

**THE IMPACT OF INTELLECTUAL PROPERTY RIGHTS
ON ENVIRONMENTALLY SOUND TECHNOLOGY TRANSFER:
AN ANALYSIS OF THE INTERNATIONAL LEGAL FRAMEWORK
FOR CLIMATE CHANGE**

*B.A.R. Ruwanthika Ariyaratna**

ABSTRACT

The United Nations Framework on Climate Change (UNFCCC) in 1994 established the importance of sharing Environmentally Friendly Technologies to manage climate change. The UNFCCC's Article 4 emphasised the importance of having access to or transferring environmentally sound technologies and know-how to others. The impact of intellectual property rights (IPR) on technology transfer, on the other hand, has ignited an unsolved debate between developed and developing countries. While industrialised countries argue that IPRs stimulate technological development and the invention of environmentally sound technologies, developing countries argue that IPRs must be relaxed for everyone to have equitable access to technology. Despite the fact that the international climate change legal framework has progressed a long way from the UNFCCC in 1994 to the Paris Agreement in 2015, the tension between IPR and technology transfer remains unresolved. As a result, the first purpose of this study is to analyse whether intellectual property rights are an incentive or an obstacle for sharing environmentally sound technology. Second, how has this issue been addressed in the international legal framework for climate change. And third, what are some viable solutions to answer the challenges of implementing technology transfer while protecting IPR. The findings of this paper reveal that all major climate change legislations have neglected to consider the influence of IPR on developing and transferring ESTs. The main reason behind this failure is the tug of war between developed and developing nations. Therefore, this study proposes two alternative suggestions for addressing the problem. The first suggestion is to recognise the relevance of IPR for technology transfer within the international climate change legal framework, and the second suggestion is to create a separate legal framework for IPR, EST and climate change. This research adopts a doctrinal research methodology supported by an extensive analysis of primary and secondary legal sources.

Keywords – Intellectual Property Rights, Climate Change,
Environmentally Sound Technologies, Technology Transfer.

* LL. B (Hons.) (Colombo), LL.M (Merit) (Colombo), MPhil (Colombo), Attorney-at-Law, Senior Lecturer, Department of Legal Studies, Faculty of Humanities and Social Sciences, The Open University of Sri Lanka.