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Intellectual property protection and the right to health under international human rights law: Toward a normative reconciliation

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Abstract
This article analyzes the structural tension between international intellectual property regimes and the human right to health. Core instruments, including the Universal Declaration of Human Rights (UDHR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), affirm the right to the highest attainable standard of health, yet significant inequalities in access to health care and essential medicines persist worldwide.
The article argues that this gap reflects prevailing macroeconomic conceptions of development that overlook individual well-being. Drawing on a capability-based framework, it contends that development must be assessed in terms of individuals' substantive freedoms, particularly access to essential goods necessary for survival and dignity. Access to medicines is thus central to the realization of subsistence rights and broader human capabilities.
At the same time, international law protects the moral and material interests of creators, recognizing intellectual property as a legitimate entitlement. Patent regimes, however, may restrict the availability and affordability of life-saving pharmaceuticals, especially where demand is inelastic and states lack resources to subsidize high prices. This creates a normative and institutional tension between intellectual property protection and the right to health.
Rather than presenting an irreconcilable conflict, the article advocates reform of innovation incentives. It explores alternative models such as health impact–based reward systems and moderated patent compensation that aim to align pharmaceutical innovation with global health equity. Ultimately, it argues that reconciling intellectual property and the right to health requires institutional redesign grounded in human dignity, distributive justice, and a human-centered conception of development.

Keywords: Right to health, intellectual property rights, access to medicines, human capabilities, global health equity

Introduction

Since the establishment of the World Trade Organization (WTO) through the 1994 Marrakesh Agreement, and particularly with the adoption of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), global standards for intellectual property protection have become significantly more robust and far-reaching. While these protections were designed to promote innovation and safeguard the interests of creators and industries, they have also sparked ongoing debate about their broader social consequences especially in relation to access to essential medicines.

Concerns have grown over whether strong intellectual property regimes, particularly in the pharmaceutical sector, may unintentionally hinder access to life-saving treatments in developing countries. This debate gained renewed attention on 31 March 2009, when Anand Grover, then the United Nations Special Rapporteur on the Right to the Highest Attainable Standard of Physical and Mental Health, presented a report examining the relationship between TRIPS, Free Trade Agreements (FTAs), and the right to health. His findings suggested that certain intellectual property provisions especially those extending patent protections had contributed to higher medicine prices and reduced availability, thereby complicating states' efforts to fulfil their human rights obligations.

The report intensified a longstanding tension between two seemingly competing human rights commitments: The protection of intellectual property and the realization of the right to health. Reactions reflected a clear divide between developed and developing nations. Countries such as Egypt and India supported the report's conclusions and voiced particular concern about practices like "evergreening," which extend patent lifespans beyond their original terms. In contrast, states including the United States and Switzerland challenged the report's premises, arguing that intellectual property protections play a vital role in encouraging pharmaceutical innovation and improving global health outcomes. They maintained that strong patent systems do not inherently restrict access to medicines and cautioned against interpretations that might undermine the incentives necessary for research and development.

This disagreement highlights a deeper interpretive divide within international human rights law. While few states would deny the existence of a right to health, its precise scope and the obligations it imposes remain contested. For example, representatives of the United States emphasized their commitment to non-discriminatory access to medicines but objected to what they perceived as an overly narrow focus on patented pharmaceuticals. They argued that intellectual property protections contribute positively to medical innovation and should not be viewed as incompatible with public health objectives.

Following the Special Rapporteur's report, Brazil introduced a resolution supported by countries such as Cuba, Egypt, India, and South Africa calling on states to ensure that their actions within international organizations align with the right to health and promote access to safe, effective, and affordable medicines. The European Union, represented by France, expressed concern that the resolution placed disproportionate emphasis on trade and intellectual property rather than broader health system challenges. Similarly, U.S. representatives regretted that the discussion

appeared confined to patent law, rather than addressing structural issues within healthcare systems.

These differing perspectives are not merely legal disagreements; they also reflect structural economic realities. Many developed countries, whose economies increasingly depend on services and knowledge-based industries, view intellectual property as central to economic growth, employment, and global competitiveness. Developing countries, by contrast, often prioritize affordable access to medicines as an urgent public health necessity.

Against this backdrop, the central question remains: Is it possible to reconcile robust intellectual property protection with the universal human right to health? This article seeks to explore whether these two objectives must remain in tension, or whether international law provides room for a balanced and humane approach that respects both innovation and equitable access to essential medicines.

Intellectual Property Rights, the Right to Health, and the Universal Declaration of Human Rights

In today's global economy, intellectual property protection extends far beyond traditional inventions. It encompasses software, pharmaceuticals, digital media, and a wide array of knowledge-based products that are central to modern economic growth. For many developed countries whose economies increasingly depend on innovation, services, and technology strong intellectual property regimes are viewed as essential tools for protecting domestic industries and sustaining competitive advantage. By contrast, many developing countries, confronted with structural economic challenges and fragile public health systems, perceive stringent global intellectual property standards as an additional barrier to ensuring basic health care for their populations. These divergent priorities raise a fundamental question: can the protection of intellectual property and the realization of the right to health be meaningfully reconciled within international human rights law?

In recent decades, there has been growing advocacy for recognizing health care not merely as a policy objective, but as a universal human right and a global public good. A healthy population benefits not only individual states but the international community as a whole. However, critics argue that the current intellectual property framework particularly in the pharmaceutical sector can restrict the production and affordability of essential medicines. In doing so, it may deepen existing inequalities, especially in low-income countries where access to life-saving treatments often determines survival. This dynamic has created an uncomfortable tension between the urgent needs of vulnerable populations and the commercial interests of pharmaceutical companies whose business models rely on patent protection and profit incentives.

While few policymakers openly reject the moral legitimacy of the right to health, disagreement persists regarding its practical implementation. One difficulty lies in the conceptual ambiguity surrounding the scope and content of the "right to health." Without a clear and operational definition, states face uncertainty about the extent of their obligations. This article contends that the central challenge is not whether health should be protected as a right, but how to design legal and economic systems that respect both the legitimate interests of innovators and the equally compelling claims of individuals to essential medical care.

Achieving a fair balance requires policy approaches that are attentive to the developmental realities of poorer nations. Adjustments to the existing intellectual property system may be necessary, particularly in relation to the manufacture and pricing of essential goods required to secure basic health subsistence. Ensuring that developing countries have reliable access to affordable medicines is not solely a matter of charity, it is integral to broader objectives of economic development, human capability expansion, and social stability. When patent protections limit the production or affordability of critical medicines, they risk undermining these wider developmental goals.

Moreover, international agreements must be interpreted and implemented in ways that are consistent with public health objectives. Tensions between different categories of rights should be addressed constructively rather than framed as zero-sum conflicts. The Universal Declaration of Human Rights (UDHR), for instance, recognizes both the protection of intellectual creations and the right to an adequate standard of living, including health. The coexistence of these rights within the same foundational document underscores the need for harmonization rather than hierarchy.

Various proposals have been advanced to encourage pharmaceutical and biotechnology firms to invest more heavily in treatments for diseases disproportionately affecting low-income populations. While such initiatives hold promise, they are not without limitations and practical constraints. Incentive structures must be carefully designed to ensure that they genuinely expand access without undermining sustainable innovation.

Before advancing these arguments further, it is important to distinguish between traditional property rights and intellectual property rights, as the two are often conflated despite their conceptual differences. It is equally necessary to examine the historical development of the right to health within international human rights discourse. During the 1990s, the right to health gained increased prominence, alongside a broader emphasis on subsistence rights those necessary to secure basic conditions of human survival. This shift, however, has generated debate. Some critics question whether health care should be treated as a justiciable right comparable to civil and political rights, often characterizing it as a costly "positive" right that demands active state provision.

Such distinctions, however, may be overly simplistic. The traditional division between "positive" and "negative" rights does not withstands closer scrutiny. All rights whether civil, political, economic, or social require both restraint and proactive measures by the state. They also entail financial and institutional commitments. The assertion that subsistence rights are uniquely burdensome or impractical should not serve as justification for denying large segments of the global population access to essential health services.

Ultimately, the challenge is not whether intellectual property rights or the right to health should prevail, but how international law can accommodate both in a manner that is equitable, realistic, and responsive to global disparities. A humane and balanced approach requires acknowledging the legitimacy of innovation incentives while affirming that the protection of human life and dignity remains the central purpose of the human rights framework.

The Nature and Variable Significance of Intellectual Property Rights

Classical theories of property often describe ownership as a form of individual control over a tangible object. Yet, more precisely understood, property represents a legal relationship between an owner and others in relation to a specific resource. It is not merely possession, but a socially recognized and legally protected claim that enables the owner to exclude others. Intellectual property (IP) shares this relational structure but differs fundamentally in character because of its intangible nature.

Unlike land or physical goods, intellectual creations such as inventions, literary works, or chemical formulas cannot be physically secured once disclosed. Tangible property can often be protected through physical control or occupation. By contrast, once an idea enters the public domain, it can be replicated and transmitted at virtually no cost. Its use by one person does not diminish its availability to another. In this sense, intellectual goods are naturally non-exclusive and non-rivalrous. The exclusivity commonly associated with intellectual property rights (IPR) is therefore not inherent; it is legally constructed. Through patents, copyrights, and related mechanisms, the state artificially creates a right of exclusion, granting creators temporary monopolies over the use and distribution of their work.

This distinction becomes clearer when comparing scarcity. Land is finite once appropriated, it cannot be simultaneously occupied by others, and its limited supply directly influences market value. A pharmaceutical formula, however, can be reproduced indefinitely without depletion. The marginal cost of allowing an additional person to use or transmit that formula is negligible, particularly in an age of advanced digital and communication technologies. Without legal protection, intellectual creations could be freely copied, often leaving the original innovator unable to recover the significant costs associated with research and development.

This dynamic is especially evident in the pharmaceutical industry. The initial development of a new drug may require years of research and investments reaching hundreds of millions of dollars. Yet once the formula is finalized, the cost of producing each additional pill is minimal. Without patent protection, competitors could replicate the product without bearing the initial research costs, thereby undercutting the original producer. From this perspective, IPR function as a mechanism to secure returns on investment and to incentivize innovation.

Supporters of robust intellectual property regimes frequently invoke economic theories that link innovation to long-term industrial growth. Drawing inspiration from thinkers such as Joseph Schumpeter, they argue that technological advancement and creative destruction drive economic development. Strong IPR protections, they contend, encourage domestic research and development, stimulate the introduction of new products, attract foreign direct investment, enhance technology transfer, and strengthen knowledge-based economies. These benefits are often most visible in advanced industrialized states, where infrastructure, capital, and skilled labor are already in place to capitalize on such protections.

However, the relevance and desirability of strong IPR frameworks may differ significantly in developing contexts. Many low-income countries lack the institutional capacity and financial resources necessary for substantial domestic research and development. Their immediate priorities frequently revolve around securing access to essential goods and services such as adequate food, clean water, shelter, sanitation, and basic health care. In such settings, the promise of expanded product diversity or high-technology innovation may seem distant when compared to the urgent need to address subsistence concerns. The question then becomes not whether innovation is valuable, but whether uniform and stringent IPR standards align with the developmental stage and social priorities of every state.

This divergence in national priorities underscores a broader structural imbalance. A country struggling to ensure access to essential medicines or safe drinking water may reasonably question whether devoting scarce resources to enforce complex intellectual property systems best serves its population. The issue is not a rejection of innovation per se, but rather a matter of sequencing and proportionality in policy design.

Moreover, when strong IPR protections are harmonized globally as occurred under the TRIPS Agreement within the World Trade Organization the incentive structures can produce unintended consequences. Equal protection across jurisdictions allows firms to relocate production to countries offering lower labor costs while retaining the same legal safeguards. For example, if copyright or patent protection is equally enforceable in multiple states, companies may shift manufacturing or research operations to regions with emerging but robust IPR regimes and comparatively lower wages.

Such shifts may promote efficiency and global integration, yet they can also generate economic dislocation in higher-income countries seeking to maintain domestic employment. In this sense, while IPR may foster innovation and global knowledge diffusion, they may simultaneously contribute to labor market disruptions and other negative externalities.

Taken together, these observations suggest that intellectual property rights are neither inherently beneficial nor inherently harmful. Their impact depends on economic context, institutional capacity, and broader social objectives. Understanding the distinctive nature of intellectual property particularly its legally constructed exclusivity and its variable economic effects is essential when evaluating its relationship with other fundamental rights, including the right to health.

Prioritizing Rights: Understanding the Right to Health as a Subsistence Right

Historical Foundations of the Right to Health

The idea that health is deeply connected to social and economic conditions is not new. Its intellectual roots can be traced back to the nineteenth century, during the Industrial Revolution. Social reformers such as Edwin Chadwick argued that disease contributed to poverty, social instability, and increased public expenditure. In contrast, Friedrich Engels famously contended that poverty itself was the primary cause of disease, highlighting the structural inequalities embedded within industrial society. Despite these early insights, the formal recognition of health as a human right did not emerge until the adoption of the Universal Declaration of Human Rights (UDHR) in 1948.

Even then, the precise meaning of the "right to health" remained unclear. Scholars and policymakers have long grappled with defining its scope and content. Early critiques questioned whether the phrase implied an unrealistic

entitlement to perfect health. Over time, however, the discourse matured. The concept evolved to refer not to a guarantee of flawless physical or mental well-being, but rather to a right to health care services and to protection against preventable health threats.

From Civil and Political Rights to Economic and Social Rights

For much of the post-World War II period, human rights advocacy concentrated primarily on civil and political rights often described as "first-generation" or negative rights such as freedom of speech, due process, and the right to vote. Beginning in the 1990s, however, there was a noticeable expansion of attention toward economic, social, and cultural (ESC) rights, sometimes characterized as "second-generation" or positive rights. This shift reflected a broader recognition that human dignity cannot be safeguarded solely through political freedoms; it also depends on access to basic material conditions necessary for survival and development.

The growing institutional recognition of the right to health was evident when, in 2002, the United Nations established the mandate of the Special Rapporteur on the Right to the Highest Attainable Standard of Health. Despite opposition from some states, the creation of this position signaled that the right to health had become a subject of sustained international engagement. The first mandate-holder played a central role in clarifying that the right to health extends beyond access to medical treatment. It encompasses the underlying determinants of health, including safe drinking water, adequate sanitation, and nutritious food, access to information, and freedom from discrimination or coercive medical practices.

Importantly, the right to health includes both freedoms and entitlements. It protects individuals against harmful state interference, such as discriminatory denial of care, while also requiring proactive measures, such as the provision of essential primary health services. It places particular emphasis on the needs of marginalized groups, including those living in poverty, women, children, and vulnerable communities. At its core, the right calls for the development of an inclusive, functioning health system capable of delivering quality services.

Progressive Realization and State Obligations

Unlike some civil and political rights that require immediate compliance, the right to health is generally subject to the principle of progressive realization. States are expected to move steadily toward full implementation, taking into account available resources. This does not render the right optional. Rather, it acknowledges economic constraints while imposing obligations of deliberate, concrete, and targeted action. Governments must adopt policies, allocate resources, and establish benchmarks to demonstrate progress.

Thus, the right to health is neither absolute nor instantaneous in its demands. It requires sustained commitment, transparency, and accountability. Even in resource-constrained settings, states retain core obligations, particularly in ensuring non-discrimination and access to essential primary care.

Debates over Legitimacy and Feasibility

Despite its grounding in international instruments and national constitutions, the right to health alongside ESC rights more broadly has faced sustained criticism. Some liberal scholars argue that such rights are better understood as aspirational goals rather than enforceable legal entitlements. They contend that rights to goods and services, such as health care or education, are inherently resource-dependent and therefore difficult to define, implement, or adjudicate.

Others raise concerns about cultural relativism, suggesting that certain international human rights norms may not align with local traditions or value systems. Still others question whether ESC rights can truly stand on equal footing with civil and political rights, which are often perceived as more immediate, less costly, and easier to enforce.

However, these distinctions are increasingly regarded as overstated. International human rights law recognizes a comprehensive catalogue of rights, encompassing civil, political, economic, social, and cultural dimensions. Instruments such as the International Bill of Rights reflect the understanding that these rights are interdependent and indivisible. The right to life, for instance, cannot be meaningfully separated from access to basic health care. Likewise, political participation loses much of its substance when individuals lack the basic conditions necessary for survival.

The argument that ESC rights are impracticable or excessively burdensome also warrants careful scrutiny. All human rights require institutional frameworks, financial commitments, and state action. Civil and political rights demand courts, law enforcement structures, and administrative systems none of which are cost-free. The claim that subsistence rights are uniquely demanding risks obscuring the broader reality that the protection of any right entail’s investment and prioritization.

The Right to Health as a Foundational Subsistence Right

Viewing the right to health as a subsistence right underscores its fundamental character. Health is not merely one policy concern among many, it is a precondition for the enjoyment of nearly all other rights. Without basic physical and mental well-being, the exercise of civil liberties and political participation becomes severely constrained.

Recognizing the right to health as a core subsistence right does not imply that states must guarantee optimal health outcomes for all. Rather, it affirms that governments have an obligation to ensure access to essential services and to address preventable health threats, particularly for the most disadvantaged. Framing the right in this manner situates it within a broader commitment to human dignity, social justice, and equal moral worth.

Ultimately, debates over feasibility, cultural context, or prioritization should not obscure the underlying ethical premise: that access to basic health care is integral to human flourishing. The challenge lies not in determining whether the right to health exists, but in defining and implementing it in ways that are practical, equitable, and responsive to diverse social realities.

Henry Shue and the Case for Health as a Basic Right

Reframing the Status of Economic and Social Rights

A powerful response to the claim that economic, social, and cultural (ESC) rights are somehow secondary or aspirational comes from Henry Shue's influential work Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy. Shue challenges the view that ESC rights lack the moral weight or legal standing of civil and political rights. Instead, he argues

that both categories belong to a core group of "basic rights" to which every person is entitled simply by virtue of being human.

For Shue, basic rights represent the minimum conditions necessary for survival and for maintaining self-respect. They are not luxuries, nor are they policy preferences. They are foundational claims that individuals may legitimately assert against society. Crucially, Shue contends that basic rights are justified because they are prerequisites for the enjoyment of all other rights. Without them, the broader architecture of human rights collapses.

Security Rights and Subsistence Rights

Shue divides basic rights into two interrelated categories: security rights and subsistence rights. Security rights protect individuals from direct physical harm such as murder, torture, rape, and assault and align closely with civil and political rights. Subsistence rights, by contrast, guarantee access to the minimum material conditions required for survival. These include clean air and water, adequate nutrition, clothing, shelter, and basic preventive health care. Subsistence rights correspond primarily to ESC rights.

Importantly, Shue insists that these two types of rights are indivisible. One cannot meaningfully enjoy subsistence rights in the absence of security. A person threatened with violence or arbitrary detention cannot reliably secure food or health care. Conversely, an individual who is starving or deprived of essential medical treatment cannot meaningfully exercise freedom of speech, political participation, or other civil liberties. Severe deprivation can be just as fatal and incapacitating as direct violations of physical security. In this sense, subsistence and security rights are mutually reinforcing and equally indispensable.

Responding to the Positive/Negative Rights Distinction

Despite the coherence of Shue's framework, critics have resisted elevating subsistence rights to equal status with civil and political rights. A common objection rests on the distinction between so-called "negative" and "positive" rights. Civil and political rights are often described as negative because they supposedly require only non-interference governments must refrain from censorship, arbitrary detention, or suppression of assembly. Subsistence rights, on the other hand, are labeled positive because they appear to require active provision of goods and services, such as food, housing, or health care.

From this perspective, negative rights are seen as more fundamental, less costly, and easier to implement, while positive rights are treated as aspirational goals dependent on economic capacity. Maurice Cranston, for example, argued that subsistence rights risk diluting the concept of "real" human rights because they depend heavily on governmental resources. In his view, transforming ESC rights into enforceable claims is often impracticable, particularly in poorer states. Moreover, while it may be clear who must refrain from violating civil liberties, it is less obvious who bears responsibility for providing health care or food. Is it the state, taxpayers, employers, or the international community? These practical uncertainties, critics contend, weaken the status of subsistence rights.

The Limits of the Dichotomy

Shue directly challenges this sharp division between positive and negative rights. He argues that all rights whether labeled civil, political, economic, or social require both restraint and active measures for their realization. The right to vote, for instance, demands far more than government non-interference. It requires the establishment of electoral systems, administrative institutions, legal safeguards, and oversight mechanisms all of which involve significant public expenditure. Similarly, the right to due process depends on courts, trained judges, law enforcement institutions, and accessible legal remedies.

In the same way, subsistence rights require not only positive provision but also restraint. Governments may need to avoid policies that undermine access to food or land. For example, prioritizing export-oriented cash crops over local food production can threaten food security for vulnerable populations. Protecting subsistence rights may therefore require refraining from economic decisions that displace communities or raise the cost of staple goods. This illustrates that both security and subsistence rights generate overlapping negative and positive duties.

The Tripartite Structure of Duties

Shue further refines his analysis by identifying three types of obligations associated with all basic rights:

- The duty to avoid depriving individuals of their rights.
- The duty to protect individuals from deprivation by third parties.
- The duty to aid those who are unable to secure the substance of their rights themselves.

These obligations apply equally to security and subsistence rights. For example, with respect to health as a subsistence right, there is a duty not to undermine people's access to essential resources; a duty to safeguard them from harmful practices by others; and, where necessary, a duty to provide assistance to those who cannot meet their own basic needs, such as children, the elderly, or the infirm.

This tripartite framework demonstrates that the conventional positive/negative distinction oversimplifies the reality of human rights implementation. All rights entail a combination of non-interference, institutional protection, and, at times, affirmative provision.

Health as a Foundational Basic Right

In recent years, Shue's basic rights thesis has gained renewed relevance in global public health debates. The recognition of health as a universal human right reflects the understanding that physical and mental well-being are prerequisites for meaningful participation in social and political life. The right to the highest attainable standard of health encompasses not only medical treatment but also preventive care, sanitation, adequate nutrition, safe housing, healthy working conditions, and a clean environment.

Without these foundational conditions, the exercise of other rights becomes largely theoretical. A person weakened by preventable disease or chronic malnutrition cannot easily engage in political activism, attend school, or secure employment. The right to vote or freedom of expression holds limited practical value if individuals lack the physical capacity to participate. Similarly, when women die in childbirth due to the absence of basic maternal care, or when children succumb to preventable illnesses, the promise of political equality offers little comfort.

In many parts of the world, socio-economic deprivation poses a more pervasive threat to human dignity than overt

political repression. Millions continue to die each year from preventable causes linked to poverty, hunger, and inadequate health care. These realities underscore Shue's central insight: subsistence rights are not peripheral to the human rights framework; they are foundational to it.

Recognizing health as a basic subsistence right does not deny the importance of civil and political freedoms. Rather, it affirms their interdependence. A human rights system that protects speech and suffrage while tolerating widespread preventable disease fails to secure the conditions necessary for genuine freedom. If the objective of human rights law is to safeguard human dignity, then ensuring access to basic health care must remain central to that project.

International Recognition of the Right to Health and the Development Paradigm

International Legal Commitments to Health as a Human Right

The recognition of health as a fundamental human right is firmly embedded in international human rights law. Foundational instruments such as the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and the Convention on the Rights of the Child (CRC) explicitly affirm the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

Beyond treaty law, states have reiterated these commitments in major global conferences and policy frameworks. At gatherings such as the Rio Earth Summit, the World Summit for Social Development in Copenhagen, and the 1995 Beijing World Conference on Women, governments pledged to strengthen health systems and reduce disparities. The Beijing Platform for Action, in particular, called upon states to reaffirm women's and girls' right to health, expand access to affordable and high-quality primary care, and drastically reduce maternal and child mortality within specified timeframes.

These declarations reflect a broad international consensus: health is not merely a policy objective but a normative commitment grounded in human dignity and equality.

Persistent Inequalities in Access and Outcomes

Despite these formal commitments, stark disparities persist in access to health services and in the quality of care available across and within countries. The difference between those who receive cutting-edge medical treatment and those who lack even basic primary care remains profound. Geographic location, national wealth, and the structure of domestic health systems whether public, private, or hybrid continue to shape life expectancy and overall well-being.

The gap between international guarantees and lived realities raises important questions about how development itself is conceptualized and pursued. While international law affirms universal standards, implementation often depends on national capacity, political priorities, and economic resources.

Rethinking Development: From States to Individuals

Development is frequently understood as a macroeconomic process measured by national income, industrial growth, or aggregate productivity. Yet this perspective risks overlooking the individuals whom development is meant to serve. At its core, development should aim to improve the everyday conditions of people's lives. Subsistence and positive rights are not claims to luxury or excess; they concern the provision of essential conditions clean air, safe water, adequate food, shelter, and basic health care that enable individuals to function with dignity.

A more human-centered understanding of development emphasizes the expansion of people's capabilities. Rather than focusing solely on economic output, this approach asks whether individuals are able to live healthy, nourished, and socially engaged lives. It integrates material access to commodities, improvements in well-being, and satisfaction of basic needs into a broader evaluative framework.

Capability theorists describe human functioning in both elementary and complex terms. Basic capabilities include being adequately nourished, clothed, sheltered, and protected from preventable illness. More advanced capabilities involve participating in community life, expressing oneself publicly without shame, and exercising agency in social and political spheres. Within this framework, the realization of both civil and political rights and economic and social rights becomes essential to genuine development.

Access to commodities plays a significant, though not exclusive, role in expanding capabilities. Individuals are entitled to certain goods and services through social and legal entitlement systems. Intellectual property regimes and the right to health are both components of this broader entitlement structure: one allocates and protects control over knowledge-based commodities, while the other seeks to ensure equitable access to goods and services necessary for well-being. The tension arises because intellectual property law may restrict access to certain commodities, while the right to health demands that essential goods particularly medicines be available and accessible.

Crucially, the emphasis within a capability framework is not on ownership of goods, but on meaningful access to them. Availability, affordability, and non-discrimination become central considerations when assessing whether individuals can truly exercise their rights.

Access to Medicines and the Structural Tension between IPR and Health

Few would dispute that medicines are indispensable to achieving the highest attainable standard of health. Pharmaceuticals prevent disease, alleviate suffering, and save lives. When access to essential medicines is restricted whether through limited production or high pricing the consequences can be severe.

A particular challenge arises from the nature of pharmaceutical demand. For many life-saving drugs, demand is relatively inelastic: individuals cannot easily substitute alternative treatments, nor can they simply forego consumption without risking serious harm or death. When patent protections create monopolies over production, manufacturers may set prices at levels that maximize returns within market constraints. If vulnerable populations cannot afford those prices, they may be forced to go without treatment, directly compromising their health and survival.

Some might argue that this is not primarily a question of intellectual property, but rather one of social welfare policy. Governments, it is said, bear responsibility for assisting those who cannot afford essential care. In principle, this

reflects the positive obligations associated with the right to health. States are expected to adopt measures enabling individuals and communities to access necessary services.

In practice, however, fulfilling these obligations can be extraordinarily difficult for resource-constrained governments. Limited fiscal capacity may restrict their ability to subsidize high-cost medicines. Moreover, when states grant exclusive patent rights that permit monopoly pricing, and then must allocate public funds to help citizens purchase those same products, a structural paradox emerges. Public resources may effectively subsidize private monopoly profits, placing governments in a complex and sometimes contradictory position.

This dynamic illustrates the deeper tension at the heart of the intellectual property and health debate. Intellectual property rights are designed to incent*i*v*i*ze innovation by granting temporary exclusivity. The right to health, by contrast, requires that essential goods be accessible to all without discrimination. Reconciling these objectives requires careful consideration of how entitlement systems allocate both control and access and whether existing frameworks adequately serve the broader goal of human dignity and equitable development.

Intellectual Property Protection and the Universal Declaration of Human Rights

Recognition of Intellectual Property as a Human Right

International human rights law does not only protect subsistence and welfare interests; it also safeguards the moral and material interests of creators. Article 15(1)(c) of the International Covenant on Economic, Social and Cultural Rights affirms the right of everyone to benefit from the protection of the moral and material interests arising from their scientific, literary, or artistic production. Similar guarantees appear in regional human rights instruments, including the American Declaration of the Rights and Duties of Man, the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, and Protocol No. 1 to the European Convention on Human Rights.

These provisions reflect a philosophical tradition rooted in Western conceptions of property. Just as individuals are entitled to own tangible property, so too are they seen as having legitimate claims over their intellectual creations. The protection of intellectual labor is therefore framed as an extension of personal autonomy and economic security.

However, this recognition exists alongside other equally important guarantees. Article 25 of the Universal Declaration of Human Rights (UDHR) affirms the right to an adequate standard of living, including medical care and necessary social services. When intellectual property protections restrict access to essential medicines or health technologies, tensions emerge between these provisions particularly between Article 27 (protection of authors' interests) and Article 25 (the right to health and well-being).

Article 28 and the Institutional Order of Rights

The tension deepens when considering Article 28 of the UDHR, which recognizes the right to a social and international order in which all rights in the Declaration can be fully realized. This provision does not add a new substantive right; rather, it establishes a structural principle. It implies that the global institutional framework including trade and intellectual property regimes must be designed in a manner consistent with the realization of all human rights.

The critical question, therefore, is whether the contemporary global intellectual property system particularly as structured under the TRIPS Agreement supports or obstructs the realization of health rights under Article 25. When patent protections grant exclusive control over life-saving medicines, and pricing mechanisms place those medicines beyond the reach of the poor, the compatibility of these rights becomes morally and legally contested.

A further complication lies in the absence of a clear hierarchy within the UDHR framework. The protection afforded to a multinational corporation's trademark stands formally alongside a patent for a life-saving drug. This equal formal status has been challenged by many developing countries, which argue that subsistence rights especially those directly linked to survival must carry greater normative weight.

Profits, Subsistence, and Global Justice

Critics of the current system have emphasized that strict intellectual property protection can place profit incentives in direct tension with human survival. The late Prime Minister Indira Gandhi, for example, expressed concern that life-saving medicines were becoming commercial commodities subject to aggressive profit-driven strategies. For many developing countries lacking independent research capacity, essential drugs were available only at prices far beyond their means.

The HIV/AIDS crisis in sub-Saharan Africa vividly illustrated this dilemma. At a time when antiretroviral therapy was the only effective means of prolonging life, patent protections allowed pharmaceutical firms to set prices that were prohibitively high for most affected populations. Public pressure, alongside the threat of compulsory licensing, eventually led to negotiated price reductions. Nevertheless, the episode demonstrated how monopoly pricing could effectively restrict access to life-saving treatment.

From a moral standpoint, placing exclusive property claims above the subsistence needs of vulnerable populations is difficult to justify. Health functions as a public good in the sense that societies broadly benefit from a healthy population. When access to essential medicines is denied on grounds of affordability, the result may resemble a structural inequity in which survival depends on purchasing power rather than inherent human dignity.

Rethinking Incentives: Toward a Health-Oriented IPR Framework

The challenge, however, is not to abolish incentives for innovation. Pharmaceutical research is costly, and without mechanisms to recover investments, future innovation may stagnate. The problem lies not in the existence of incentives, but in how they are structured.

Philosopher Thomas Pogge has proposed alternative models aimed at aligning innovation incentives with global health needs. Under current market conditions, research priorities tend to favor profitable conditions prevalent in wealthier populations, while diseases disproportionately affecting the poor such as malaria remain underfunded. Pogge suggests mechanisms that would reward pharmaceutical firms based on the global health impact of their products rather than solely on market sales.

One proposed strategy involves creating a public fund to compensate firms in proportion to a drug's measurable

contribution to reducing the global disease burden. Essential medicines would remain accessible at lower prices, while firms would receive remuneration over time through publicly financed reward mechanisms. Such an approach seeks to decouple research incentives from monopoly pricing.

Another complementary proposal involves extended but moderated patent compensation. Essential drugs could be supported partly through public funding, while firms receive long-term, smaller royalty streams rather than short-term monopoly profits. This model would transform patents into stable long-term assets rather than instruments of high short-term returns. An independent international body potentially the World Health Organization could oversee the determination of compensation rates and monitor public health impact.

These proposals aim to reconcile corporate innovation with global justice. By restructuring incentives, they attempt to ensure that essential medicines are both developed and made broadly accessible.

Conclusion: Reconciling Intellectual Property and the Right to Health

The central tension explored in this article is not whether health is a human right. International law, global declarations, and moral consensus overwhelmingly affirm that it is. The deeper challenge lies in the feasibility of realizing this right within an international economic order that simultaneously protects strong intellectual property claims.

Governments particularly those facing fiscal constraints are understandably cautious about assuming expansive positive obligations. Developing countries may lack the resources to subsidize essential medicines, while developed states often prioritize protecting industries that drive innovation and employment. Yet framing the debate as a binary conflict between profit and life obscures the possibility of structural reform.

The dichotomy between intellectual property rights and the right to health cannot be resolved purely through moral argument. Few would openly claim that profit should prevail over human survival. Instead, the solution must lie in institutional design specifically, in creating frameworks where innovation and access are mutually reinforcing rather than mutually exclusive.

Health must be understood as a global public good. A minimally healthy population contributes to social stability, economic productivity, and collective human flourishing. Reconciling Articles 25 and 27 of the UDHR requires a reorientation from short-term corporate gains and electoral cycles toward long-term human well-being. While national political systems and corporate governance structures often incentivize short-term performance metrics, intellectual property regimes can be redesigned to promote sustainable and equitable outcomes.

A restructured compensation model combining public funding, moderated patent rewards, and long-term royalty mechanisms offers one pathway forward. Such reforms would not eliminate intellectual property rights but would recalibrate them in light of their broader human impact. By aligning corporate incentives with the reduction of global disease burdens, it becomes possible to respect both the creative contributions of innovators and the subsistence needs of vulnerable populations.

Ultimately, reconciliation between intellectual property protection and the right to health is possible but only if states, corporations, and international institutions embrace a shared vision of development centered on human dignity. Without meaningful reform of the existing patent compensation structure, the promise of the UDHR will remain only partially fulfilled. With thoughtful institutional innovation, however, intellectual property and the right to health need not stand in opposition. Instead, they can form part of a coherent framework aimed at advancing both innovation and the well-being of humanity as a whole.

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