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ROLE OF IPR TRADE LINKAGE IN ECONOMIC DEVELOPMENT OF DEVELOPING NATIONS

INTRODUCTION

An important factor in promoting development is intellectual property, it provides for recovery of investment of time and money at the microeconomic level made in patents, copyright, and other intellectual property. It forms an interconnection of economic activities between the developing and the developed world.¹ Developing countries have expressed their concerns that stronger protection will affect the prices and permit foreign institutions to exploit their indigenous resources.² They fear that patent protection may increase prices of medicines and bioprospecting through foreign actors would devoid their own people from using their own resources.³

Colonialism played a crucial role as colonies were impacted by the big four who were signatories to the Berne Convention 1887, which expanded intellectual property especially copyright to the colonies as well. As the colonies were liberated, they still conformed to the standards of the Convention through successive revision, run by former colonial powers.⁴

Post World War II, somewhere around 1960 and 1970 developing countries questioned the international standards of intellectual property on the basis appropriation rather than diffusion

¹ Judy Winegar Goans, Intellectual property and developing countries HSDL (2003), <https://www.hsdl.org/c/view?docid=446296> (last visited Feb 8, 2024), page 3.

² *Id.*, At 8.

³ *Id.*

⁴ Peter Drahos, *Developing countries and international intellectual property standard-setting*, 5 The Journal of World Intellectual Property 765–789 (2002), page 767.

of knowledge, however they were unsuccessful in adjustments sought in the international regime.⁵

Developing countries maintained that WIPO⁶ should handle the standard setting at international standard and opposed GATT⁷ involvement in these issues, stating that trade aspect should be dealt by UNCTAD.⁸

The Uruguay Round became the defining moment in international economics, as developed countries felt that sanctions dispute resolution under WIPO were detrimental to intellectual property development.⁹ This led to the Trade Related Aspect of Intellectual Property Rights (TRIPS) agreements under the WTO.¹⁰ With this trade rules now extended to IPRs and dispute settlement for the same now shifted from WIPO to under the WTO.

The question that arises, is whether the linkage of intellectual property and trade has the same meaning for developed and developing countries under the agreement? Has the concept of neo-colonialism been enforced by setting of minimum standards in accordance with developed countries?

TRIPS and WTO- hegemony or harmonization?

AV Ganesan opines those developing nations through the process of trade agreements always found themselves to be hapless defenders of the policies and not “*demandeurs*” or developed countries.

The TRIPS agreement reflects the developed world intellectual property standards, as their bargaining powers were greater and were leveraged so that the agreement could conform to their standards.¹¹ The agreement establishes a twenty year patent monopoly, a fifty year copyright monopoly and ten years for industrial design, further requiring an exclusive right to trademarks. It also offered a better dispute settlement mechanism under the WTO.¹² Intellectual

⁵ *Id.*, At 768.

⁶ World Intellectual Property Organization.

⁷ General Agreements on Tariffs and Trade.

⁸ Peter Drahos & John Braithwaite, *Information feudalism: Who owns the knowledge economy* (2017), page 114.

⁹ *Id.*

¹⁰ World Trade Organization.

¹¹ R Brewster, *The Surprising Benefits to Developing Countries of Linking International Trade and Intellectual Property*, 12 *Chicago Journal of International Law* (2011).

¹² *Id.*

property rules had expanded its geographic reach with respect to trade negotiations by developed states.¹³

The agreements can be seen as an obstacle to adaptation to and transfer of knowledge to all consumers, they merely reinforce the prevailing hierarchy in product and power relations, thereby preserving the control of transnational corporations, technological superiority and control.¹⁴ The idea of harmonization stayed with but not limited to the United States and Japan, where all investment and capital opportunities lie, reinforcing the prevailing hegemonic order.¹⁵ The hegemonic states thus, pushed for harmonization of laws through the agreement as the problems leading to the agreement were addressed from the perspective of transnational corporations.¹⁶

Role of IPR-Trade Linkage in Economic Development of Developing Countries.

The issues that are involved in analyzing the development in economy with respect to the Agreement and IPR protection is a complex process, expanded regimes have led to contradictory impacts, however if structured properly, can lead to economic growth and technological advancement.¹⁷

“Developing nations face an important challenge reconciling intellectual property protection with the global push for more open, procompetitive trade.”¹⁸

On balance it may seem that it is disadvantageous for developing states as reaction from developed states may inhibit the developing states from exercising the flexibility of the Agreement, impeding on their ability to produce or import pharmaceuticals or other critical goods.¹⁹

Early observations point that a higher IPR protection do not lead to increase in foreign direct investment or technology transfer, even the contribution of developing countries towards research and development cost seems to be very low, this is due to inadequate structure at the

¹³ *Id.*

¹⁴ Donald G. Richards, Intellectual property rights and global capitalism: The political economy of the TRIPS agreement (2004). page 121.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Keith E. Maskus, Intellectual property rights in the global economy (2000).

¹⁸ *Id.*

¹⁹ Brewster, *Supra* note 11, At 4.

national level. If only a handful of companies and innovators benefit coupled with the cost of litigation being high, there may be a visible bias in favor of large organizations.²⁰ It has also been observed that the pricing of certain drugs due to patents in pharmaceuticals have also affected the developing countries in accessing these lifesaving medicines at an affordable cost. The high technological advancement of developed countries has made it easier to invest in the developing countries exploiting certain aspects of their intellectual property as they lack the infrastructure to do so on their own.

Maskus in 2001 observed that it could enhance domestic innovations, attract technology transfer but must be weighed against administrative costs, this might be difficult in case of developing countries.

With access to medicine being one of the primary concerns of the developing countries along with public health, it has been seen in the case of South Africa that consumers there are paying 98% more for such drugs than its cheapest availability in the European Union.²¹ This has been seen in price of Zantac tablets when comparing them to 8 developing nations as opposed to affluent nations.²² This is also evident from the fact that South Africa has been using geographical indications long before the TRIPs agreement, but the European Union chose to ignore their efforts in totality, but the issue remains unheard as smaller nations cannot fight against the pressure of large economic communities.²³

The TRIPs agreement has incorporated compulsory licensing and parallel imports but what needs to be seen is that developing countries account for only 4% of world research and development expenditure, with the extension of rules to developing nations the effect will be seen on the prices of these goods. Meaning new inventions may be out of the reach of most developing countries.²⁴

²⁰ Maskus, *Supra* note 17.

²¹ Peter Drahos & Ruth Mayne, *Global intellectual property rights: Knowledge, access and development* (2002). page 189.

²² *Id.*

²³ *Id.*

²⁴ *Id.*, At 42.

CONCLUSION

From the above, it is clear that what the TRIPs agreement tries to achieve is a balance between the global north and the south. The agreement disguises hegemony and neo-colonialism in the guise of harmonization and minimum standards. It may be bringing a semblance of full uniformity but not a full harmonization of national legislature.²⁵ The developing nations may strive to develop on the basis of their international laws and indigenous strength, but recent trends of bioprospecting, access to medicines, and public health under the umbrella of WTO, facilitated through the TRIPs agreement has only infringed upon the protection of IPRs in developing countries. As mentioned earlier strong IPR protection facilitates economic growth, however, harmonization through trade, predominantly ruled by the developed nations has led to the weakening of certain critical aspects, as investments and innovation have now been found wanting in most of the developing nations, in trying to conform to minimum standards laid down in the agreement.

²⁵ *Id*, At 54.