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Waiving Windfalls: The Socio-Legal and Contextual justification of a “TRIPS Waiver” during the COVID-19 pandemic

This paper goes on to highlight aspects of inequity in institutionalizing IP regimes across the world, and focusses on IP Gradualism, and the lack of it, in the backdrop of the COVID-19 pandemic. It builds on narratives of capability building, the hypocrisy of transition periods, and its impact on the global political economy of IP institutions across nations. The paper is an attempt to defog the historical realities that have resulted in skewed capabilities which are being exposed during such a pandemic, leading to a situation where a part of the world which was y not allowed to pursue sovereign self-determination for centuries is having to “beg” for a waiver of the same agreement which is the fundamental basis of situating this inequity.

The primary normative point is that getting rid of this knowledge and capability divide and in fact De-Colonizing IP requires an alternate accent - where global trade ought to be looked at from the eyes of geo-historical attentiveness. The essence of distributive justice lies in realizing the importance of the historical context, i.e., this context prolonged inability due to global acts of suppression, accounted for in history.

As a corollary to this normative claim, this paper also discusses the practice of grating “Waivers” under the WTO Agreement to show how the current debate around waiving TRIPS obligations during the COVID-19 pandemic should be a “non-starter” given the precedential circumstances in which such waivers have been granted. The legal limelight is on exposing the hypocrisy in the interpretation of “Exceptional Circumstances” under Article IX.3 of the WTO Agreement, further supporting the normative claims of inequity, need for context, and the fundamental restructuring of this global diplomatic regime. The final attempt is to harp upon the need of global solidarity which cannot in fact be pragmatized unless one is forced to face these historical realities - to consciously realize the context and reasons for the inequity that we see today. The context needs to be out there, and this paper is an attempt towards the same.