fact is that an even greater number of states continue to suffer, and there is a stark difference between the levels of development of the North and the South. This research revolves around the concept of Intellectual Property Rights; it traces the origins of IPR and then builds a case on how the widely prevalent practice has been detrimental to the interests of one major part of the world.

Intellectual Property Rights: Tracing the Origins

While the IPRs have gained momentum in the current era, many scholars are of the view that the history of Intellectual Property Rights can be traced back to several centuries. They claim that since the idea of exclusive rights for the authors and inventors was non-existent so instead, rewards and incentives were granted as prizes in arts and crafts, particularly in China and Persia ([Pager, 1950](#)). However, with the passage of time, the system evolved as the dark ages were over and the first monopoly privileges began to emerge ([Baker & Avafia, 2011](#)). In the initial period, exclusive rights were only provided at the discretion of the monarchs. Moreover, monopolies on the basis of artisan techniques and inventions were also granted, especially for the purpose of securing the presence of craftsmen and also to maintain the secrecy of their crafts. These monopolies and the secrecy provided the territories with benefits in trade during the period of exclusivity. However, as a result of the further evolution of the concept, in the year 1474, the very first legal and constitutional framework of intellectual property law came into existence. This law balanced the rights of the consumers as well as the inventors,

and it is this very law that formed the basis of contemporary intellectual property law. ([May 2002](#))

Since the introduction of the law, it continued to evolve, but it was in the second half of the 19th century that the expansion of its scope was initiated by the unions that intended to protect the industrial property along with literary and artistic works. By that time, the idea of the protection of intellectual property had gained such importance that very few countries weren't practising the law that protects intellectual property ([Baker & Avafia, 2011](#)). As a result of the efforts that were made in the 19th century, the Paris Convention (1883) and the Berne Convention (1886) were enforced for the protection of literary and artistic works, and they were legally binding. Although these conventions seemed appealing, there were states that showed reluctance in being a party to the Paris convention specifically. This was primarily because many of the countries that had recently gained independence at that point in time realized the philosophical differences that existed on intellectual property leading to innovation and having an impact on development. These newly independent countries were interested in expanding the scope of the law regarding intellectual property beyond the convention of Berne and Paris because of the absence of adequate enforcement provisions. ([Matthews, 2002](#)).

1960s was the time period when the intellectual property laws went through an evolution and were a part of intense debates because during that time, economic development had moved to the priority shelf, and intellectual property was considered to be a fuel for development. Moreover, around the same time period, certain developing countries, as well as the newly independent countries, began advocating for a trade body apart from the General Agreement on the trade and tariffs (GATT) since these countries had reached the understanding that this organization had not been catering to the needs of the developing bloc. As a result, a conference was held in Cairo in the year 1962 regarding the challenges that were being faced by the developing countries, and these constant efforts resulted in the establishment of the United Nations Conference on Trade and Development (UNCTAD) in 1964 despite strong opposition from the developed bloc ([Toye & Toye, 2004](#)).

It wasn't surprising that there was a reaction from the developed countries regarding the efforts being made by the developing countries to highlight the economic setbacks that they had been facing because of the laws like the intellectual property law that were established by the developed world, and they also worked in favor of the very same part of the world. So, there were persistent efforts from the North to strengthen the commitment to intellectual property; hence, the World Intellectual Property Organization (WIPO) came into existence ([Toye & Toye, 2004](#)). While on the one hand, the developed countries were making use of the WIPO to widen the scope of the intellectual property and deepen the commitment towards it, on the other hand, the alliance between the developing countries with India and Brazil being the leaders, continued their efforts to ensure the revision of the Paris and Berna conventions. The consistent efforts resulted in the passing of the resolution on an 'International Development Strategy for the Second UN Development Decade calling for, among other things, a review of the international convention relating to patents in the United Nations General Assembly (UNGA) ([Baker & Avafia, 2011](#)).

The tug of war between the North and the South continued, and while the South was determined to fight its case, the North was making a strong case for the protection of the intellectual property with the US and the European Nations being in the front seat. As a result of the efforts made by the North, the Uruguay Round were held, and they hold immense significance as with their initiation in the year 1986, the Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement was formed. This agreement happens to be a turning point in the history of Intellectual Property Rights as it comprehensively embodies rules and regulations not only on the administration but also on the enforcement of intellectual property rights. Since the enforcement of this agreement, the practice of the protection of intellectual property intensified and while one part of the world continued to progress under its auspice, the other struggled ([Baker & Avafia, 2011](#)).

Intellectual Property Rights and the Struggling South

Even after a tug of war with the North, the

interests of the South couldn't be attained and since the enforcement of TRIPS, the southern part of the world has been struggling. Elhanan Helpman presents his viewpoint in this regard and argues that in the shorter term, a higher rate of protection enhances the level of innovation; however, it also proves to be a factor behind the decreasing rate of welfare in the South ([Helpman, 1992](#)). This mainly happens because the increased protection results in accelerated prices of the products, which has an unfavorable impact on the economy of the developing states while the power remains in the hands of the developed states that own most of the innovations. This statement is backed by the statistics quoted by Arif Hossain and Shamima Parvin Lasker, who claim that 97% of the innovation is in the hands of the developed economies, and it is only 3% of such innovation that is controlled by the developing states. Moreover, as far as the patents on biotechnology are concerned, 93% of them are owned by the United States, European Union and Japan, while only 7% are from the other countries. These statistics signify that there is a huge gap between the North and the South; while the North continues to prosper and strengthen its economic position by owning the majority of the patents and protecting them, the South continues to pay the price ([Hossain & Lasker, 2010](#)).

Hossain and Lasker further argue that economic development is not guaranteed by the use of intellectual property rights, and they discuss the countries that have experienced rapid economic growth in either the absence of these rights or in their weak presence. One of these countries happens to be South Korea that had no protection for pharmaceutical products, and that is how it went through an accelerated economic growth that turned it into a developed state from a developing one. Moreover, Switzerland, Holland, Japan followed suit and economically progressed ([Hossain & Lasker, 2010](#)).

Delving deeper and bringing in a briefing paper that was published by the USAID on the subject, it should be taken into account that the developed countries often use intellectual property rights to exploit the developing states by depriving them of their own resources. The developing countries have shown an increasing concern towards the practice that is called bioprospecting. As a part of this practice, foreign

companies get samples of the biological materials from the developing countries that are later used for the production of patentable products. There have been reports that reveal that foreign patents have been issued for products that are naturally occurring in order to cure diseases in developing countries. Now, the issue is that since the patents have been issued, so these patents will prevent the developing states from making use of the products that have been a part of their culture for centuries. This is likely to occur because, according to the law, patents apply only to the country where they originate from ([Goans, 2003](#)). This means that the intellectual property rights are if on the one hand, promoting innovations; on the other hand, they are also proving to be barriers in the introduction of innovations and providing minimal room for the South to progress. As a matter of fact, developed countries like the United States are very closely involved with intellectual property rights and their inventions are patented in the majority of the cases. These patents are indeed beneficial when it comes to the protection of intellectual property and the promotion of innovation; however, it needs to be understood that the developed part of the world has already laid the foundation of the innovations and the inventions that are now introduced, have to be an extension of what has already been introduced. It needs to be taken into account that this argument doesn't tilt towards the promotion of piracy but rather the fact that new ideas are generated on the basis of the older ones as the older ideas are a foundation, and working on the older ideas is the basic driver behind innovations.

Since it is now obvious that the intellectual property rights have not been guarding the interests of the global South, it wouldn't be wrong to claim that because of the huge difference in the economies of both the part of the world, these laws have been proving to be detrimental for the developing states. Specifically, in this case, the "one-size-fits-all" phenomenon has failed to work as the institutional transplants aren't always helpful, especially when there is a stark difference in the economies and the structure. In addition, there are large distributional impacts of the intellectual property rights regimes, and the South doesn't have the resources to offset those impacts ([Dosi & Stiglitz, 2014](#)). It means that this entire system is established to promote the interests of the

North, and that is the basic reason behind the existence of the vicious cycle of exploitation of the South at the hands of the North.

It has already been argued that the developing countries pay a high price for the existence of the IPR system, and the benefits are reaped by the developed world. However, what needs to be taken into account here is that it is not just the usage of the system that is deleterious for the South, but its instalment in these countries also comes at high costs. These costs are involved while handling counterfeit cases as well as complex patent cases where examination and registration offices and equipment are required. Moreover, drafting administrative procedures, training examiners, judges, and customs authorities also incur huge costs, and once the use of the intellectual property rights is greater, additional costs are applied, which makes the process difficult for countries that are already have struggling economies ([Maskus, 2001](#)). The UN Conference on Trade and Development reveals estimated costs of the development of TRIPS in certain developing countries, and according to those figures, in Chile, an amount of \$718,000 was needed. However, the annual recurrent amount was said to be \$837,000. On the other hand, an Egyptian expert calculated the cost and revealed that it should be around \$800,000 for the country, along with an additional annual training cost to be around \$1 million. Moreover, in the case of Bangladesh, a one-time TRIPS compliance cost was said to be around \$250,000 with an additional \$1.1 million investment on an annual basis for judicial work, equipment and enforcement ([Maskus, 2001](#)). The question that arises here is that why a system that is not benefiting the developing countries in strengthening their economies is rather a source of the continuation of the vicious cycle of exploitation and comes with huge implementation costs, would be a preference for the developing countries? And that answers as why the developing countries have resisted following the system that is only a source of exploitation for them.

Another point that must be raised is that the intellectual property rights system was developed long after the developed countries had developed their ideas, and so these rights have been a source of protection for them, but on the other hand, the developing countries have not had the opportunity to cope up with the pace

of the developed world which is detrimental in their case. It is also noteworthy that the ideas that the developing world has based its innovations on also have their foundations elsewhere, and while the North had the leverage, the South has been deprived of it, highlighting grave inequalities. A prime example, in this case, is the recent outbreak of covid-19 that has been fatal, which accelerated the demand for ventilators in order to reduce the chances of deaths. These ventilators are a sophisticated technological innovation, and such technologies are imported primarily because of the protection of the technological inventions that limit the power of the South, giving more power in the hands of the North. Pakistan faced an extreme shortage of ventilators, and the major factor behind this issue in the face of a deadly virus were the barriers in the introduction of innovations. The fact of the matter is that this is just one case that proves how intellectual property rights have been proving to be a double-edged knife that works both ways, and it is only the developing countries that have been on a receiving end.

Conclusion and the Way Forward

The fact of the matter is that the protection of ideas is, in fact, a healthy practice, and it rather promotes the generation of new ideas; hence, the benefits that intellectual property rights have to offer cannot be sidelined. However, the reality that these rights, which were primarily introduced for the protection of ideas, have been used as a weapon by the powerful lot to widen the disparities between both the worlds, has made the shield a weapon instead. Hence, a greater emphasis needs to be placed on the fact that even the most sophisticated technologies introduced by the first world are based on pre-existing ideas, and thus, in order to bring the developing world on the same footing, the same leverage needs to be extended to the South. This does not entail that the intellectual property rights should not be implemented; it rather denotes that their implementation must be ensured once the North and the South match the level of innovation, so the role of the intellectual property rights is played in its true essence towards the promotion of the new ideas and not their restriction.

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