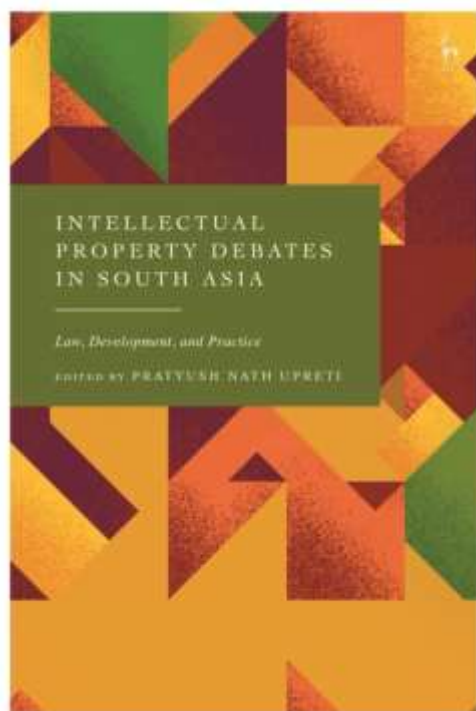


(Part III) Book Review: Intellectual Property Debates in South Asia

Reviewing Part III of the book- "[Intellectual Property Debates in South Asia](#)", edited by Dr. Pratyush Nath Upreti. Prof. Ishupal Singh Kang engages with how institutions, courts, and practices shape IP governance beyond doctrinal boundaries, bringing questions of gender, access, expertise, and social justice into the frame. Reading the chapters in conversation rather than isolation, Prof. Kang reflects on innovation-centric assumptions, the politics of IP expertise, and the role of South Asian historical narratives in re-imagining IP law and its futures. Prof. Kang is an Associate Professor at Jindal Global Law School. See [here](#) and [here](#) for reviews of Parts I and II of the book by Shama Mahajan and Akshat Agrawal, respectively.

[We also organized an online discussion on the book, where the reviewers exchanged their perspectives and engaged with questions from the audience. Interested readers can check that out here ([Part I](#) and [Part II](#)).]



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(Part III) Book Review: Intellectual Property Debates in South Asia

By Prof. Ishupal Singh Kang

The writings (which consist of five chapters) from this part, titled, "Institutions, Courts and Practices", cover a wide span of themes, perspectives and approaches. This offers a richness to the issues and subject matters covered in the book section. These range from an expansive reflection on the issues of gender disparity in IP; to familiar concerns of access to fundamental resources like learning materials and; from perplexities of complying with international patent standards in the dying days of the multilateral trade framework with a history of, as Anne Orford put it, [broken bargains](#); to very important self-reflective questions on politics of "IP

expertise" itself and the field (and the range of) of discourse (and ostensibly what is left out on the margins).

First observation that I would like to make is that a very remarkable aspect of these writings from Part III of the book, is a certain ease with inclusion of traditionally non-IP related concerns as well as an indiscipline which does feel all embracing and allows for a wider conversation and I will try to keep up with that approach. There are some meandering threads of commonalities as well as disagreements running through the book that are quite thought-provoking. Rather than take each chapter individually, I will try to put these into conversations with each other under some broad themes.

I take my cue from this fascinating sub-title that has been used in the Introduction chapter by Pratyush: "South (Asia) at a Crossroad". I was intrigued by this formulation. In my close reading of this, it seems like a helpful characterization. To me this foregrounds a sense of "south-ness" that is concrete and significant and of common concern (as compared to the bracketed Asia, leaving it provisionally open rather than geographically and conceptually fixed). I would like to think that this reading is supported by the highly insightful foreword to the book by Dev Ganjee which lays emphasis on questions and considerations of social justice as being central, of *stark inequalities* in sharing the gains (and losses), of the need for examination of *normatively pre-loaded assumptions* and (re)imaginings that go beyond the conceptualisations of *liberal individualism*.

Building upon these relevant points, my first broad theme would be the exploration of the innovation-centric perspective. Although all the chapters do emphasize the issues of equity and social justice, one can feel that an undercurrent runs, that is discernible at few places in the writings, which comes across as an Innovation-centric perspective. This innovation-centric perspective, aligns with and is based on the *normatively pre-loaded assumptions*, that Dev Ganjee talks about in the foreword.

This is discernible in the writings at several places. For example, the reference to the Global Innovation Index (and the direct link with National IP Policies with it) as a barometer for innovative progress (Chapter 14) or the assumption that introducing (IP) legal regimes and policies would directly lead to improvement of women's lives (as diverse as authors, farm labourers, traditional artisans) (Chapter 15) or also on a broader level on the notion of "balance" (despite highlighting structural issues rooted in colonial histories and unequal global rule making) (Chapters 12 and 13). While this is a central aspect of the discourse/field, as the chapter by Lokesh Vyas reminds us ("The IP field had solidified within a specific epistemic framework") (Chapter 16) and on a pragmatic level offering solutions within the internal logic is of great value, however, examining and questioning these assumptions can also, in a sense, break new ground and offer fresh perspectives.

It goes without saying that critical and interdisciplinary strands of IP scholarship have long documented the *ratcheting of IP standards*, consequent commodification of knowledge and technology and enclosures of the intellectual commons as well as pointed out the limits of the economic rationality of the incentive-access framework. What is noteworthy, from my limited viewpoint, is that the straightforward link between IP, Innovation and Progress/Development as a horizon value have also come under scrutiny and in a much more

significant fashion. For instance, as [Jessica Silbey](#) notes in her book, [Against Progress: Intellectual Property and Fundamental Values in the Internet Age](#), “Intellectual property law is no longer about “promoting progress of science and the useful arts” by simply granting to authors and inventors a limited property right. The qualities of “progress” and the characteristics of the “property” are both under reconsideration in the Digital Age. From this follows that the incentive story—if property, then progress—is also up for revision. The causal calculation is either much more complicated or built on faulty assumptions”.

Similarly, Henning Grosse Ruse-Khan notes (in the appropriately titled article, [Is IP Good For Our Planet](#)): “there is no reason to settle for an IP system that is unambiguously pro technological innovation without critically reviewing its impact on the continued destruction of our planet”. In a similar vein, scholars in different fields like STS ([Birch and Muniesa](#)), critical political economy ([Cecilia Rikap](#)) and Critical IP ([Hyo Yoon Kang](#)) have shown in detailed and compelling way that even if IP law is conventionally about balancing of incentives and access, in contemporary times, IP has come to predominantly be entangled with processes like assetization, speculative finance and capitalization which serve the interest of financial actors to capitalize on information and knowledge in ways that could enable ever increasing value creation (for such actors) with no broader material-economic benefits to societies at large.

A refreshing and hopeful experience of reading the book was that these writings offer very interesting directions which align with the considerations, concerns and the issues mentioned above. For instance, there is remarkable reference to empirical and evidence based interrogation of these fundamental normative assumptions in Gargi Chakrabarti’s writings on Gender and IP, as she puts it: “an important doubt remains whether the women involved in the production of GIs are actually receiving economic benefits of GI protection” (Chapter 15). Similarly, while outlining the suggested approach for a National IP Policy for Sri Lanka, Althaf Marsoof stresses on the values of preservation of sovereignty/autonomy (echoing the concerns with uncritical adoption of “expertise”, economic, legal or otherwise) as well as inclusivity and wide engagements with communities and interest groups etc (Chapter 14). Going beyond this, Lokesh Vyas in his prescription for a move towards “decolonization” (a fraught term but the way used mostly avoids that fraughtness) of IP education/training suggests that “foundational elements (of IP) must be taught within the country or region’s broader social, economic, and cultural context. Adding a multidisciplinary perspective – from anthropology, sociology, linguistics, psychology and other fields” (Chapter 16) is extremely important. These steps and considerations are surely critical for any attempt for a serious reimagination. To conclude, one of my favorite and most useful in-class reading texts is this blogpost by Shamnad titled: [Obsessing on Newness: The Death of Patents?](#) which in a very playful and lively way offers a foundational critique of the Innovation-centric paradigm.

The second broad theme worth reflecting upon is the uses of history (around knowledge, technology, economic dynamics etc.) and their value in framing the issues in contemporary times. This is a connecting thread present in many of the writings in part III of the book as they offer a historical narrative, (again, a very useful term that is used in the Introduction Chapter: *South Asian IP Narratives*). These historical narratives, at the risk of oversimplification, sketch the evolution of norms/rules around production, access and valuing of “knowledge” from pre-colonial times to the imposition of intellectual property rules and norms aimed at vested colonial interests to the post-colonial continuities. This, of course, is

valuable and decenters certain *Western reference points (Forward)* as well as ties up well (though maybe not in a detailed and elaborate way) with the more general historical perspectives in IP Scholarship whether it is, by now, the canonical text by Ruth Okediji, [International Relations of Intellectual Property](#) or the recent book by Amaka Vanni, [Patent Games in Global South](#) which takes a TWAIL-historical perspective on evolution of patent law globalisation.

This importance of colonial/postcolonial historical narratives in the writings makes me wonder if this also opens up space for other kinds of historical narratives, which could complement the colonial/postcolonial framework, by including, histories of resistance as well as histories of agency of the so-called colonised (rather than only colonial domination) and maybe also unpack the monolithic national or regional identities (there are definitely internal tensions and the gains and losses even within the South Asian region are grossly inequitably distributed) .

Here, the writings in part III themselves offer glimpses of this as Chapter on Srilankan history on access to education, the debates around introduction of legislation for plant varieties protection etc. as well as reference to the role of public organising and discourse in the educational access movement revolving around [Rameshwari Photocopying](#). Moreover, the recommendation by Lokesh Vyas to look towards the discipline of International Law for inspiration – which has had a significant historical turn resulting in rich outcomes – is certainly offering exciting direction for the discipline of IP law also. One example, in addition to the ones mentioned above, could be to also take seriously the histories of what escapes the “lawfulness” of the IP field itself. A tentative suggestion, in this vein, would be Rosana Pinheiro-Machado’s book [Counterfeit Itineraries in the Global South: The Human Consequences of Piracy in China and Brazil](#) which offers a very detailed and insightful anthropological account of commodity circuits in the geographies of the Global South and how these intersect and navigate in relation with global IP rules painting a rich and complex picture of issues of production, access, value and punitive dimensions of knowledge economy.

All in all, these writings, part of the first consolidated effort to focus on IP in South Asia, illuminate important issues and blind spots and offer thoughtful solutions and suggestions that would most certainly engender further research, discussions and conversations in new and hopeful directions.