RETHINKING INTELLECTUAL PROPERTY IN THE GLOBAL SOUTH - A CRITICAL ASSESSMENT OF INDIA'S LEGAL TRAJECTORY, INNOVATION ECOSYSTEM, AND ITS CHALLENGE TO WESTERN-CENTRIC IP NARRATIVES

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INTRODUCTION

The rise of IP into the sphere of global governance is one of the greatest legal and political processes of the late twentieth century. After being limited to statutory regimes at domestic level, the logics of proprietary as the IP were finally internationalized via the institutions, WTO and World Intellectual Property Organization (WIPO), where the logics of proprietary were entrenched in the global trade law and development policy. TRIPS, especially, constitutionalized a Western idea of IP by solidifying minimum standards of protection between the states of the union. They are based on the liberal, individualist and market-oriented rationales, rewarding inventors, encouraging individual innovation, and allowing capital flows across the borders and assuming their universal applicability. This has been done not only on a technical level by raising IP to the position of world norm but much more fundamentally normative as it instils a particular worldview to fit the economic needs of the highly industrialized economies.[1]

However, the same genericity that TRIPS and other regimes are purportedly promoting masks inherent contradictions between the concerns of the Global North and the developmental policy concerns of the Global South. In the case of developing nations and especially Global South nations, wholesale importation of Western-centric IP norms can be in conflict with the demands of public health, the need to build technological capacity and distributive justice. Introducing tough IP regulations threatens to limit entry to lifesaving medicines, to curtail knowledge dissemination, and to favor foreign patent holders at the expense of national creators.[2] The case of India illustrates such tension as India has both had to reconcile its laws with its TRIPS commitments,

1 Lokesh Vyas, *Whither Global South's Copyright Scholar(ship): Lost in the "Citation Game"?*, 56 IIC International Review of Intellectual Property & Competition L. 501 (2025).

2 *Id.*

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and has also been able to marshal both doctrinal creativity and statutory accommodations to place access and the common good first. This incongruity highlights the crucial issue that lies at the core of the international IP regulation, whether it is possible to balance the interests of the commercial interests of Global North with the requirements of development, the imperatives of social welfare, and the traditions of epistemology of the Global South.

Heading the list in rethinking IP regimes within the Global South, the UNCTAD Technology and Innovation Report, 2025 also emphasized the leading role of India in expanding its national IP filings, which rose 4,77,533 in 2020-21 to 6,89,991 in 2024-25 by 380% compared to 2,00,000, with a 3,38,000 total of AI patents & strong growth in AI total of 3,38,000.[3] The India AI Mission (2024) supported by legal history, Indian Council of Medical Research ethical standards on data safety and privacy, and with $1.4 billion in AI investment in the country in 2023 and 13 million developers on GitHub (second globally, 36% better than 2022-23), this legal trend places India at rank 36 on the Frontier Technologies Readiness Index (a 48-place improvement since 2022).[4] The innovation ecosystem in India is sustained by scalable Digital Public Infrastructure (DPI) serving more than 1 billion people, strategic alliances such as Google-Armman in developing AI in healthcare (3.6 million women served by 30% engagement boosts), and IIT-based centers of excellence, but challenges Western-centric IP stories such as the dominance of multinational tech giants (Alphabet, Amazon, and Microsoft controlling more than 66% of cloud markets and 90% of GPUs), leading to the AI divide (118 Global South countries omitted by major governance initiatives, risks deskilling in low-wage data annotation (under $2/hour), and hinders local value capture in global value chains, urging flexible IP policies for open data and inclusive AI to foster equitable development and counter corporate-led monopolies.[5]

HISTORICAL AND LEGAL TRAJECTORY OF IP IN INDIA

The Indian IP regime has long been consciously developed in opposition to the British template of the Patents and Designs Act, 1911, which favored foreign commercial interests and embedded monopolistic market structure in a way that was ill adapted to Indian developmental realities. The Act was a duplicate of the urban schemes that was not sensitive to the local industry or population health, which is effectually a reinvention of the foreign patent holders to the nascent industries in India. After independence, the legislature emphatically parted with such a heritage with the Patents Act, 1970, which substituted product patents in vital industries like pharmaceuticals with a process patents regime. Such a recalibration, which has since been upheld by later judicial interpretation, was symbolic of an expressly welfare-idealized conception of IP that attempted to achieve a trade-off between technological development and fair access. The Act contributed to the emergence of the strong Indian generic pharmaceutical sector and legal philosophy opposed the commoditization of basic commodities solely in the form of proprietary rights.[6]

With the advent of the TRIPS era, which the admission of India to the WTO in 1995 brought about, pressures to comply with western-centric models of patent protection surfaced anew, creating a tense legal landscape in which national welfare interests

3 United Nations Conference on Trade and Development (UNCTAD), Technology and Innovation Report 2025: Inclusive Artificial Intelligence for Development (UNCTAD/TIR/2025), Geneva (Apr. 7, 2025).

4 Press Information Bureau, *Government of India, IndiaAI Mission Calls for Proposals in Second EoI Round to Drive Ethical and Responsible AI Innovation* (Dec. 20, 2024) (Release ID 2086605).

5 Aparna Taneja & Milind Tambe, *Using ML to Boost Engagement with a Maternal and Child Health Program in India*, Google Research Blog (Aug. 24, 2022), https://research.google/blog/using-ml-to-boost-engagement-with-a-maternal-and-child-health-program-in-india/.

6 S. Sidhartha Narayan, Malavika Ranjan & Madhumitha Raghuraman, *Comparing Intellectual Property Policy in the Global North and South - A One-Size-Fits-All Policy for Economic Prosperity?* (2021).

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clash with international demands. The role of judicial interventions came into the limelight in the process of mediating these tensions, predominately in *Novartis AG v. Union of India*,[7] the decision of the court to refuse to patent a modified version of the cancer drug imatinib mesylate under the anti-evergreening provision, Sec. 3(d) reiterated the principle and embedded practicality principle of raising health concerns over the broad claims of a patent. The ruling crystallized the Indian middle-path stance, adherence to TRIPS in substance, but flexibility on the basis of access protection. Modern trends continue this two-fold line, and India has extended protections to software and digital IP, and developed mechanisms, as with Traditional Knowledge Digital Library (TKDL) to counter biopiracy, yet its courts and legislature still take a careful approach to guarantee that IP does not preclude developmental goals. The course of action therefore indicates long-term opposition between imported legal ideals and the constitutional obligation of India to distributive justice.

INDIA'S INNOVATION ECOSYSTEM

The pharmaceutical industry in India is a case of the conflict between the protection of IP and developmental concerns, which explain its reputation as a pharmacy of the Global South. The jurisprudence of the Indian courts has always underlined the public health as a constitutional requirement in Art. 21. As an example, in *Bayer Corporation v. Union of India*,[8] court overturned this saying that compulsory license given to Natco on behalf of Bayer on cancer-related drug sorafenib was justified since high prices hampered the availability of life-saving drugs. This decision has defined how India interpreted flexibilities of TRIPS, such that affordability and accessibility (as opposed to monopoly rights) are paramount in the interpretation, becoming a pattern to guide subsequent discussions on compulsory licensing. In addition, the court in *F. Hoffmann-La Roche Ltd. v. Cipla Ltd.*[9] emphasized that there is a need to balance the enforcement of patent rights and the interests of the population in the pharmaceutical sphere and thus the jurisprudential adherence of India to the moderate course of action, contrary to maximalist tendencies of the West in patent protection.

Another place where India has not been a victim of wholesale transplantation of Western IP paradigms is the IT and software industry. Indian copyright law, especially the post-Amendment, 2012, has attempted to negotiate the interface between proprietary software paradigm and open-source practices, by virtue of the hybrid nature of the Indian digital economy. Court involvement, in *Tata Consultancy Services v. State of Andhra Pradesh,*[10] the commodification of digital innovation was indirectly influenced & court accepted software as a good on the grounds of taxation. However, India is yet to progress towards being able to recognize software patent in a broad sense as that observed in the US but in the process, it has created room to facilitate and adopt service-oriented innovation. The judiciary has been careful not to grant broad software patenting as a sign of sensitivity to the socio-economic distribution of the IT sector in India that is based on service outsourcing, process innovation, and a comparatively open ecosystem, as opposed to controlling IP.

On the ground, the innovation economy in India predicts the virtue of frugality, local knowledge, and community invention that is sometimes outside of the conventional IP construct. Judicially and legislatively approved recognition of community rights, such as the Protection of Plant Varieties and Farmers Rights Act, 2001, is reflected in legal mechanisms and has not been embraced by pure corporate centered IP regimes. Although litigation in this domain is less salient, judicial support of biodiversity and traditional knowledge safeguards is reflected in its interpretative approach to constitutional obligations to conserve natural resources. TKDL is an initiative to thwart biopiracy in advance, and in effect, to establish a sui generis defensive protection against inappropriate patenting in other nations. The above measures point to how India is moving out of the individualized authorship paradigm, in which collective custodianship is favored over innovation, which itself questions the philosophical underpinnings of

7 13 S.C.R. 148.

8 AIRONLINE 2019 DEL 1712.

9 RFA(OS) 92/2012.

10 AIR 2005 SUPREME COURT 371.

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Western IP discourses.

Moreover, the role of government policy, e.g. Make in India, Startup India, & Atal Innovation Mission are incorporated in a legal-institutional framework that aims simultaneously at incentivizing entrepreneurship and protecting access. Courts have been invited to resolve conflicts that have emerged as a result of tensions between encouraging innovation and controlling monopoly. In *Shree Vardhman Rice & Gen. Mills v. Amar Singh Chawalwala*,[11] the court warned of zealous IP protection that would result in the impediment of competition and consumer interest. These decisions echo the overall developmental agenda of the state, to encourage industrialization without imitating exclusionary Western IP regimes. Although not directly creating innovation policy, the judiciary has played a consistent role in enhancing the constitutional balance between economic growth, the general interest and fair access, thus creating an ecosystem that is entrepreneurial, inclusive, and hostile to Western-centric IP orthodoxy.

INDIA'S CHALLENGE TO WESTERN-CENTRIC IP NARRATIVES

The IP jurisprudence of India has long been expressed in terms of a struggle against Western-centric histories that glorify individual authorship and market monopoly. On a philosophical basis, Western IP-regime is situated on Lockean theories of labor and utilitarian reasoning, wherein protection is explained as stimulus to innovation & individual profit. The constitutional promises to the access to public health, access, and distributive justice have been repeatedly prefigured in Indian legal discourse. For instance, in *Bayer Corporation v. Union of India*,[12] the IP Appellate Board affirmed the grant of the compulsory license in relation to the cancer drug sorafenib on the basis that patent should not be surrounded with the sense of invulnerability against the greater good. This jurisprudence is an intentional rejection of market-based exclusivity and the transfer of IP rights to more general developmental objectives and communal demands, hence opposing the blind exportation of Western legal orthodoxies.

The Indian IP law places emphasis in its normative orientation on the equilibrium between incentivizing creators and protecting access by the society. In contrast to the western model of maximalist protection, India statutory architecture, especially in the form of Sec. 3(d) and 84 of Patents Act, 1970 incorporates welfare-based controls over evergreening and non-working patents. *F. Hoffmann-La Roche Ltd. v. Cipla Ltd.*[13] indicated this equilibrium even as patent validity is upheld, in which court rejected interim injunctions to prevent production of a generic copy of a life-saving medication, expressly considering the societal interest in the availability of affordable medicine. These cases reflect a jurisprudential ethic that treats IP not as absolute, but as a conditional privilege subject to yielding in case of fundamental rights and socio-economic justice concerns, and undermines the universality of Western, individualistic models.

At the global level, India has established itself as a norm-entrepreneur in WTO negotiations, and continuously resists TRIPS-Plus commitments sought by developed countries. Its opposition lies in the fact that standardized, high IP criterion does not consider developmental asymmetries. India has also joined Brazil and South Africa to oppose proposals that undermine flexibilities in TRIPS particularly concerning the aspect of compulsory licensing and parallel imports. The *Pharmaceuticals (India) v. USTR*[14] wrangles & WTO controversy point to India not being willing to subject its health needs to the orthodoxy of the global markets. This position is not only defensive but also positive, it promotes a pluralist vision of IP governance; where differentiated standards are justified as the solution to substantive equality between North and South.

This leadership of India was further reinforced during the COVID-19 pandemic, as, together with South Africa, it was at the forefront of the proposal

11 FAO (O) No. 138 of 1996.

12 AIRONLINE 2019 DEL 1712.

13 RFA(OS) 92/2012.

14 *Setting The Record Straight: Ustr Claims Vs India's Medical Device Policy*, Business Standard, https://www.business-standard.com/economy/analysis/setting-the-record-straight-ustr-claims-vs-india-s-medical-device-policy-125040700952_1.html (last visited Sept. 7, 2025).

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at WTO to temporarily waive TRIPS commitments on vaccines and other key medical technologies. The waiver proposal has highlighted the ineffective Western-based IP paradigms in responding to world crises, revealing the structural inequalities of monopolistic pharmaceutical regimes. Although the waiver was met with vehement opposition by developed countries, it did provoke Global South cohesion and civil society activism, and left India on a central position in the re-politicization of IP law. Even the partial achievements of such diplomatic effort bolster the ability of India to destabilize long-standing accounts of IP as untouchable means of innovation and recast it as a mechanism that should be receptive to the needs of world population health.[15]

In addition, India has been the first to implement alternative knowledge governance regimes challenging the epistemic hegemony of Western IP categories. One such systemic attempt to defend the knowledge systems of the communities and indigenous people is the TKDL which was created to fight against biopiracy which is the patenting of common sense and local knowledge in foreign countries. Courts acknowledging that biodiversity and indigenous innovation need to be preserved as they have been in D*ivya Pharmacy v. Union of India*,[16] is not out of step with these institutional innovations, where collective custodianship of knowledge is appreciated. Similarly, the Indian enthusiastic promotion of open-source software and commons-based innovations in the digital sphere corresponds to a larger reconsideration of innovation outside ownership schemes.

CRITICAL ASSESSMENT

The greatest success story in India IP journey has been in the capacity to protect access to essential medicines without violating the TRIPS provisions. Decision in *Novartis AG v. Union of India*[17] is the jurisprudential hallmark., which codified Sec. 3(d) of the Patents Act, 1970 as an antitrust to evergreening. Such a provision highlights a different legal philosophy, in which the emphasis is placed more on public health and distributive justice rather than incentives of monopoly. The strong application of compulsory licensing, in *Natco v. Bay*, indicates the readiness to exercise TRIPS flexibilities in a manner that reflects constitutional obligation to the right to health. Such interventions have not merely safeguarded access within the nation but have also established the image of India as the pharmacy of the Global south to interfere with Western discourses that equate the strong IP protection with innovation and development.[18]

Other than pharmaceuticals, India has promoted an ecosystem of innovation that flourishes despite its conscious opposition to maximalist IP regimes. The development of its information technology industry, with its strong dependence on service models and open-source systems, demonstrates the feasibility of the innovation channels that do not depend on the broad-based proprietary rights. Jugaad and low-end innovation, which frequently exist outside the legal framework, is a phenomenon that can be used to question the epistemic superiority of Western IP law that gives preference to codified inventions as compared to informal and collective innovation. This shows that dynamic technological and social innovation may co-exist, indeed, thrive under, legal minimalism in IP.

India has also taken an unusually high position in global IP diplomacy by placing itself as an alternative to western leadership in norm-setting bodies. Its WTO-TRIPS Council leadership in the HIV/ AIDS crisis and, more recently, in the proposal of the COVID-19 vaccine waiver (alongside South Africa) is indicative of an unwavering campaign in favor of equitable access to knowledge and technology. India has challenged the universality of the TRIPS-Plus standards promoted by bilateral and plurilateral trade agreements by marshaling South-South solidarities. India has, in this regard, played not only a defensive role but also a norm entrepreneur role, trying to redefine the ideological landscape of world

15 K. Beiter, *Access to Scholarly Publications in the Global North and the Global South* (Am. Univ. Wash. Coll. of L., Program on Info. Justice & Intell. Prop. Research Paper No. 2021-02, 2021), https://digitalcommons.wcl.american.edu/research/1141/.

16 Writ Petition (M/S) No. 3437 of 2016.

17 13 S.C.R. 148.

18 Christopher Foster, *Intellectual Property Rights and Control in the Digital Economy*, 40 Info. Soc'y 1 (2024).

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IP by foregrounding developmental asymmetries and primacy of human rights.[19]

However, the status of India is full of contradictions. Although the US has expressed such commitment to the country with regard to the interests of the people, under the banner of constitutional and diplomatic obligation, the country continues to be pressurized by the US in the form of Special 301 Reports, which portrays India as the defiant violator of IP. At the same time, the emergence of big-box national industries in the areas of pharmaceuticals, biotechnology, and digital platforms has produced in-house lobbying of tougher IP protections, undermining the normative role of the state in distributive justice. In addition, traditional knowledge holders, grassroots innovators and indigenous communities, are still unequally safeguarded despite the efforts, including TKDL. The continued presence of bio-piracy controversies (e.g., neem, turmeric, basmati rice) highlights the insufficiency of existing legal frameworks to protect the non-Western epistemologies, and indicates that India IP regime is simultaneously both resistant and complicit towards hegemonic orders.

India has dilemmas on maneuvering the second generation of IP questions. The digital economy creates complicated questions about software patents, artificial intelligence, and ownership of data, the areas where current legal systems are inadequately developed or biased in favor of business. It will take long-term legal creativity to balance the commitments under both multilateral and bilateral trade agreements with constitutional commitment to equitable development. The risk is to recreate new exclusions, in which marginalized innovators become marginalized by new IP regimes in favor of digital capital and multinational platforms. Whether India can continue to be an international model of pluralistic IP governance or be swallowed by the homogenizing logic of Western-centric IP orthodoxy will depend on its capacity to develop a subtle legal pathway that both resists maximalist pressures and also meets the gaps in protection of grassroots and digital innovation.

CONCLUSION

The IP path of India reflects a deep conflict between compliance and commitment to international and pursuing a more developmental jurisprudence that challenges a normative hegemony of western-centric IP paradigms. Although TRIPS compliance has required major legal changes, India has persistently used the constitutional principles of social justice and social interest to curb exclusivist pressures, visible being its treatment of pharmaceutical patents and pharmaceutical access. This stance highlights one notable legal philosophy: IP has no termination but a conditioned tool that can be subjected to greater constitutional and developmental requirements. Defying the universality of the Western innovation-incentive paradigm, India presents itself as a norm entrepreneur in the discourse of global IP, to promote a pluralistic order that honors differentiated capacities, communal knowledge practices, and demands of fair access. The Indian experience thus shows that other legal paths in the Global South are not only responsive to Western impositions, but can be a form of positive and principled reconstruction of IP governance.

19 *Id.*