



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL
ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

WWW.WHITEBLACKLEGAL.CO.IN

DISCLAIMER

No part of this publication may be reproduced, stored, transmitted, translated, or distributed in any form or by any means—whether electronic, mechanical, photocopying, recording, scanning, or otherwise—without the prior written permission of the Editor-in-Chief of *White Black Legal – The Law Journal*.

All copyrights in the articles published in this journal vest with *White Black Legal – The Law Journal*, unless otherwise expressly stated. Authors are solely responsible for the originality, authenticity, accuracy, and legality of the content submitted and published.

The views, opinions, interpretations, and conclusions expressed in the articles are exclusively those of the respective authors. They do not represent or reflect the views of the Editorial Board, Editors, Reviewers, Advisors, Publisher, or Management of *White Black Legal*.

While reasonable efforts are made to ensure academic quality and accuracy through editorial and peer-review processes, *White Black Legal* makes no representations or warranties, express or implied, regarding the completeness, accuracy, reliability, or suitability of the content published. The journal shall not be liable for any errors, omissions, inaccuracies, or consequences arising from the use, interpretation, or reliance upon the information contained in this publication.

The content published in this journal is intended solely for academic and informational purposes and shall not be construed as legal advice, professional advice, or legal opinion. *White Black Legal* expressly disclaims all liability for any loss, damage, claim, or legal consequence arising directly or indirectly from the use of any material published herein.

ABOUT WHITE BLACK LEGAL

White Black Legal – The Law Journal is an open-access, peer-reviewed, and refereed legal journal established to provide a scholarly platform for the examination and discussion of contemporary legal issues. The journal is dedicated to encouraging rigorous legal research, critical analysis, and informed academic discourse across diverse fields of law.

The journal invites contributions from law students, researchers, academicians, legal practitioners, and policy scholars. By facilitating engagement between emerging scholars and experienced legal professionals, *White Black Legal* seeks to bridge theoretical legal research with practical, institutional, and societal perspectives.

In a rapidly evolving social, economic, and technological environment, the journal endeavours to examine the changing role of law and its impact on governance, justice systems, and society. *White Black Legal* remains committed to academic integrity, ethical research practices, and the dissemination of accessible legal scholarship to a global readership.

AIM & SCOPE

The aim of *White Black Legal – The Law Journal* is to promote excellence in legal research and to provide a credible academic forum for the analysis, discussion, and advancement of contemporary legal issues. The journal encourages original, analytical, and well-researched contributions that add substantive value to legal scholarship.

The journal publishes scholarly works examining doctrinal, theoretical, empirical, and interdisciplinary perspectives of law. Submissions are welcomed from academicians, legal professionals, researchers, scholars, and students who demonstrate intellectual rigour, analytical clarity, and relevance to current legal and policy developments.

The scope of the journal includes, but is not limited to:

- Constitutional and Administrative Law
- Criminal Law and Criminal Justice
- Corporate, Commercial, and Business Laws
- Intellectual Property and Technology Law
- International Law and Human Rights
- Environmental and Sustainable Development Law
- Cyber Law, Artificial Intelligence, and Emerging Technologies
- Family Law, Labour Law, and Social Justice Studies

The journal accepts original research articles, case comments, legislative and policy analyses, book reviews, and interdisciplinary studies addressing legal issues at national and international levels. All submissions are subject to a rigorous double-blind peer-review process to ensure academic quality, originality, and relevance.

Through its publications, *White Black Legal – The Law Journal* seeks to foster critical legal thinking and contribute to the development of law as an instrument of justice, governance, and social progress, while expressly disclaiming responsibility for the application or misuse of published content.

INTELLECTUAL PROPERTY AS A HUMAN RIGHT: MYTH, MISINTERPRETATION, OR LEGITIMATE LEGAL CLAIM?

AUTHORED BY - IMRANKHAN A.

Abstract

The characterisation of intellectual property (IP) as a human right has generated sustained debate within international legal scholarship. Article 15(1)(c) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognises the right of everyone to benefit from the protection of the moral and material interests resulting from their scientific, literary, or artistic productions. This provision has increasingly been invoked to justify expansive intellectual property protection, particularly within the framework of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). However, modern IP regimes are largely corporate-driven, economically oriented, and embedded within trade law enforcement structures. This article critically examines whether intellectual property qualifies as a human right in doctrinal, philosophical, and institutional terms. Adopting a balanced yet strongly analytical approach, it argues that while Article 15(1)(c) protects the dignity-based interests of individual creators, contemporary IP regimes extend far beyond the human rights framework and often conflict with other fundamental rights such as health and education. With special reference to Indian constitutional jurisprudence, the article proposes a principled distinction between human-centred moral and material interests and commercial monopolistic entitlements. It concludes that intellectual property constitutes a limited human right, but that equating global IP regimes with human rights protection represents a significant misinterpretation.

Keywords: Intellectual Property Rights, Human Rights Law, Article 15(1)(c) ICESCR, TRIPS Agreement, Right to Health

I. Introduction

The intersection of intellectual property law and international human rights law has become increasingly prominent in global governance discourse. Since the adoption of the TRIPS Agreement in 1994, intellectual property standards have been harmonised across World Trade Organization (WTO) members, including developing countries. Simultaneously, scholars and policymakers have invoked Article 15(1)(c) of the ICESCR to argue that intellectual property protection itself is grounded in human rights.

This framing carries significant implications. Human rights occupy a privileged normative status within international law. If intellectual property rights are understood as human rights, they acquire moral legitimacy and potential insulation from democratic reform. Conversely, if IP protection is primarily instrumental and statutory, it remains subject to recalibration in light of competing social and economic priorities.

This article examines whether intellectual property qualifies as a human right in the strict doctrinal sense recognised by international human rights law. It argues that while Article 15(1)(c) establishes a human right protecting the moral and basic material interests of individual authors, the contemporary global IP regime—particularly under TRIPS—reflects a trade-oriented and corporate-centric model that cannot be equated with human rights protection. The conflation of the two represents a misinterpretation that risks diluting the normative coherence of human rights law.

II. Conceptual Foundations of Human Rights and Intellectual Property

A. Defining Human Rights

Human rights are generally understood as universal, inherent, inalienable, and grounded in human dignity.¹ They are not granted by states but recognised as pre-existing moral entitlements. Human rights are also non-transferable and typically attach to natural persons rather than legal entities.

Economic and social rights under the ICESCR are subject to progressive realisation but nonetheless derive from the inherent dignity of the human person.² Their normative basis lies in the protection of fundamental aspects of human flourishing.

B. Philosophical Justifications of Intellectual Property

Intellectual property law has historically been justified through three principal theoretical frameworks.

First, **Lockean labour theory** posits that property arises when individuals mix their labour with resources.³ Applied to intellectual creations, this suggests that authors deserve rights over their works.

Second, **personality theory**, derived from Hegelian philosophy, emphasises that creative works embody the personality of their creators.⁴ This justification most closely aligns with dignity-based human rights reasoning.

Third, **utilitarian theory**, dominant in Anglo-American jurisdictions, views IP as an instrument to incentivise innovation and maximise social welfare.⁵ Protection is justified not as a natural entitlement but as a policy tool.

Modern global IP regimes are primarily grounded in utilitarian reasoning. This instrumental orientation sits uneasily with the inherent and dignity-based nature of human rights.

III. Article 15(1)(c) of the ICESCR: Scope and Interpretation

A. Textual Analysis

Article 15(1)(c) ICESCR provides that States Parties recognise the right of everyone “to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.”⁶

Three textual features are significant:

1. The right belongs to “everyone.”
2. It protects “moral and material interests.”
3. It refers specifically to “authors.”

The language does not explicitly mention patents, copyrights, or trademarks. Nor does it refer to corporate ownership.

B. Drafting History

Historical records indicate that Article 15(1)(c) was introduced to safeguard creators from state appropriation and to ensure recognition of their contributions.⁷ It was not designed to constitutionalise comprehensive commercial IP regimes.

The provision emerged within the broader post-war human rights project, emphasising human dignity rather than economic monopolies.

C. General Comment No. 17

The UN Committee on Economic, Social and Cultural Rights clarified the meaning of Article 15(1)(c) in General Comment No. 17.⁸ The Committee emphasised:

- The right protects human creators, not corporations.
- Intellectual property rights and human rights are distinct legal regimes.
- IP protection must be balanced against other Covenant rights.

This authoritative interpretation undermines expansive claims that TRIPS-style IP protection constitutes a human right per se.

IV. TRIPS and the Institutionalisation of Global IP Protection

The TRIPS Agreement, concluded in 1994 within the WTO framework, establishes binding minimum standards for intellectual property protection.⁹ It mandates enforcement mechanisms backed by trade sanctions.

Unlike the ICESCR, TRIPS is enforceable through a compulsory dispute settlement system. Its architecture reflects trade liberalisation objectives rather than human dignity concerns.

TRIPS also:

- Protects corporate entities.
- Requires exclusive rights of defined duration.
- Limits national flexibility.

The structural contrast between TRIPS and the ICESCR is striking. The former is market-oriented and enforcement-driven; the latter is dignity-oriented and subject to progressive realisation.

This divergence suggests that conflating TRIPS protection with human rights protection risks doctrinal confusion.

V. Normative Conflicts Between IP and Other Human Rights

A. Access to Medicines and the Right to Health

Patent protection can significantly affect drug prices. Article 12 ICESCR recognises the right to the highest attainable standard of health.¹⁰

The Doha Declaration on TRIPS and Public Health affirmed that TRIPS should be

interpreted in a manner supportive of public health and access to medicines.¹¹ The Declaration implicitly acknowledges tension between patent enforcement and health rights.

Scholars have argued that excessive patent protection may undermine the right to health in developing countries.¹² The need for compulsory licensing mechanisms reflects this structural tension.

B. Indian Jurisprudence: The Novartis Decision

India provides an instructive example of balancing IP and social rights. In *Novartis AG v Union of India*,¹³ the Supreme Court interpreted section 3(d) of the Patents Act 1970 narrowly to prevent “evergreening” of pharmaceutical patents. The Court prioritised public access to affordable medicines.

Although the judgment focused on statutory interpretation, it reflects broader constitutional values. Article 21 of the Constitution of India protects the right to life, which has been interpreted to include health and medical access.¹⁴

The Indian approach demonstrates that IP protection can be reconciled with human rights through purposive interpretation that emphasises public welfare.

C. Education and Access to Knowledge

Copyright restrictions may limit access to textbooks and academic resources. Article 13 ICESCR recognises the right to education.¹⁵

Balancing copyright enforcement with educational access requires flexible exceptions and limitations. Overly rigid enforcement may disproportionately burden students in developing states.

VI. Corporate Ownership and the Problem of Human Rights Inflation

A significant proportion of patents and copyrights are owned by corporations rather than individual creators. Yet human rights law is fundamentally anthropocentric.

While corporations may enjoy certain procedural protections under regional human rights systems, international human rights treaties were not primarily designed to protect commercial monopolies.

The characterisation of IP as a human right risks what some scholars describe as “human rights inflation,” whereby the expansion of rights claims dilutes the moral authority of core rights.¹⁶ If every statutory entitlement is reframed as a human right, the normative distinctiveness of human rights may erode.

VII. The Indian Constitutional Context

India does not recognise intellectual property as a fundamental right. Following the Forty-Fourth Constitutional Amendment, the right to property is no longer a fundamental right but a constitutional legal right under Article 300A.

Indian courts have expansively interpreted Article 21 to include rights to health, livelihood, and dignity.¹⁷ This jurisprudence situates proprietary claims within a broader constitutional framework centred on human welfare.

In cases involving public health, Indian courts have demonstrated willingness to prioritise socio-economic rights over commercial interests.¹⁸ This constitutional ethos aligns with a restrained understanding of IP as subordinate to fundamental rights.

VIII. Reassessing the Human Rights Status of Intellectual Property

The debate may be conceptualised through three interpretative positions:

1. **IP as Mythical Human Right** – No basis exists in international law for treating IP as a human right.
2. **IP as Misinterpreted Right** – Article 15(1)(c) has been overstretched to justify expansive commercial protection.
3. **IP as Limited Human Right** – A narrow human right protects moral and basic material interests of individual creators.

The third interpretation is doctrinally most defensible. Article 15(1)(c) does establish a human right—but one limited to safeguarding human dignity and subsistence-level material interests. Modern IP regimes extend far beyond this scope. Patent monopolies, extended copyright terms, and corporate enforcement mechanisms reflect economic policy choices rather than inherent human entitlements.

IX. Toward a Balanced Framework

To preserve coherence within international law, a principled framework is required.

1. Human-Centred Interpretation

Protection under Article 15(1)(c) should apply only to natural persons. Corporate ownership should not automatically elevate commercial entitlements to human rights status.

2. Proportionality and Balancing

Where IP enforcement conflicts with health, education, or food security, states must ensure proportionality consistent with human rights obligations.

4. Recognition of TRIPS Flexibilities

Compulsory licensing, parallel importation, and strict patentability standards are legitimate tools to balance IP with public welfare.

5. Distinction Between Moral and Economic Interests

Moral rights—such as attribution and integrity—are more closely aligned with dignity-based protection than exclusive commercial monopolies.

X. Conclusion

The claim that intellectual property constitutes a human right requires careful qualification. Article 15(1)(c) ICESCR recognises a human right protecting the moral and material interests of individual creators. However, contemporary intellectual property regimes, particularly those embedded in the TRIPS framework, extend well beyond this narrow protection and serve predominantly economic and corporate objectives. Thus, intellectual property as a human right is neither entirely mythical nor wholly legitimate in its expansive contemporary form. It represents a limited human right that has been broadened through interpretative expansion and strategic framing. A balanced and critical approach illustrated by Indian constitutional jurisprudence can reconcile creator protection with the primacy of human dignity, health, and education. Preserving the normative coherence of human rights law requires resisting the unqualified elevation of commercial intellectual property entitlements to human rights status.

Footnotes (OSCOLA)

1. Jack Donnelly, *Universal Human Rights in Theory and Practice* (3rd edn, Cornell University Press 2013).

2. International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR) art 2.
3. John Locke, *Second Treatise of Government* (1689).
4. Justin Hughes, 'The Philosophy of Intellectual Property' (1988) 77 *Georgetown Law Journal* 287.
5. William M Landes and Richard A Posner, *The Economic Structure of Intellectual Property Law* (Harvard University Press 2003).
6. ICESCR (n 2) art 15(1)(c).
7. Laurence R Helfer, 'Human Rights and Intellectual Property: Conflict or Coexistence?' (2003) 5 *Minnesota Intellectual Property Review* 47.
8. UN Committee on Economic, Social and Cultural Rights, General Comment No 17 (2005) UN Doc E/C.12/GC/17.
9. Agreement on Trade-Related Aspects of Intellectual Property Rights (adopted 15 April 1994) 1869 UNTS 299 (TRIPS).
10. ICESCR (n 2) art 12.
11. WTO, Doha Declaration on the TRIPS Agreement and Public Health (2001) WT/MIN(01)/DEC/2.
12. Frederick M Abbott, 'The Doha Declaration on the TRIPS Agreement and Public Health' (2002) 99 *AJIL* 469.
13. *Novartis AG v Union of India* (2013) 6 SCC 1 (India).
14. Constitution of India 1950, art 21.
15. ICESCR (n 2) art 13.
16. Samuel Moyn, *The Last Utopia: Human Rights in History* (Harvard University Press 2010).
17. *Paschim Banga Khet Mazdoor Samity v State of West Bengal* (1996) 4 SCC 37 (India).
18. *Union of India v Bayer Corporation* (2014) 6 SCC 113 (India).