

Access to Medicines and the Changing Role of Corporations: Making the Human Rights Regime Stronger in A Trips Plus World

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Abstract

The information age, the world is interlinked, interconnected and interdependent. As one moves towards a knowledge based economy, strong intellectual property protection is essential to protect innovation.

Economic growth cannot logically be treated as an end in itself. Development has to enhance the lives of all people and enhance the freedoms enjoyed.

Like other social institutions, even Intellectual property rights are social constructions whose objective is to promote the well-being of the society at large. It can, for instance, affect the competitiveness and efficiency of the entire economy, the extent of inequality in society, and the health of its citizens.

The globalization and the liberalization era resulted in the formation of a uniform intellectual property regime (TRIPS) irrespective of the stage of development of the country. This entailed strengthening the local intellectual property laws to make them uniform.

However, many of the developed countries sought to dilute the multilateral framework and promoted a bilateral framework that includes a stringent intellectual property framework that goes beyond the TRIPS agreement. These provisions can affect access to health, innovation, transfer of technology, food security among other things. These bilateral agreements are known as TRIPS Plus. TRIPS Plus agreements usually entail extending the patent term beyond 20 years, limiting the use of compulsory licenses, data exclusivity, and restricting generic competition.

There has also been a power shift from the nation state to the transnational corporations. Corporations wield powers that were once the exclusive domain of the state.

By a comparative analysis of developed countries like USA with Third World and developing countries, this paper would explore mechanisms to make the human rights regime stronger by exploring the changing role of corporations and making human rights instruments applicable to them.

KEYWORDS: Human Rights, TRIPS, Intellectual Property Rights, Globalization

Introduction

In the information age, the world is interlinked, interconnected and interdependent. The nature of the modern world is such that even that states that are on opposite poles, are the largest trading partners of each other. Innovation is the key to maintaining the competitive edge that countries have. As we move towards a knowledge based economy, strong intellectual property protection is essential for this purpose. How we regulate and manage the production of knowledge and the right of access to knowledge is at the centre of how well this knowledge economy, works and who benefits.¹ Economic growth should enhance the lives we lead with its associated freedoms.

The role of the state is gradually diminishing as large transnational corporations wield more power and influence. Transnational corporations can be defined as: “...an enterprise, comprising entities in two or more countries, regardless of the legal form and fields of activity of these entities, which operates under a system of decision-making, permitting coherent policies and a common strategy through one or more decision-making centers, in which the entities are so linked, by ownership or otherwise, that one or more of them may be able to exercise a significant influence over the activities of others, and, in particular, to share knowledge, resources and responsibilities with the others”²

In 2016 itself, the top 10 corporations together had a market capitalization that was more than the GDP of 98% of the countries.³ Only 3 countries had a GDP that was more than the market capitalization of the top 10 corporations put together.

Therefore, human rights become all the more important as non-state actors are wielding significant influence in areas that were once the exclusive domain of the state and are also threatening the violation of human rights. Thus, we also need to look into the governance gaps and the manner in which societies manage their adverse effects taking into consideration the changed global scenario. While a free market is essential for the development of the state, effective mechanisms that protect human rights also need to be enforced.⁴

Intellectual Property Rights, like any other social institution is a social construction whose aim is to promote the well-being of the society at large. The IPR system and innovation system of any country does not exist in isolation and are interdependent. The IPR system as it exists can affect the competence and effectiveness of the entire economy including the extent of inequality, and the access to health its citizen's receive⁵.

¹Joseph Stiglitz, *Economic Foundations of Intellectual Property Rights*, Vol. 57:1693, Duke Law Journal (2008).

²Draft UN Code on Transnational Corporations 1983 version.

³FT500: *World's Largest Companies* (15th August 2016)

<http://markets.ft.com/Research/Markets/DataArchiveFetchReport?Category=&Type=GMKT&Date=03/31/2016>.

⁴Saulius Katuoka, Monika Dailidaitė; *Responsibility of transnational corporations for human rights violations: Deficiencies of international legal background and solutions offered by national and regional legal tools*; Mykolas Romeris University; (2012).

⁵Giovanni Dosi and Joseph Stiglitz, *The role of IPR in the development process, with some lessons from developed countries: an introduction* in Intellectual property rights legal and economic challenges for development 1-12 (1st ed. 2014).

The globalization and the liberalization era resulted in the formation of a uniform intellectual property regime of Trade Related Intellectual Property Rights (TRIPS) irrespective of the stage of development of the country. This entailed strengthening the local intellectual property laws to make them uniform. Developing and least developed countries however got additional time to implement this regime due to their differing social and economic situation. Prior to acceding to this system, India did not issue product patents in food, chemicals and drugs keeping in line with the social welfare objective that is enshrined in the Indian Constitution. However, India got time until 2005 to fulfil its international obligations to strengthen its intellectual property laws.

TRIPS Agreement has adequate flexibilities (through various articles: Articles 7, 8, 27, 31), that was reiterated by the Doha Declaration, so as to enable the states to control the patents in a manner as to avoid any adverse impact on access to medicines and thereby on public health. The TRIPS Agreement coupled with the Doha Declaration left it open to the member States to adjust their individual systems by regulating patent grants and for setting up higher standards for patent protection for various pharmaceutical and other products.

As the Indian Parliament aimed at harmonizing our IPR laws with that of the TRIPS agreement, it strove to balance its international obligations with its commitment to protect and promote access to medicines, of its own people and also those in other Developing and the Least Developed Countries. Several provisions of the Patents Act, like section 3(d), strike a balance between the necessity for promoting research and to keep monopoly of private companies at the least level.

However, many of the developed countries sought to dilute the multilateral framework and promoted a bilateral framework that includes a stringent intellectual property framework that goes beyond the TRIPS agreement. These provisions can affect access to health, innovation, transfer of technology, food security among other things.

In the backdrop of the changing role of corporations in a globalised world, this article will explore the consequences of implementing stronger IPR provisions that go beyond the TRIPS framework and how the human rights framework can be equipped to deal with the challenges that the new world order has to offer especially with regard to access to medicines.

Objectives

The primary objective of this study is to ascertain the overall impact of human rights in the context of globalization, changing role of corporations and the change in the global intellectual property framework. The authors will also analyze the changes in light of how the roles of the changing role of corporations wherein they are assuming certain powers that were the exclusive domain of the state. The study will analyze case laws and foreign statutes that will help us determine ways to regulate transnational corporations. It will specifically explore the gradual shift from a multilateral framework to a bilateral one in terms of more stringent IP provisions known as “TRIPS Plus”.

This study will examine the impact of these changes on human rights and the right to health duty that the states have. Further, the International Conventions and the present Indian position will also be stated and certain suggestions will be given.

Methodology

The present study is a doctrinal one that will analyze various international conventions, foreign statutes, case laws and the Indian position.

Primary data will mainly consist of statutes, international conventions and case laws. The Indian position will be examined on the basis of the Constitution of India and other relevant statutes. International conventions like the International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights will be examined. Foreign statutes like Alien Tort Claim Act.

Secondary sources will include media reports, articles by academics, surveys by various governmental and non-governmental organizations and newspaper reports.

Changing role of corporation's

A recent trend that has emerged is Human Rights laws that are being made applicable to holders of intellectual property including corporate owners⁶. In *Anheuser-Busch, Inc v. Portugal*⁷, for example, the Grand Chamber of the European Court of Human Rights extended the coverage of Article 1 of Protocol No. 1 to the European Convention of Human Rights to both registered trademarks and trademark applications of a multinational corporation. The term "possessions", in Article 1 of Protocol No. 1 have been interpreted to include intellectual property rights.

If corporations are being allowed human rights protections, and a liberal interpretation of the human rights provisions are made for the protection of their products it is natural that they should be subjected to corresponding obligations as well. Human rights provisions of international treaties should be made applicable to these corporations⁸.

With the advent of globalization there has been a power shift from the nation state to the transnational corporations⁹. Many corporations have income that is more than the GDP of many countries put together. These corporations wield powers that were once the exclusive domain of the state.

Third World countries lack the economic or political capacity to bring large corporations to justice, many of which have more earnings than the state itself. As a result, even the judiciary in these states is weak and ineffective. What makes matters worse is that many of these states depend entirely on the corporations for economic sustenance.

During the 24th regular session of the UN Human Rights Council, Ecuador called upon the Council to recognize "the necessity of moving forward towards a legally binding framework to regulate the work of transnational corporations and to provide appropriate protection, justice and remedy to the victims of human rights abuses

⁶Peter K. Yu, *Intellectual Property And Human Rights In The Non multilateral Era*, Florida Law Review, 1066 (2012).

⁷*Anheuser-Busch v Portugal*, ECHR (15th August 2016)

http://www.ippt.eu/files/2007/IPPT20070111_ECHR_Anheuser-Busch_v_Portugal.pdf

⁸Ana Natsvlishvili, *The impact of globalization on human rights in the developing world: Transnational corporations and human rights – the masterpieces of globalization in the era of democratized violence.*

⁹Id.

directly resulting from or related to the activities of some transnational corporations and other businesses enterprises.”¹⁰

Jurisdictional issues, Foreign laws and cases to regulate Transnational Corporation’s

Transnational Corporations legally form separate entities based on their jurisdiction. The subsidiaries that operate abroad are different legal entities than their parent companies. They are bound by the laws of the state that subsidiary operates. There is a problem of jurisdiction with regards to prosecution in case of any violation by these corporations. Many of the developing states have weak laws as compared to developed countries and lack the power to prosecute these corporations that may wield significant influence. Laws to prosecute corporations for human rights violations are often lacking.

There are deficiencies in the regulatory framework with regards to transnational corporations. However in the USA they could be prosecuted under the Alien Tort Claim Act (ATCA). Most of the transnational corporations that are found violating human rights norms are incorporated in the US. The ATCA says that: “*The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty in the United States*”¹¹

The scope of ATCA has been expanded through various judgments. The first of such judgments was *Filártiga v. Peña-Irala (1980)*¹² which extended the jurisdiction of the US courts to tortuous acts committed around the world. In this case torture that was done outside of the US was awarded compensation. It was argued that various international norms such as the UDHR, American Declaration of the Rights and duties of Man etc were violated and the courts had the jurisdiction under the ATCA to hear the case.

Among subsequent case that is important is *Doe v. Unocal Corporation (2002)*¹³ was a lawsuit filed against the corporation for human rights violations including forced labor, assault, wrongful death etc. The court ruled that the corporations and their executive officers can be held guilty for human rights even in foreign jurisdictions. When the case gradually went for appeal in the Ninth Circuit, Unocal agreed to compensate the villagers and develop programs for their well-being and improve their health.

However in some other subsequent cases like *Kiobel v. Royal Dutch Petroleum Co.* the court found that the ATCA does not apply extra-territorially.

The European Union does not have a law like the ATCA; however there can be alternatives wherein tort law can be used. Although it does not substitute ATCA, it can produce similar results.

¹⁰ United Nations Human Rights Office of the High Commissioner, *Regulating Transnational Corporations: A Duty under International Human Rights Law*, (2014).

¹¹ Legal Information Institute, 28 U.S. Code § 1350 - Alien’s action for tort (15th August 2016) <https://www.law.cornell.edu/uscode/text/28/1350>

¹²630 F.2d 876.

¹³393 F.3d. 932.

In the UK, in the case of *Thor Chemical Holdings Ltd.*, their production of mercury based holdings was criticized and they subsequently shifted to South Africa. However in 1992 when mercury exposure was detected in employees there and three of them died due to the mercury poisoning, claims were brought before the English High Court holding the parent company responsible.

Within India, in the aftermath of Bhopal Gas disaster the Indian government under the doctrine of *Parens Patriae* assumed the role of the litigant and sued Union Carbide in the US court. Eventually a settlement of \$470 million was reached. While in the Indian courts various employees of Union Carbide were convicted of causing death due to negligence.

International bodies like the International Criminal Court do not include legal persons within its ambit. Under Individual Criminal Responsibility, Article 25 of the Court says that the court will have jurisdictions over natural persons. It excludes entities like corporations have a legal personality.

Conflict between developed countries promoting human rights norms in practice while practically opposing it

Switzerland follows a human rights based approach to health with regards to its development framework. As a member of the International Covenant on Economic, Social and Cultural Rights, Switzerland has committed itself towards realizing the right to health in third world countries. As a promoter of the Millennium Development Goals, it has also committed itself to providing access to affordable drugs in third world countries.

However while negotiating Free Trade Agreements (FTA), provisions that go beyond the international framework are adopted e.g. extension of patent term, data exclusivity etc. In the EU-India FTA that was being negotiated, including such provisions that go beyond the TRIPS framework will endanger the access to medicines for a large part of the population.

Switzerland is also asking the Thailand government to restrict its use of compulsory licensing. Such policies go against the international human rights obligations that Switzerland is committed to.

Concept of TRIPS Plus and some its provisions

While the TRIPS agreement brought in a one-size-fits-all approach, irrespective of peculiar situations based on individual countries, and implemented a uniform mechanism for intellectual property rights across the world.

TRIPS Plus goes beyond these provisions. Despite the Doha Declaration, third world countries are under increasing pressure to incorporate stringent provisions in their intellectual property laws beyond what is required by the TRIPS Agreement. Such provisions are usually incorporated within various Free Trade Agreements.

The countries are not obligated to agree to such stringent IP terms but many developing countries, such as Brazil, African states, China or Central American states had to

implement them as a part of their trade agreements with USA or European Union¹⁴. These have a disastrous impact on access to medicines.

TRIPS Plus agreements usually entail extending the patent term beyond 20 years, limiting the use of compulsory license, data exclusivity, and restricting generic competition.

The data exclusivity provision entails granting exclusive rights to clinical trial data submitted by companies to the regulatory authorities for the purpose of market authorization. Information regarding the safety and efficacy of the drug is kept confidential for a certain number of years.¹⁵

Effect of these provisions on access to medicines and human rights

If a company that makes generic products wants to register a drug, it will not be sufficient to show that the drug is therapeutically similar. As per the stringent provisions, it may have to conduct clinical trials again and prove the safety and efficacy of the drug- something that has already been done by the original manufacturer. This will happen even when the particular product is not protected by a patent. Data exclusivity is a backdoor method to prevent competition, to ensure that even when the patent protection has expired, the company will continue to enjoy a minimum period of monopoly while charging prices that will be beyond the reach of most consumers in the developing world.

Such provisions like data exclusivity etc. are frequently promoted as a part of the free trade agreements between developed and developing countries.

These provisions are suitable for developed countries where the per capita income and the welfare measures are implemented by the government for the small section of the underprivileged section of the population. However, for a country like India, that has a significantly lesser per capita income compared to the developed world, and a large section of population lives in poverty¹⁶ such provisions will have disastrous impact on welfare and access to medicines. Generic manufacturers will have to redo the clinical trial data that will push up the costs of medicines.

The Doha Conference specifically acknowledged the problems of high drug prices faced by developing countries. It said that the agreement should be implemented in a way that is supportive of the member states right to public health. Some authors read Intellectual Property Rights into human rights treaties such as UDHR and ICESCR. Other authors state that there can be a coexistence framework wherein public has access to the fruits of innovations¹⁷.

It has been noted that there is a conflict between implementation of agreements like TRIPS and the realization of economic, social and cultural rights. Beyond the access to

¹⁴TRIPS, TRIPS Plus and Doha (10th February, 2016)
<http://www.msfaccess.org/content/trips-trips-plus-and-doha>

¹⁵Supra note 4.

¹⁶(20th May, 2016)http://povertydata.worldbank.org/poverty/country/IND_

¹⁷Tamvada, Subramanya Sirish. "TRIPS and Human Rights: The Case of India." Jindal Global Law Review 2 (2010): 131-152.

medicines interpretation, these international trade agreements include traditional knowledge and technology transfer.¹⁸

Article 21 of the Indian Constitution can be said to include the right to health within the framework of right to life.

Strong IP regimes are more helpful for developed countries that have a higher per capita income and have the apt conditions for utilizing the benefits of innovation and technologies. Blind adoption of a model of IPR's followed by developed countries without allowing for a period for industrial and cultural development while strengthening institutions puts the proverbial cart before the horse.

An example of the Italian pharma industry is also given that was a world leader in innovation whose fortunes dwindled after implementing strong IP regimes¹⁹.

Right to health duty

Most policy makers do not consider their right to health duties when negotiating or implementing TRIPS or TRIPS-plus intellectual property rights. This lacuna suggests the need to assure consideration of human rights duties by policy-makers when it comes to negotiating and implementing trade-related policy and practice.

The Thailand example

We can explore the example of Thailand to gain a better practical understanding. The experience in Thailand is as follows: The first of these studies found that branded antiretroviral drugs in Thailand were two to ten times more expensive than generics, with generic medicines costing 40 to 448 Baht (\$1.30-15) versus 252 to 791 Baht (\$8.50-26.45) for branded drugs. The study further found that branded drugs cost approximately 1.5 to 4.7 times the daily minimum wage of 170 Baht per day (\$5.60).

The intellectual property rights section also explored a study estimating drug costs if patent terms or market monopoly was extended from one to ten years. The study found that a one-year patent extension would increase drug costs per item ten-fold, from 4.29 to 43.95 Baht (\$0.14-1.46 per item), while a ten-year extension would increase drug prices six-fold, from 181.10 to 1,116.16 Baht (\$6-37)²⁰.

The Latin American and Sub-Saharan example

Studies into the impact of FTA's in Latin America have found that the TRIPS Plus provisions such as increasing patent term, data exclusivity etc. would lead to a price increase and a negative impact on access to medicines. In Peru, it was found that 43

¹⁸Id.

¹⁹Id.

²⁰LISA FORMAN, *From Trips-Plus to Rights-Plus? Exploring Right to Health Impact Assessment of Trade-Related Intellectual Property Rights Through the Thai Experience*, Asian Journal of WTO & International Health Law & Policy, September, 2012.

products that could have been subject to data exclusivity would have seen a price increase of 94.3 to 114.4 percent²¹.

In the third world countries there is a widespread problem of HIV Aids, medication for which is expensive if not done through the generic route. In Sub-Saharan Africa, there were more than 22 million people who were suffering from the disease²².

Special 301 and the pressure to implement certain provisions

The Special 301 report is an annual report by the Trade Representative of the US that seeks to identify trade barriers for US companies in various areas such as intellectual property. Like many previous reports, the 2015 report also includes India among the priority watch list and expresses concerns over various aspects of India's intellectual property laws including section 3(d) that seeks to prevent evergreening of patents²³. It is said that most countries included in the Priority Watch List between 1996 and 2000 were done so by groups that promote the interests of pharmaceutical companies.

This creates pressure on the countries to amend their laws in line with that of developed countries which may not suit their interests. This may result in excessive cost of drugs and put most of the lifesaving drugs out of the reach for a large part of the population of developing countries. India should resist this pressure from such countries and aim to promote, through policy initiatives a balanced trade and intellectual property regime.

Eminent Domain and Intellectual Property

“Eminent Domain is the power of the government to take private property and convert it into public use.” The Fifth Amendment in the US Constitution provides that the government may only exercise this power if they provide just compensation to the property owners²⁴.

India's objectives, particularly when it comes to pharmaceuticals, are clearly driven by a welfare motivation. This situation resembles the ones in which the “eminent domain” power issued in the U.S.²⁵

In the USA, in the case of *Zoltek Corp. v. United States*²⁶ rejected that patents can be treated as property at par with that of the concept of eminent domain wherein property can be taken for public use. As per the US Law, 28 U.S.C § 1498, a statutory authority is given for any Federal Officer to use or manufacture any U.S. patented invention with minute restriction. They are however entitled to get reasonable compensation. The

²¹Carlos Correa, *TRIPS and TRIPS-Plus Protection and Impacts in Latin America*, in Intellectual Property, Trade and Development Strategies to Optimize Economic Development in a Trips Plus Era, oxford university press, 223-224 (2014).

²²Charles T. Collins-Chase, *The Case Against Trips-Plus Protection In Developing Countries Facing Aids Epidemics*, 2008.

²³ 2015 Special 301 Report, Ambassador Michael B.G. Froman, United States Trade Representative.

²⁴Supra at note 33.

²⁵Supra at note 33.

²⁶442 F.3d 1345.

government never infringes a patent but takes a compulsory license in the patent under its eminent domain power and must only provide just compensation for the taking²⁷.

As the USA is a net exporter of intellectual property, provisions as that in TRIPS Plus are beneficial for their companies and economy. However, we can see that even the USA retains provisions to protect its public interest in case of emergency situations.

Human Rights Obligations

Three human rights provisions are of particular importance: Article 15(a) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), Article 15(c) of the ICESCR and Article 27 of the International Covenant on Civil and Political Rights (ICCPR).

With the changing concept of human rights; socio-economic rights which reflect the duty of the states to provide for material conditions of human existence such as welfare benefits and a decent standard of living are also considered as human rights along with basic rights such as life, liberty and property.

It is essential therefore to impose the corresponding obligations on states for their protection²⁸. There are no express provisions in the intellectual property laws in India that impose such obligations.

One author²⁹ includes intellectual property in the realm of human security along with various other aspects that can be defined as security. He makes reference to the 49th WIPO Assembly in 2011 wherein it was said by the Indian delegation that although IP regimes need to be strengthened, there is a growing sensitivity among others to ensure that the regime was equitable to facilitate the fulfillment of the aspirations of the majority of humanity while ensuring that the innovative process remains unhampered. The author says that the IP regime must be developed in a manner so as to advance the dignity, welfare and security of people.

In July 2016 the United Nations Human Rights Council adopted a landmark resolution whose central tenet was the primacy of human rights over international trade, investment and intellectual property rights regimes.³⁰

Although developed countries advocate stronger IP regimes, during an economic crisis, even the US Supreme Court in the case of *Pharmaceutical Research and Manufacturers of America V. Walsh*³¹, agreed to the imposition of indirect price controls. When the US and Canada were faced with the threat of anthrax, they moved towards issuing compulsory licenses.

²⁷Bradley M. Taub, *Why Bother Calling Patents Property? The Governments Path to License Any Patent and Maybe Pay for it*, 6 J.MARSHALL REV. INTELL. PROP. L. 151 (2006).

²⁸ Ellie Palmer; *Judicial Review, Socio-economic Rights and the Human Rights act*, 11-14 (2007).

²⁹Robin Ramcharan, *International Intellectual Property Law and Human Security*, 19-20 (2013).

³⁰Firstpost, *UN Human Rights Council Adopts Landmark Resolution on Access to Media* <http://www.firstpost.com/world/un-human-rights-council-adopts-landmark-resolution-on-access-to-medicines-2868570.html>.

³¹ 538 U.S. 644.

Present Indian position and a possible future change in the “strengthen IP” narrative

India is against the implementation of these provisions in trade agreements as it will lead to various problems³². Inclusion of TRIPS-Plus provisions within Indian law would curtail generic drugs exports and prevent Indian companies from obtaining the latest technology at affordable prices. India is an IPR consumer and not an IPR producer. Therefore, it would not suit the Indian interests to implement such provisions.

In fact, there are some authors within the U.S. that state that although such provisions might benefit them in the short run, there is a gradual shift in the U.S. to being an IPR consumer from being the major IPR producer³³. As other countries develop, this gap will only widen. The TRIPS Plus provisions have been found to increase the price for consumers and the same trend will eventually be observed within the U.S. as well.

Conclusion

Free trade is believed to lead to an increase in wealth and is thus defended³⁴. However, an increase in wealth is not necessarily shared by all its members. Justice requires that society takes steps to ensure that those disadvantaged in the short term are able to participate fully in the new economic conditions. This however requires significant social commitment from the state. Effective internationalization does not mean unmitigated laissez faire.

Bilateral agreements that implement stronger IPR norms have been implemented by many countries. We have examples and can assess the impact of these provisions in that country. In the specific example of Thailand that has been discussed it has been found that price of many essential drugs increased significantly after implementing the agreement. It was also found that it would hamper local industry and lead to a monopoly of foreign companies in the Thai market. The impact on the Indian market would be important.

There has to be better consideration of the provision of basic needs of people and public goods such as health care. Malnourished, diseased and underprivileged populations are often seen to be more serious a danger to the overall development of mankind than under-incentivizing inventors.

There has been a tectonic shift not only in the relation between the state and major corporations, but also the power dynamics between the two. In the past decade, high- and middle-income countries have pushed aggressively for the establishment of, bilateral and regional, trade and investment agreements. Corporations have more money than many of the smaller nations put together and wield significant influence that they can influence policy decisions. These corporations have also become the principle violator of human rights and there is a need for a strong regulatory framework for imposing human rights regimes for them.

³²<http://www.thehindubusinessline.com/todays-paper/tp-economy/india-against-tripsplus-clauses-in-bilateral-trade-pacts/article1001590.ece> as accessed on 1st March 2016.

³³Beatrice Lindstorm, *Scaling Back Trips-Plus: An Analysis Of Intellectual Property Provisions In Trade Agreements And Implications For Asia And The Pacific*, New York University Journal of International Law and Politics, (2010).

³⁴ PAUL JAMES, HEIKKI PATOMAKI, *GLOBALIZATION AND ECONOMY* 317 (2007).

Many of these stringent IP provisions have created a conflict between development, trade and human rights. It is essential that countries have to strike a balance between enforcing strict IPR norms and the commitments that they have made towards protection of human rights in international human rights instruments.

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