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**Patients Rights v. Patent Rights and their harmonization towards social justice:
A legal perspective**

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The relationship between human rights and intellectual property rights (IPR) has been the topic of many debates in the recent past. Human rights are today a growing set of inherent and indivisible State obligations. Intellectual Property is a set of rights resulting from intellectual activity in industrial, scientific, literary and artistic fields. Intellectual property rights have increasingly come into conflict with socio-economic rights specially right to health. In terms of the International Human Rights law, there are certain aspects of the right to health that must be realized immediately. Such obligations are called 'minimum core obligations' and States are bound to comply with them immediately. These human rights State obligations in certain instances come into conflict with the State obligations under the IPR regime. In compliance with the obligations of international intellectual property law, States are required to enact tough patent laws to protect their products from fraudulent acts. Tougher patent laws will however increase the extent of State obligations with regard to the provision of health care, necessitating an increase in State expenditure on drugs. Patented drugs produced by the global pharmaceutical giants using costly research and development are inevitably priced at a level that is beyond the reach of millions of people, Disincentives to carry on research and development for the discovery of new medicine may also occur due to reasons such as market failure.

Therefore, challenging task is to ensure at least a basic level of harmonization with the human rights that are imperiled by these intellectual property laws. International Intellectual property regime however, recognizes mitigatory measures such as compulsory licensing and parallel imports in implementing patent for inventions. These mitigatory provisions were not initially included in the Intellectual Property Bill which led to our current statute on intellectual property rights. They were in fact later incorporated after the landmark Supreme Court determination to that effect, namely *In Re Intellectual Property Bill*, The Supreme Court recognized the impact of IPR on the right to health and stressed that the peoples' right to health must be accorded primacy.

At present however, the right to health is not recognized in the Sri Lankan Constitution. Therefore, study recommends the recognition of a justiciable fundamental right to health in our 1978 Constitution. Sri Lanka's National Medical Drug Policy is commended as it reflects some universal human rights. In conclusion, Intellectual property rights need be recognized subject to the protection of the right to health.

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